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Testimony

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1 TESTIMONY IN EPISTEMOLOGICAL DEBATE

THE ISSUE OF the status of testimony is central to epistemological discussion, and it is easy to see why. Along with our senses, testimony is one of the two key ways in which we gain knowledge of the world.[1] Traditionally, when epistemologists talk of testimony they have in mind something quite broad which includes, for example, the written 'testimony' that one can gain from textbooks. Since our ultimate focus here is on the issue of legal testimony, however, we will understand testimony in a more strict fashion in terms of the intentional and verbal transmission of information.[2]

The debate surrounding the status of testimony in the epistemological literature has tended to cluster around two opposing models. On the one hand, there is the *inferentialist*—or, as it is sometimes known, often pejoratively, *intellectualist*—claim that one cannot gain a justified belief about a proposition solely on the basis of hearing someone assert that proposition (ie, one needs independent grounds to justify that belief). In contrast, others have argued for a *default* model—sometimes called, again often pejoratively, *credulism*—which allows

[1] A key difference between testimony and perception is that testimony, like memory, is not a *generative* source of knowledge and justification, but only a *sustaining* source. That is, while we gain new knowledge by using our perceptual faculties, we merely acquire knowledge that has already been gained by another source (such as by perception) from testimony, or transmit such old knowledge to others through our own testimonial acts. This, at any rate, is the standard view of testimony though, as J Lackey, 'Testimonial Knowledge and Transmission' (1999) 49 *Philosophical Quarterly* 471, points out, there are complications concerning exactly how we are to understand this claim.

[2] This also allows us to side-step the issue of whether an agent's *unintentional* transmission of information, whether verbally or otherwise, should qualify as testimony. For more on the issue of how we should define testimony, see C A J Coady, *Testimony: A Philosophical Study* (Oxford, Clarendon Press, 1992), ch 2—cf P J Graham, 'What is Testimony?' (1997) 47 *Philosophical Quarterly* 227—and E Fricker, 'Against Gullibility' in B K Matilal and A Chakrabarti (eds), *Knowing from Words: Western and Indian Philosophical Analysis of Understanding and Testimony* (Dordrecht, Kluwer, 1994) 125.

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that provided there are no special grounds for doubt, then one can gain a justified belief in a proposition simply by hearing someone assert that proposition.[3]

There are certainly considerations that can be offered in favour of each position. As regards inferentialism, the natural motivation for the view is that without independent grounds there is, intuitively at least, no reason to accept testimonial evidence as being in any way indicative of the truth. Suppose that you have no independent grounds by which you can assess an instance of testimony—you do not know, for example, anything about the speaker's reliability as an informant or about the truth of what she asserts. In such a situation, why should hearing her make an assertion give you any reason for thinking that what is being asserted is true (let alone provide you with a reason which would suffice to *justify* your belief in that proposition)? After all, for all you know to the contrary, this person could be a compulsive liar, or completely delusional, or perhaps even someone who is having a joke at your expense.[4]

Historically, the inferentialist position is most often associated with the work of David Hume, who, it is claimed, argues that since there is no a priori reason for thinking that beliefs gained via testimony should be thought to be true, so we need independent grounds to justify our beliefs gained by testimony. Moreover, if we are to acquire a general justification for testimony, then this will have to be gained, ultimately, from non-testimonial sources since otherwise the justification would be circular. He writes:

> [T]here is no species of reasoning more common, more useful, and even necessary to human life, than that which is derived from the testimony of men and reports of eye-witnesses and spectators [. . .] [O]ur assurance in any argument of this kind is derived from no other principle than our observation of the veracity of human testimony, and of the usual conformity of facts to the reports of witnesses. It being a general maxim, that no objects have any discoverable connexion together, and that all the inferences, which we can draw from one to another, are founded merely on our experience of

[3] It is worth noting that this formulation of the contrast between inferentialism and the default model specifically focuses on epistemic *justification*. Accordingly, a quasi-credulist thesis which merely claimed that one can gain a reason—ie, as opposed to a *justification*—for a belief in a proposition simply on the basis of hearing someone assert that proposition would be counted as an instance of inferentialism by the lights of this formulation since it would still be demanding that testimony-based justified belief requires independent grounds. In what follows, when I talk of how default theorists allow that testimony-based beliefs have an innate epistemic status I will have in mind the specific claim that such beliefs have an innate justification. I take it that inferentialists will usually be inclined to reject even the weakened rendering of the default thesis, though it is not essential to the view as I understand it here that they do so.

[4] Of course, it is very difficult to imagine *any* situation in which one has no independent grounds by the lights of which one can assess an instance of testimony, and one might think that this fact counts against credulism. It is worth remembering, however, that it is not part of the credulist position to make an empirical claim to the effect that there are situations in which one forms justified testimony-based beliefs without having any independent grounds which one can bring to bear as regards assessing the truth of those beliefs. Rather, their claim is simply that where there are no special grounds for doubt, one can be justified in believing a proposition solely on the basis of hearing someone assert that proposition. Accordingly, credulists will claim that the fact that there usually are independent grounds available for belief in an instance of testimony merely indicates that we typically have *more* grounds available to us to justify our beliefs in such cases than is strictly necessary.

> their constant and regular conjunction; it is evident that we ought not to make an exception to this maxim in favour of human testimony, whose connexion with any event seems, in itself, as little necessary as any other.[5]

It follows that as regards any particular testimony-based belief, that belief cannot be justified by that testimony alone. What will be required for justification will be further independent (ie, non-testimonial) grounds, such as our previous observations regarding the 'usual conformity of facts to the reports of witnesses.'[6] Hume's position is often descried as *global reductionism*, in that he is interpreted as holding the view that testimonial justification must always be reducible to other forms of justification, such as perceptual justification.

Of course, we are very rarely in a situation in which, as we imagined above, we have *no* independent evidence by the lights of which we can assess an instance of testimony. Typically, for example, we can see the person making the assertion (or at least hear him), and this will reveal *something* to us about the pedigree of that assertion. Moreover, the content of the assertion is important in this respect. If it roughly conforms with our view of the world and what we deem to be likely to be true, then this will itself be independent grounds in support of belief in the proposition asserted, while if the assertion is of something which is, as far as we know, quite fantastic, then this will be prima facie grounds for thinking that what is asserted is false. What this reveals, according to the inferentialist, is that although the phenomenology of receiving someone's testimony seems to conform to the default model, in that we don't normally doubt such testimony unless there is special reason to do so, this is in fact because we are implicitly aware that we usually have good independent grounds for trusting testimony in this way—in particular, because we have independent reasons in favour of trusting the speaker or for thinking that what he says is true.

