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The Recovery Problem's Threat to Consent Testimony

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doi: 10.2478/disp-2023-0016 BIBLID: [0873-626X (2023) 70; pp. 351–70]

Abstract
Peet [2016] clarified that when we communicate testimony, this is not simply a matter of the speaker claiming some content and the hearer receiving it. He pointed out that some situations create epistemic difficulties with recovering the correct content of the speaker's utterance. In such situations, testimonial knowledge cannot be attained. This is called the *recovery problem*. Davies [2018] responds that the so-called *e-method* can allow us safely to obtain testimonial knowledge even when the recovery problem arises. I argue that Davies' e-method is limited and inapplicable to consent testimony, the "dual-function testimony" that, in addition to communicating propositional content, also serves as a speech act that alters the moral permissibility of a particular action. Therefore, the recovery problem still threatens such testimony. For now, we have no satisfactory solution to the recovery problem regarding consent testimony. We must therefore deal with such a testimony in a different way, for example by shifting our goal from fully recovering the testimonial content to acquiring knowledge of a more limited proposition.

Keywords
consent testimony; dual-function testimony; knowledge; safety condition recovery problem

1 Introduction

In most discussions of the epistemology of testimony, theorists have examined the necessary conditions for acquiring testimonial knowledge under the assumption that the speaker uttered some propositional content p, and the hearer received it correctly. Peet [2016] questioned this assumption, suggesting that a crucial epistemological problem known as the "recovery problem" may arise at the stage of determining/recovering the content of the speaker's assertion. Davies [2018] responds that we have a reliable method of safely obtaining testimonial knowledge even when the recovery problem arises. However, in my view, Davies' recovery method is limited in its effectiveness and cannot be used with all testimonies. Although Davies does not discuss which types of testimony the recovery problem afflicts, his proposed method of recovery is ineffective for at least one type of testimony: consent testimony. Consent testimonies are utterances such as 'I agree to lend you my car'. Therefore, contrary to Davies' argument, the recovery problem remains a threat, at least where consent testimony is concerned. This paper shows that, among the various types of testimony, the recovery problem is especially severe for testimony with specific characteristics, like consent testimony, making it necessary to deal with these cases differently.

I shall begin by outlining the recovery problem in detail by following Peet's argument. I shall then discuss Davies' [2018] e-method as a proposed solution to this problem. Next, I shall raise consent testimony as an example of a type of testimony where this method does not work effectively, thus demonstrating the method's limited applicability. I shall argue that consent testimony is a dual-function testimony that communicates propositional content while also functioning as a speech act that alters the moral permissibility of a particular action. Because of these two functions, for the hearer to recover the content of the testimony fully and acquire testimonial knowledge, she must clarify the exact scope of the action to which the consenting subject is willing to consent. Davies' e-method does not work for such testimony. Therefore, the recovery problem remains a threat for such testimony. We have not yet arrived at any satisfactory solution to the recovery problem regarding consent testimony, so we are left with two options for dealing with such testimony: either we must reject the possibility of acquiring testimonial knowledge from it, or we must shift our aim from fully recovering the testimonial content to acquiring knowledge of its more restricted propositional content.

2 The recovery problem of testimony

Peet [2016]'s characterization of the recovery problem can be summarized as follows:

Recovery problem:
In some contexts,

(α) Testimony is given using context-sensitive expressions, and

(β) From the evidence available to the hearer, the question of which possible interpretation of the speaker's assertion to choose is undetermined.

In contexts in which both (α) and (β) obtain, the safety condition, which is often considered a necessary condition for the establishment of knowledge, is not satisfied, and testimonial knowledge is not established.

However, this is not sufficient to elucidate the meaning of this problem fully, so let us review it in more detail. First, the context-sensitive expressions mentioned in (α) are expressions that have different content in each of the contexts in which they are used. There are several such expressions,[1] but a typical example directly related to the recovery problem is an *expression with a quantifier domain restriction* hereafter E-qdr). An example of an E-qdr is the sentence, 'There is no food'. This sentence should not usually be considered as expressing the proposition 'there is no food anywhere in the universe', but rather 'there is no food (in a specific restricted domain for each utterance context, *e.g.*, in the fridge)'. What the sentence expresses is therefore restricted to a quantification domain when it is uttered. Thus, (α) refers to situations in which testimony is given using such an E-qdr.

To recover the correct content of an E-qdr, the scope of the domain must be determined from context. However, there can be many possible candidates for this context. Therefore, there are also many possible candidates for the content of the E-qdr (Peet calls such candidates for an E-qdr's content "epistemic candidates" [2016: 396]. For instance, for the sentence 'there isn't any food', there are multiple candidates for the context that the speaker may have had in mind. Consider the following:

Contextual candidate 1: a context in which food prepared for a party is at issue.
Contextual candidate 2: a context in which food that the speaker owns is at issue.
Contextual candidate 3: a context in which food in this room is at issue.

[1] For instance, indexicals (like 'I', 'now' and 'here') are a type of context-sensitive expression, as they