Nevertheless, if this is Hume's position,[7] then it will clearly lead to a form of scepticism about the epistemic status of a wide class of our beliefs. The reason for this is that the kind of independent evidence that we might wish to appeal to in justifying our testimony-based belief will often itself be gained via testimony. Think, for example, of the general world-picture that one has, including mundane facts about such things as how the postal service works, along with scientific facts concerning, for example, the way the gravitational pull of the moon affects the movements of the tides. Clearly, these are truths which very few of us are in a position to verify for ourselves, and it would be extremely difficult to gain sufficient inductive evidence about the reliability of an informant to ensure

[5] See D Hume, *Enquiries Concerning Human Understanding and Concerning the Language of Morals* (1777) ed L A Selby-Bigge (2nd edn, Oxford, Oxford University Press, 1972), 111.

[6] This passage from Hume incorporates some ambiguities that I have not the space to discuss here. For discussion, see Coady, n 2 above, ch 2.

[7] I actually have my doubts about whether Hume is best thought of as a global reductionist at all, since closer examination of the text reveals some important qualifications to what he says, and a contextual setting which undermines the apparent generality of the remarks just cited. In general, it strikes me that the 'Humean' position as regards testimony in the contemporary epistemological literature is not one that Hume would assent to.

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that we were able to vouch for the testimony of that informant on matters like this without appealing to further testimonial evidence (eg, someone else telling us that this informant is reliable about these matters). As C A J Coady puts the point, 'it seems absurd to suggest that, individually, we have done anything like the amount of field-work that [global reductionism] requires.'[8] Thus, the range of empirical beliefs that we are able to possess justifications for on this picture is going to be much slimmer than we might have hoped. Nevertheless, this point is not in itself a decisive consideration against the view, since it could just be *true* that our beliefs are not as extensively justified as we often suppose, and thus that a limited form of scepticism about our testimony-based beliefs is entirely in order.

Still, the phenomenological pull of the default model of the epistemology of testimony is quite strong, in that the inferentialist account seems to unduly 'intellectualise' our understanding of how we acquire justified beliefs via testimony. The analogy with perceptual belief might be thought to be instructive in this regard, since this clearly seems to be a case in which insisting on an inferentialist model would be bizarre. We are quite happy to allow perceptual beliefs a default positive epistemic status. Intuitively, in normal circumstances where there is no special reason for doubt, one can gain justified beliefs about one's environment merely by observing that environment. Given that this is the case, the natural question to ask is why the same compliment should not be extended to our beliefs formed via testimony?

One might think that the obvious reason for this is that our perceptual faculties are *natural*—we are, as it were, *designed* to gain reliable information about our environment via these faculties. In contrast, it seems that our tendency to trust testimony is *acquired* rather than innate, and so is in need of some further justification. Closer inspection reveals, however, that this distinction is far from clear-cut. After all, it is well documented that our natural instinct is to tell the truth. The truth is something that 'slips out' when we are not being careful about what we say, and when telling a falsehood our bodies react in abnormal ways to indicate this (which is what ensures the general reliability of lie-detector tests). Moreover, it is a commonly observed feature of the intellectual development of children that they *learn* to be suspicious of what adults say in certain circumstances (eg, if they assert something in the middle of a 'make-believe' game)—their natural instinct is to trust the testimony of others, particularly adults. It could be argued, then, that just as we are naturally configured so as to gain information via our perceptual faculties, so we are naturally configured not just to tell the truth but also, in turn, to accept the word of others.

[8] See Coady, n 2 above, at 82. For two interesting—and recent—discussions of the manner in which a good deal of what we believe is ultimately based on testimony, see L Stevenson, 'Why Believe What People Say?' (1993) 94 *Synthese* 429, and E Sosa, 'Testimony and Coherence' in Matilal and Chakrabarti, n 2 above, at 59. This issue is also a recurrent motif in Wittgenstein, *On Certainty*, G E M Anscombe and G H von Wright (eds), D Paul and G E M Anscombe (tr) (Oxford, Blackwell, 1969).

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Of course, this at best puts the epistemic status of testimony-based belief in the same boat as that of perception-based belief, and one might argue that such 'natural' justifications are not justifications at all, as regards *either* type of belief. For example, even if one grants the truth of an evolutionary story about how we came to have acquired the faculties that we did, this will only at best establish the practical *utility* of such faculties as regards our survival as a species,[9] and this alone will not ensure that they are reliable indicators of the truth. Indeed, there could be traits which are evolutionarily useful, because they help us to prosper as a species, and yet work precisely because they lead to false beliefs (perhaps because the true beliefs in question would be an impediment to our survival).

One way of understanding the default model in this respect is to construe the justification that accrues to one's testimony-based beliefs as a result of employing the principle of credulity along epistemologically *externalist* lines. Externalists about justification hold that an agent's belief can be justified, at least in certain cases, without that agent being in a position to offer *any* supporting grounds for her belief at all. All that matters on this view is that the belief is formed in the right kind of way, where this in turn is usually understood in terms of the agent forming her beliefs via a process that is reliable.[10] So just as long as the process of forming testimony-based beliefs by allowing testimony a default epistemic status is in fact a reliable way of forming such beliefs, then those beliefs can be justified, regardless of whether the agent is in a position to offer any grounds for, for example, thinking that such a principle is reliable.

While externalism might seem a plausible account of the justification of basic perceptual beliefs, however, it is far from obvious that it is applicable to the case of testimony. The reason for this is that the kinds of beliefs that are issue in basic cases of perception are very different from the potentially highly theoretical beliefs that one might acquire via testimony. For example, using one's perceptual faculties one might form the belief that there is a chair before one, and it seems plausible to suppose that provided there are no grounds to doubt this belief, and just so long as the perceptual faculties in question are in fact reliable in those circumstances, then one can be justified in forming such a belief. Contrast this case, however, with a situation in which one forms a belief that there are nine planets in our solar system solely on the basis of an isolated piece of testimony. Here it is not so plausible that just so long as a 'credulous' belief-forming process is a reliable way of forming beliefs then one would be justified in this case, and part of the reason for this concerns the 'theoretical' nature of the belief in question. Indeed, a related critical thought that one might have in this regard is that in the perceptual case there is a direct causal link between the

[9] And perhaps not even that. There is a great deal of debate about whether an evolutionary explanation of a creature's development ensures that there is an evolutionary 'merit' which accrues to all of that creature's cognitive faculties.

[10] For more on the epistemological externalism/ internalism distinction, see H Kornblith (ed), *Epistemology: Internalism and Externalism* (Oxford, Blackwell, 2001).

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fact and the formation of the belief, whereas this is absent in the testimony case. Accordingly, this might be thought to constitute prima facie grounds for holding that the kind of epistemology appropriate to basic perceptual beliefs is not directly transferable to the case of testimony-based beliefs.

Moreover, the point made earlier about the phenomenological immediacy of our acquisition of testimony-based beliefs lends only ambiguous support to the default position for the simple reason that, despite the name, inferentialism is not normally understood as demanding that a certain inferential process needs to be involved in the acquisition of justified beliefs from testimony. Instead, the focus of the thesis is on the chains of epistemic support that need to be in place if a testimony-based belief is to be justified. It may be, for example, that an agent does not actually 'run-through' the relevant inference in his head in order to gain a justified belief from testimony, but merely that he would have been in a position to make such an inference if called upon to do so. The view is thus not obviously hostage to the psychological data, such as it is, about whether or not an inference does always take place when one acquires (apparently justified) testimony-based beliefs.[11]

Historically, this default position has tended to be most often associated with the work of a contemporary of Hume's, Thomas Reid. Indeed, we find in Reid an explicit statement of the view that we have a natural faculty that leads us to accord a default epistemic status to the word of others. He writes that we have a,

> [. . .] disposition to confide in the veracity of others, and to believe what they tell us [. . .] [W]e shall call this the *principle of credulity*. It is unlimited in children, until they meet with instances of deceit and falsehood; and it retains a very considerable degree of strength though life [. . .].
>
> It is evident, that, in the matter of testimony, the balance of human judgment is by nature inclined to the side of belief; and turns to that side of itself, when there is nothing put to the opposite side. If it was not so, no proposition that is uttered in discourse would be believed, until it was examined and tried by reason; and most men would be unable to find reasons for believing the thousandth part of what is told them. Such distrust and incredulity would deprive us of the greatest benefits of society, and place us in a worse condition than that of savages [. . .].

He concludes that,

> [*I*]f credulity were the effect of reasoning and experience, it must grow up and gather strength, in the same proportion as reason and experience do. But if it is the gift of nature, it will be strongest in childhood, and limited and restrained by experience; and the most superficial view of human life shows, that the last is really the case, and not the first.[12]

[11] In any case, it could well be that psychological inferences do take place but in such a way that the agent herself is not aware of making any such inference. At the very least, whether this hypothesis is true is an empirical issue that is not resolved simply by reflecting on the phenomenology of our acquisition of testimony-based beliefs.

[12] See T Reid, *An Inquiry into the Human Mind* (1764) T Duggan (ed) (Chicago, Chicago University Press, 1970) 240–41.

As we can see from this quotation, for Reid the fact that this trust of testimony encapsulated in the principle of credulity is thanks to nature is a reason for thinking that it can be relied upon, although it should be noted that this is largely because he regards our nature as God-given. Moreover, it is also worth noting that the further argument in defence of the principle of credulity that is implicit here—that it is only via the employment of this principle that we gain the 'greatest benefits of society'—offers at best only *pragmatic* rather than epistemic grounds in favour of that principle. It is quite consistent with the principle of credulity being practically beneficial in this way that testimony in no way correlates with the truth.

Nevertheless, there may be something more substantive underlying this issue about how we need some degree of credulity if we are to be more than savages, and this is the linguistic point that it is only by being generally accepting of testimony in the first place that one can acquire a language and thereby come to evaluate the truth of what is being conveyed in testimony. The inferentialist seems to be supposing that it ought to be possible, in principle at least, to *understand* what is being conveyed in testimony without going on to accept any instance of testimony on the grounds that we lack an independent justification for it. This is extremely dubious, however, in that in order to acquire a language and thereby gain an understanding of what is conveyed in testimony, one must clearly already be willing to accept some testimony in the first place. It seems, then, that there must be *something* right about the default model.[13]

We should tread carefully here, however, for one can grant that it may be necessary to assume the truth of a great deal of testimony if one is to be able to evaluate any particular instance of testimony without thereby granting that this constitutes grounds for thinking that there is any reason for maintaining that testimony tends towards truth, and it is this latter claim that is being proposed by defenders of the default model. Perhaps we need to make such an assumption

[13] As Wittgenstein (n 8 above, §160) writes at one point: 'The child learns by believing the adult. Doubt comes *after* belief.' This is a recurrent theme of Wittgenstein's later work and, as we noted earlier, does seem to possess some empirical support. As regards the recent literature on the epistemology of testimony, this view is most often associated with the work of Coady (see, esp, 'Testimony and Observation' (1973) 10 *American Philosophical Quarterly* 149, and *Testimony*, n 2 above) and T Burge, 'Content Preservation' (1993) 102 *Philosophical Review* 457, and 'Interlocution, Perception, and Memory' (1997) 86 *Philosophical Studies* 21, but see also Stevenson, n 8 above. The general point that one can only meaningfully engage in the activity of distinguishing truth from falsity by assuming from the outset that a large number of one's beliefs are true (this is, very roughly, the so-called 'principle of charity') tends to be most often associated these days with the particular brand of content externalism advanced by D Davidson: see, eg Davidson, 'A Coherence Theory of Truth and Knowledge', in E LePore (ed), *Truth and Interpretation: Perspectives on the Philosophy of Donald Davidson* (Oxford, Blackwell, 1986).

It is important to note that Hume himself (even on the standard interpretation) may well be willing to grant that we cannot help but take a great deal of testimony on trust. Insofar as this is the correct interpretation of Hume's position in this regard (and there are complex textual issues in play here), this doesn't necessarily mean that there is any inconsistency in Hume's stance for the simple reason that Hume is notoriously sceptical about the possibility of justifying testimony-based beliefs. More precisely, then, the issue for the inferentialist is how to deal with this problem while avoiding such scepticism.

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in order to get the 'game' of evaluating testimony off the ground, but this does not mean that this assumption is *true*. Moreover, even if this argument were to establish a ground for maintaining that testimony-based beliefs should be accorded a default epistemic status, it is far from clear that the ground in question would be adequate for our purposes here. For all that has been shown is that we have reason to assume the general truth of testimony in order to enable the activity of evaluating testimony meaningfully to occur. Still, however, it could be that once one has mastered the language and is thereby able to understand what is being conveyed by testimonial assertions, one should then proceed as dictated by inferentialism and thus always seek independent grounds.

Given this *impasse* between these two opposing models of the epistemology of testimony, one might think that the way forward is to find a middle-ground between the two positions.[14] It is not at all obvious, however, that such a 'third-way' is possible. For example, some have proposed a *local reductionism* as a way of tempering the global reductionism of the Humean position while retaining its core anti-credulist tenor. The thought is that while we do not need to trace the justification for our testimony-based beliefs in general back to non-testimonial sources, as Hume apparently claimed, we do need to offer evidence in favour of each particular testimony-based belief which is independent of the testimony itself, where that evidence can include testimonial evidence. Such a view is most often associated with the work of Elizabeth Fricker.[15]

On the face of it, this might seem a common-sense amendment to the inferentialist position which enables it to evade some of the most pressing problems associated with the view. In particular, local reductionism appears to be able to account for our inferentialist intuitions without entailing a fairly radical form of scepticism about the justification of our beliefs. The problem, however, is that closer examination of the thesis reveals that it collapses into the global reductionism that it is meant to be an alternative to after all.

In order to see this, one need only note that unless some testimony-based beliefs are allowed to enjoy a default status, then the view will quickly become untenable. After all, as the thesis presently stands, my justification for one testimony-based belief may well depend on another testimony-based belief, the justification for which in turn rests on another testimony-based belief, leading to an indefinitely large regress of justification that leaves the issue of the epistemic status of the original belief moot. Indeed, what we have here is, at best, a very large *circle* of justification, in that we have a web of testimony-based beliefs

[14] For more on the main contours of the debate between inferentialist and credulists, see E Fricker, 'The Epistemology of Testimony' (1987) 61 *Proceedings of the Aristotelian Society (supplementary volume)* 57, and 'Telling and Trusting: Reductionism and Anti-Reductionism in the Epistemology of Testimony' (1995) 104 *Mind* 393; J McDowell, 'Knowledge by Hearsay' in Matilal and Chakrabarti, n 2 above, at 195.

[15] See, eg Fricker, 'Against Gullibility', n 2 above. For two other variations on the basic Humean reductionist account of the epistemology of testimony, see J Adler, 'Testimony, Trust, Knowing' (1994) 91 *Journal of Philosophy* 264, and J Lyons, 'Testimony, Induction and Folk Psychology' (1997) 75 *Australasian Journal of Philosophy* 163.

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each supporting the epistemic status of each other. Now some have argued that circles of justification can be epistemically acceptable just so long as the circle is large enough,[16] but a moment's reflection reveals that, in the extremal case, the circle of justification could be extremely small. It could, for example, be that the justification for one testimony-based belief rests on another testimony-based belief, where the justification for this second testimony-based belief rests on the first testimony-based belief. Even proponents of epistemological theories which allow circular systems of justificatory support must concede that so small a circle of justification cannot be epistemically legitimate.[17]

Nevertheless, there may be ways out of this difficulty and, indeed, one can find the traces of one such response to this problem in the work of Fricker herself.[18] Recall that the key worry about inferentialism that proponents of the default model raised was that such a picture of the epistemology of testimony didn't seem to be able to account for our intellectual development—including, crucially, the learning of a language. One thought that one might thus have is to allow the testimony-based beliefs of agents in a developmental state a default justification and merely insist on inferentialism in the case of mature agents. Indeed, if one is worried about the rationale for such an amendment to the inferentialist view being of a purely pragmatic nature—in that it is only being proposed so that we can make sense of our intellectual development and not because we have any reason for thinking that such testimony is likely to tend towards the truth—then the view could be supplemented with the kind of epistemological externalism mentioned earlier. The thought would therefore be that there is a prima facie case in favour of the reliability of testimony in such 'basic' cases which is analogous to the putative reliability of our perceptual faculties when it comes to basic perceptual beliefs. Thus, the principle of credulity is permissible in this case only provided that, as a matter of fact, it is a reliable way of forming beliefs about this subject matter.[19]

[16] See, eg L Bonjour, *The Structure of Empirical Knowledge* (Cambridge, Mass, Harvard University Press, 1985).

[17] For a development of this line of argument against local reductionism, see Stevenson, n 8 above; M Weiner, 'Accepting Testimony' (2003) 53 *Philosophical Quarterly* 256. For a (rather limited) defence of global reductionism, see C Insole, 'Seeing Off the Local Threat to Irreducible Knowledge by Testimony' (2000) 50 *Philosophical Quarterly* 44.

[18] See, eg Fricker, 'Telling and Trusting', n 14 above, at 402.

[19] Accordingly, in possible worlds in which there is widespread deception taking place, agents would not be justified in accepting the testimony of others without seeking further independent support for that testimony, even where those agents are still in the 'developmental' stage. A slightly different suggestion in this regard might be to allow the principle of credulity, but weaken it so that an agent's assertion of a proposition merely gives one a *reason* to believe that proposition, not also a justification. As noted in n 3, this would still be a form of inferentialism in that it holds that no agent can be justified in believing a proposition solely on the basis of testimony alone. Nevertheless, such a proposal might be thought to be able to evade the regress problem facing inferentialism on the grounds that the additional reasons one needs in order to gain a justified testimony-based belief could be themselves 'default' testimonial grounds, thereby ensuring that one could gain a justified testimony-based belief while avoiding a regress of justification.

At a formal level, this has the potential to meet the problem just raised because if there is a wide enough class of testimony-based beliefs the justification for which does not depend on other testimony-based beliefs, then this could, in principle at least, ensure that the justification for most testimony-based beliefs does not depend on either an infinite regress of justification or else a small circle of justification. Moreover, with this class of default-justified beliefs in play one could then argue that the phenomenological attractions of credulism—principally, that we seem to be able to form justified testimony-based beliefs without needing to appeal to further independent grounds—could be explained away in terms of how it is part of an agent's intellectual development that she acquires certain traits—or, if you will, faculties—which enable her to form judgments about testimonial matters in a way that is sensitive to the truth.[20] In this fashion the quasi-local-inferentialist picture that we have in mind here could appropriate some of the theoretical machinery of the default position without acceding to its key claim concerning the need to accord all testimony-based beliefs an innate epistemic status.[21]

Still, the view would not be without its problems. For example, something would need to be said about whether the testimony-based beliefs that one gained in childhood should be subjected to further epistemic evaluation in adulthood if they are to retain their justified status. If this were the case, then the formal advantages of the view would start to diminish quite radically (and if it were not demanded that adults re-evaluate their childhood beliefs then that too would undermine some of the attraction of the view).[22] Moreover, the problem

[20] The key difference between this faculty-based approach to the epistemic status of mature agent's testimony-based beliefs and the faculty-based approach envisaged by some default theorists would be that on this view the mature agents involved ought to be, at the very least, in a position to offer grounds in favour of their beliefs that are being derived via their cognitive faculties in this way.

[21] Weiner has explicitly attacked the idea that a local reductionism could be combined with a limited acceptance of a default principle which is applied only to agents in the 'developmental' stage. He argues that such a model would not work because it would generate the result that an adult and a child could hear the same piece of testimony and form a belief solely on the basis of that testimony which was, respectively, justified in the latter case but not in the former. He claims that this is counterintuitive because if these two beliefs are to be accorded different epistemic evaluations at all, then it should be the *adult's* belief that is privileged and not the child's. His reason for this is that adults will typically have acquired a discriminative capacity to evaluate testimony that children will usually lack and he notes in this respect that the child in this case would be likely to believe in the existence of Santa Claus on the basis of an isolated instance of testimony ('Accepting Testimony', n 17 above, at 261). This remark about Santa Claus is revealing, however, since one might think that the reason why the adult would be more suspect than the child in this case is because she has gained a wider set of justified beliefs—many of them not derived from testimony—with which she can evaluate such testimony and find it questionable. In particular, the kind of discriminative capacity that we are to suppose adults acquiring is surely best understood in inferentialist terms as the product of a wide pool of general knowledge coupled with repeated exposure to cases of testimony which generates rough-and-ready rules by which such testimony can be (quickly, perhaps even instantaneously) evaluated. Thus, if anything, the kind of counterexample that Weiner has in mind to this proposal in fact lends support to it.

[22] My own feeling on this point is that we should opt for the second alternative, a view which I take to be implicit in Wittgenstein's remarks on 'hinge' propositions. The price you pay for such a move is that you have to either advance a scepticism-friendly theory of knowledge or else incorporate such a thesis into an externalist epistemology which limits the role that reasons play in the

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that the class of justified testimony-based beliefs than we hold is more limited that we would wish might still remain, in that the epistemic status of a great many of our 'theoretical' testimony-based beliefs will not be traceable back to the default justification possessed by our 'developmental' testimony-based beliefs. Thus, the problems raised earlier about infinite regresses of justification and circular justifications would also remain even on this model. Finally, some of the difficulties that face the original credulist position would resurface here, such as concerns over allowing a default epistemic status to any instance of testimony and about the use of epistemological externalism where this further addition to the thesis is made.[23]

Nevertheless, I think that there are at least grounds for further exploration of this proposal. It is not my intention to mount a full defence of a particular model of the epistemology of testimony here, however, but merely to note the general contours of this debate between proponents of the inferentialist conception of the epistemology of testimony and proponents of the alternative default model. In what follows what I *will* be arguing, however, is that the inferentialist account *is* applicable to the specific case of legal testimony, and it is to this issue that I shall now turn.

2 LEGAL TESTIMONY

In order to simplify the discussion here, I would like to open my discussion of legal testimony by making a few stipulations. To begin with, we will understand 'legal testimony' as being the intentional and verbal transmission of information by witnesses (under oath) in a legal trial.[24] Moreover, in what follows we will confine our attentions to criminal trials where *all* the evidence that is presented for the consideration of the jurors in making their judgment about the defendant's guilt will be via the testimony of witnesses (we will setaside the issue of

acquisition of knowledge. Again, my preference in this regard is for the second alternative, though I have not the space to develop this line here. For more on this point, see D Pritchard, 'Radical Scepticism, Epistemological Externalism, and "Hinge" Propositions' in D Salehi (ed), *Wittgenstein-Jahrbuch 2001/2002* (Berlin, Peter Lang, 2001), 97.

[23] Another suggestion that has been made regarding the epistemology of testimony is that we can avoid the extremes of the inferentialist and default models by understanding the justification that we acquire from testimony along virtue-theoretic lines. On this view, rather than defining those traits which aid us in gaining knowledge and justification in terms of their knowledge/justification-conduciveness, we instead define knowledge and justification in terms of the epistemic virtues. The task in hand is thus to identify those epistemic virtues that are relevant to the acquisition of testimonial knowledge and justified belief and then define testimony-based knowledge and justified belief in terms of the appropriate application of such virtues. Further consideration of this proposal would take me too far away from the present discussion, but for more on such an account, see the exchange between M Fricker, 'Epistemic Injustice and a Role for Virtue in the Politics of Knowing', in M S Brady and D H Pritchard (eds), *Moral and Epistemic Virtues* (Oxford, Blackwell, 2003), ch 10, and S E Marshall, 'Epistemic Injustice: The Third Way?' in Brady and Pritchard, ch 11.

[24] Accordingly, we will be setting aside the epistemic issue of how, for example, juries can be influenced by the so-called 'demeanour' evidence of a witness.

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whether or not there ever are any criminal trials that have this peculiar feature).[25]

One of the first points that we need to note is that in assessing the judgments formed by the jurors in response to the testimonial evidence that they are presented with, we cannot just focus on the justification for their belief about whether or not the defendant committed the crime in question. There are two reasons for this. The first is that it is at least possible that during a trial evidence that bears upon whether or not the defendant committed the crime in question may become available to the jurors which they are then explicitly instructed by the judge to disregard in their deliberations. One consequence of this is that a juror may well have adequate evidence to justify his belief that, say, the defendant committed the crime, even though, taking into account only the evidence that he is allowed to consider in making his judgment about the defendant's guilt, he simultaneously has insufficient evidence to form the belief that a 'guilty' verdict should be returned.[26]

The second reason why we cannot just focus upon the juror's beliefs, in the light of the testimonial evidence that is presented to them, about whether or not the defendant committed the crime in question concerns the presumption of innocence that is in operation in criminal trials, where the jury is instructed only to find the defendant guilty provided that her guilt has been established beyond all reasonable doubt. Since we do not normally make such an austere epistemic demand on justification, this means that a juror might have adequate evidence to justify her belief that the defendant committed the crime and yet at the same time lack adequate evidence to justify forming the belief that a 'guilty' verdict should be returned because whilst the evidence under consideration is sufficient to favour the belief that the defendant committed the crime over the possibility that she didn't, it isn't sufficient to favour the belief that the defendant committed the crime over the possibility that she didn't *beyond all reasonable doubt*.

In order to deal with these two issues, henceforth when we speak of the beliefs formed by jurors in the light of testimonial evidence we will specifically have in mind their belief that the defendant is (or is not) guilty beyond a reasonable doubt given only the testimonial evidence that the jury has been instructed to consider in this regard. It should be noted, however, that from the outset these two factors mark an important difference between the role of testimony in legal and non-legal contexts, since ordinarily we are interested in *all* the (testimonial)

[25] Of course, this doesn't mean that all the evidence that will be relevant to the jury's verdict will thereby be testimonial evidence. For example, the testimony of what the court agrees is an 'expert' witness implicitly brings with it further non-testimonial evidence that the witness is a reliable informant on the matters in question (though there is of course a further issue here, which I shall set to one side, as to whether even this additional information is not ultimately testimonial in nature).

[26] In practice, one would expect such a situation to be extremely rare in that if evidence were to be revealed to a jury in this way that could substantially alter the jury members' judgments about the defendant's guilt, then this would be a reason for, for example, changing the jury. This is especially the case if the illicitly revealed evidence were indicative of the defendant's guilt because of the presumption of innocence that operates in criminal trials.

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evidence that is available (rather than just a sub-set of it), and typically (testimonial) evidence need only favour belief in a proposition over belief in the negation of that proposition for that belief to be justified (it doesn't need to favour belief in a proposition over belief in the negation of that proposition beyond all reasonable doubt). Indeed, I think that these two features of the legal context highlight one sense (we will consider others below) in which the epistemic standards in operation in legal contexts are more demanding than those in play in normal non-legal contexts.

The Pragmatics of Assertion

A further sense in which the legal context is more epistemologically demanding than non-legal contexts concerns the manner in which it requires a level of explicitness on the part of testifiers that we would not normally demand. One way in which this is manifested can be seen by considering the implicit rules which govern the pragmatics of assertion in normal non-legal contexts, and how they are, as it were, 'suspended' in a legal context.

It is often noted that in making an assertion one conveys—often quite intentionally—far more information than the literal content of what is asserted, and any account of the epistemology of testimony needs to be sensitive to this fact. In what follows I will primarily explore this distinction between the information explicitly stated and the information implicitly (and intentionally) conveyed in terms of the notion of *conversational implicature*.[27]

The standard account of conversational implicature is due to Paul Grice and concerns what one can reasonably take to be implied by an assertion (though which is not entailed by that assertion), given that one is able to make some plausible assumptions about the speaker (that he is, for example, honest, co-operative and otherwise rational).[28] If an assertion generates a conversational implicature that the agent making the assertion believes is false then, even if the assertion itself is of a proposition which is true, that assertion is conversationally inappropriate.

Grice uses the following example to illustrate this notion. Suppose that an agent, Ann, asks a by-stander, Bob, where she can get petrol from and Bob replies by asserting 'There's a petrol station around the corner.' Although Bob has not explicitly stated that this petrol station is open, and although this is not entailed by what he (literally) said, one would reasonably infer from such an assertion that the petrol station which Bob is speaking about *is* open (and that, for example, it was presently selling petrol). This is an example of a conversational implicature. If Bob did not mean to imply this by his assertion,

[27] For a sophisticated discussion of the role that conversational implicature plays in an account of testimony, see B Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton, Princeton University Press, 2002), ch 5.

[28] See H P Grice, 'Logic and Conversation', in his *Studies in the Way of Words* (Cambridge, Mass, Harvard University Press, 1989).

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then we would expect him to have qualified his assertion in such a way as to cancel this implicature, perhaps by asserting, for example, 'There's a petrol station around the corner, but I'm afraid that it's not open.' Indeed, one can easily see that this implicature is generated by the original assertion by considering how odd it would be for Ann to reply to Bob's assertion by asking whether or not the petrol station in question is open (at least unless there was special reason to do so, such as that it was very late at night). In reply to such a question Bob might well respond by saying that of course it is, since why else would he have said what he did? In contrast, if Bob is aware that the conversational implicature in question here that the petrol station is open is false, then his assertion is conversationally inappropriate for this reason. Moreover, that this assertion is conversationally inappropriate is not changed by the (literal) truth of the assertion nor by the possibility that the implicature in question might, as it happens, be true (perhaps Bob thought that it was closed but was himself the victim of a trick played by the petrol station owner). An assertion can thus be true and generate a conversational implicature that is also true, but nevertheless be conversationally inappropriate because it is a conversational implicature that the agent making the assertion believes to be false.

The problem posed by these pragmatic features of assertion as far as legal testimony is concerned is that they can lead to important information being lost in a trial situation. Indeed, unscrupulous testifiers could use such pragmatic rules in order to suppress information that they do not wish to be heard by the jury. It is easy to see how such attempts to suppress information might work. Imagine, for example, that the accused is asked if she pushed the victim down the stairs and she replies by saying that she didn't. Ordinarily, a negative answer to a question of this sort by itself (ie, with no further qualifiers) would be taken to indicate that the agent had *nothing* to do with the event in question (or at least, nothing to do with it that wasn't already common knowledge), since if she did have something to do with it then she would have supplemented her reply with a further account of how she was involved in the event. In a trial situation, however, we cannot rely on the veracity of such implicatures and it is the responsibility of the lawyers involved to extract this further information from the accused (perhaps by asking a second question about whether the agent had *anything* to do with the victim falling down the stairs). Indeed, if the threat of the witness being tried for perjury is to get a grip, then it will be necessary for the lawyers concerned to extract fully what the agent's testimony is so that there will no subsequent ambiguity over whether the agent has, in fact, perjured herself (as opposed to merely asserted propositions which, while literally true, generated conversational implicatures that she believed to be false).[29] So while it

[29] For a subtle discussion of the demand that a necessary condition of perjury is that the testimonial assertions in question be literally false, and which also includes a useful overview of the literature in legal theory on this topic, see S Green, 'Lying, Misleading, and Falsely Denying: How Moral Concepts Inform the Law of Perjury, Fraud, and False Statements' (2001) 53 *Hastings Law Journal* 157.

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may well be plausible to suppose that we ordinarily tend to assume that agents are being co-operative in their assertions unless we have specific reason for thinking otherwise, it seems to be in the nature of a trial situation to offer just such a standing reason to doubt the full co-operation of at least some of the agents who are presenting their testimony.[30]

The witness need not be intending to suppress information, of course, since it could just be that he fails to present a fully explicit answer because what is commonly taken for granted in normal non-legal contexts cannot be legitimately taken for granted in the context of a criminal trial. We can bring this issue into sharp relief by considering the role of the so-called *evidence maxim* as regards the pragmatics of assertion. This is the maxim that in making an assertion an agent represents himself as being in the possession of adequate contextually relevant evidence that will back-up that assertion. Accordingly, one's assertion, if not qualified appropriately, will carry the conversational implicature that one is in a position to offer adequate contextually relevant evidence to backup that assertion.[31] As a result, if one makes such an assertion while aware that one lacks such grounds, then that assertion will be conversationally inappropriate, even if true.

Consider our example of Bob and Ann that we looked at above. A conversational implicature that would clearly be generated by Bob's assertion in that conversational context is that he has appropriate evidence to backup his

[30] As Bernard Williams points out, the legal case is not the only scenario in which this is true. He mentions in this respect the subtle rules that govern declarations by political representatives: 'In the British Parliament, there is a convention that ministers may not lie when answering questions or making statements, but they can certainly omit, select, give answers that reveal less than the whole relevant truth, and generally give a misleading impression. [. . .] It is clear what the point of this convention is. No-one can expect a government to make full disclosure about everything, and often it is unclear anyway what full disclosure would be. It is equally undesirable that they should be able to get away with anything they like in order to deceive the public. The rule makes it harder to get away with deceit, since answers will be suspiciously inspected and questions pressed and ministers who are debarred from lying can be forced to a position in which they either produce the truth (if they know it) or are left seriously embarrassed and with nothing to say.' He goes on to note the parallel between this case and legal testimony: 'These are quite special circumstances: the situation is at once adversarial and rule-governed. The rule works, a good deal of the time, because it has a point and there are strong sanctions against breaking it. There are other situations with a similar structure, such as courts of law [. . .]. But, apart from such cases, not much of life has just this structure of expectations. Most of it is either better or worse. It is better when we can more or less rely on what people imply as well as on what they assert; it is worse when we cannot even rely on what they assert' (*Truth and Truthfulness*, n 27 above, at 108–9). An example from the political sphere that might be useful for illustrative purposes in this regard is Bill Clinton's famous assertion (in a press conference) that 'I did not have sexual relations with that woman.' Depending on how one interprets 'sexual relations' here, and to whom one takes 'that woman' to be referring to in this conversational context, his assertion could well be literally true even though it clearly carries the conversational implicature (which he knows to be false) that he did not engage in *any* kind of sexual activity with Monica Lewinski. Significantly, perhaps, Clinton's original training was in law. Green (n 29 above) offers an interesting discussion of the legal ramifications of the Clinton/Monica Lewinski affair.

[31] Indeed, typically at least, in asserting a proposition one represents oneself as *knowing* that proposition. For a robust defence of this claim in one of its strongest guises, see T Williamson, 'Knowing and Asserting' (1996) 105 *Philosophical Review* 489.

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assertion. For example, we would expect him to have some knowledge about this petrol station, such as when it is open, its location, and whether or not it currently sells petrol. If Bob were to make such an assertion while aware that he lacked such evidence (perhaps because he was new to the area himself), then his assertion would generate a false conversational implicature and thus be conversationally inappropriate, even if (as it happens) it were in fact true.

One way of drawing out the importance of paying due attention to the conversational implicatures generated by the evidence maxim in the case of legal testimony is by considering the role of contrast classes in this respect. In making an assertion I usually have an implicit contrast in mind, where this contrast is dictated by the shared presuppositions of that conversational context. One consequence of this is that, depending upon what contrast I have in mind, the evidence that I represent myself as having in making that assertion will be different.

Consider the following example, due to Fred Dretske.[32] In asserting the proposition 'Mary stole the bicycle,' I could have one or more of the following contrasts in mind. I could be intending to emphasise that it was *Mary* (as opposed, say, to John) who stole the bicycle, or I could be intending to emphasise that it was Mary who *stole* (as opposed, say, to borrowed) the bicycle, or I could be intending to emphasise that it was the *bicycle* (as opposed, say, to the car) that Mary stole. The contrast in question will usually depend upon the shared presuppositions of that conversational context. For example, in a conversational context in which everyone takes it as given that it was the bicycle that was stolen, and stolen by either Mary or John, then the goal of the assertion will clearly be to draw the contrast in John's favour. The kind of contextually relevant evidence that will be needed to support this assertion will thus relate to this particular contrast. In this case, for instance, in making an assertion of this sort one only needs adequate grounds for thinking that John did not steal the bicycle (perhaps he was around one's house at the time); one does not need adequate grounds specifically for thinking that Mary is the culprit (such as seeing Mary taking the bicycle), much less does one need grounds for thinking that, for example, the bicycle was stolen (as opposed to merely innocently borrowed).

The importance of this to a trial situation is that one needs to draw out exactly what grounds are being implied as supporting the assertion in question. If one's grounds for making the assertion about Mary already assume that either she or John stole the bicycle, then while the assertion may well be true, the evidence offered by this testimony is somewhat limited in this context. Accordingly, it is going to be crucial to elicit from the witness just what evidence is being implicitly presented in support of the assertion in question. In general, the interest here is in stripping away the presuppositions that may be informing that assertion in order fully to identify the exact informational content of the testimony being offered.

[32] See F Dretske, 'The Pragmatic Dimension of Knowledge' (1981) 40 *Philosophical Studies* 363.

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We have thus seen two further senses in which the epistemic standards employed in a legal context are more demanding than in normal non-legal contexts. The first concerns the general issue of how in a legal context it is necessary to explicate the relevant conversational implicatures that are generated by a witness's assertion so as to unearth all the information germane to the trial (especially in cases where there is reason to suppose that the witness might have a motive for suppressing such information). The second more specifically concerns the manner in which in a legal context it is important to make explicit just what evidential claims are being conversationally implied by the witness's testimony.

The Case for Inferentialism

As it stands, neither of these consequences of the pragmatics of assertion directly speak to the issue of how the original debate that we introduced regarding the inferentialist and default models of the epistemology of testimony bear on the specific issue of legal testimony. The reason for this is that our focus has not been on the truth of the assertions in question, but rather on the truth of what is conversationally implied by those assertions (indeed, more specifically still, the focus has been on the truth of the agent's *beliefs* about the conversational implications of her assertions). Nevertheless, what we have seen is that in the legal context there is at least a standing reason not to trust the reliability of these conversational implicatures, especially where those implicatures concern the evidential basis of the agent's assertion and where there is reason for thinking that the witness has a motive for suppressing relevant information. Accordingly, these considerations, while not impacting directly on the application of the principle of credulity (taken literally) to the legal context, do have an impact on the application of a sister credulity principle—what we shall call *super-credulity*—to the legal context.

Recall that the principle of credulity endorsed by proponents of the default model of the epistemology of testimony held that unless there were specific grounds for doubt, one should take testimony at face-value as true. Given the previous discussion on the pragmatics of assertion, however, we need to clarify just what is meant by this principle. As it stands, all it seems to commit one to is the *literal* truth of the testimony in question, but as we have seen there is a more to a testimonial assertion than the conveyance of the information contained in the literal assertion itself. Accordingly, we can distinguish a stronger credulity principle, the super-credulity principle, which demands that we should not only regard testimony as literally true (pending specific reasons to the contrary at any rate), but regard that testimony as *fully informative* in the sense that the agent does not intend it to generate false conversational implicatures. The principle of super-credulity is clearly stronger than the principle of credulity because it could be true that there is a default assumption in favour of the literal truthfulness of testimonial assertions without there being a default assumption

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in favour of the literal and, as it were, *conversational*, truth of testimonial assertions (ie, what is conversationally implied by that assertion, particularly about what the agent believes is conversationally implied by the assertion). Whatever one might say about the application of the principle of credulity to legal contexts (where this is explicitly understood in terms of the literal truth of the testimonial assertions in question), it is certainly true that the principle of super-credulity is inapplicable to legal contexts because, as we have seen, there *are* good standing reasons for thinking that we should press the conversational implicatures of a testimonial assertion in a legal context, even if we do not also think that we should query the literal truth of the assertion itself. That is, even if one is willing to grant the application of the principle of credulity in legal contexts, this does not ensure the legitimate application of the principle of super-credulity to this context.

Although the principle of super-credulity is stronger than the principle of credulity, they are in the same spirit, in that what motivates the former also motivates the latter. If one thinks that one should regard people as generally truthful in their assertions because it is part of our nature to be truthful, then it would be odd to insist that one should be suspicious of the conversational implicatures of one's assertions. After all, part of what constitutes being truthful is being fully informative in the sense just specified. It might be psychologically easier to deceive in such a way that preserves the literal truth of what is said, but such evasiveness would still be contrary to the veracious nature that authors like Reid take to be a natural feature of our cognitive character. Accordingly, it would be strange to maintain the principle of credulity while rejecting the principle of super-credulity. Whatever one might say about the application of these principles in general, then, there are good reasons for thinking that the principle of super-credulity is inapplicable to the legal context and thus, given their common motivation, there are also good grounds for thinking that the application of the principle of credulity in this regard is suspect also.

Nevertheless, even despite these indirect reasons for rejecting the application of the principle of credulity in legal contexts, there remains an overwhelming consideration that speaks in favour of this principle (but not the principle of super-credulity) having application in a legal context, and this is the consequences of bearing false witness. Unlike testimony in normal non-legal contexts, making literally false assertions in a legal context carries with it a very definite legal sanction—*viz*, the possibility of criminal prosecution and, thereafter, legal punishment. Accordingly, while there is no presumption in favour of witnesses being as informative and explicit in their testimony as is appropriate to the legal context, there is a presumption that they will not literally bear false witness and thereby perjure themselves.[33]

[33] Of course, this is not to deny that there are sanctions against both lying and (where this is thought to be different) deceiving in non-legal contexts as well, such as the moral opprobrium from one's peers that can result. The point is only that the sanction in this regard is both very specific and very austere. Furthermore, it is worth noting that it is not part of the claim here that all witnesses

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Even so, this conclusion does not lend support to the default model as regards the epistemology of legal testimony for the simple reason that what is motivating the application of this principle in this context is precisely the fact that we have independent non-testimonial grounds in favour of the application of the principle—namely, our knowledge that agents will want to avoid the undesirable consequences of perjuring themselves on the witness stand. Indeed, that the overwhelming consideration in favour of applying the principle of credulity in this context rests upon an independent ground lends support to the opposing inferentialist model of legal testimony. That is, whatever one might want to say about the default epistemic status of testimony in general, there does seem to be a standing reason for seeking independent grounds in favour of an agent's legal testimony.[34]

I want to close by briefly considering one further motivation that one might have for preferring the inferentialist model of the epistemology of testimony, at least when it comes to legal testimony, and this concerns the issue of unconscious prejudice. Clearly, jurors might be consciously prejudiced in the beliefs that they form, and if they are then this will undermine the justification that they have for their beliefs since gaining one's beliefs via prejudice is, by its nature, an unreliable way of gaining true beliefs. Naturally, since the goal of a criminal trial is to get to the truth about the specific matter of which verdict should be returned in this case, we do not want consciously prejudiced individuals on the jury (at least where the prejudices are relevant to the case in hand). The epistemic advice that one should give the consciously prejudiced is thus obvious, and I will not dwell further on this issue.

Where the prejudice is unconscious, however, then matters start to become a little more complicated since the agents concerned may consciously desire to form their beliefs in an unprejudiced manner and yet habits of thought lead them inexorably towards forming prejudiced beliefs (albeit, perhaps, true ones). Here the advantages of advising the jurors to proceed, epistemically, along the

who tell the (literal) truth on the witness stand will be motivated merely by their desire to avoid this sanction, since one would expect a large majority of witnesses to regard themselves as being under an obligation to tell the truth in this situation which is independent of any concerns they might have about the legal consequences of bearing false witness. The point is simply that given this very specific and austere sanction imposed on asserting literal falsehoods in the witness stand, this consideration alone will give us reason for thinking that there is a presumption in favour of the truth of a witness' testimony, regardless of any further evidence one might possess regarding the moral character of the witness in question.

[34] That is, the correctness of inferentialism as regards the epistemology of the specific class of beliefs at issue in the case of legal testimony does not prejudice the issue of which epistemological model is applicable as regards testimony-based beliefs in general. More precisely, the (local) inferentialist claim that there is no possible situation in which one's testimony-based belief in a legal context could be justified in the absence of independent grounds is perfectly consistent with the general default theorist's claim that there *are* possible situations in which one's testimony-based belief could be justified in the absence of independent grounds. (In a similar way, the general sceptical worries about inferentialism raised in §1 have no direct application to an inferentialist account of legal testimony for the simple reason that it is not being denied by such a thesis that there are *no* testimony-based beliefs that are justified in the absence of independent supporting grounds).

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lines dictated by inferentialism are clear, since it is by seeking further independent grounds that one can bring to light any prejudice that may be informing the formation of one's beliefs. If one's natural and subconscious instinct is groundlessly to count, say, the accent of the defendant as evidence for thinking that his testimony is false (and thus for finding him guilty of the crime in question), then further consideration of the supporting grounds in favour of one's beliefs in this respect will be the best way to bring this to light. A juror might find, for example, that his 'grounds', when exposed to the clear light of day, are, if genuine grounds at all, inadequate to justify the belief that he instinctively formed and thus, given that he consciously wishes to avoid prejudice of this sort, his belief (unlike that of the consciously prejudiced juror) will change in response to this revelation. This then is a further reason to recommend inferentialism as the correct model of the epistemology of testimony in the legal context.[35,36]

[35] For a further discussion of the problem of unconscious prejudice and how it bears on the issue of the epistemology of testimony in the legal context, albeit a discussion that takes a very different approach to that taken here, see M Fricker, n 23 above (cf Marshall, n 23 above).

[36] I am grateful to the organisers and participants at the two 'Trial on Trial' workshops—held at the Universities of Edinburgh and Stirling—at which an earlier version of this chapter was discussed. Special thanks go to my commentator at the second of these events, Victor Tadros, and to Michael Brady, Rowan Cruft, Antony Duff, Stuart Green and Tony Pitson. Finally, I am indebted to The Leverhulme Trust for the award of a Special Research Fellowship which afforded me the time to conduct work in this area.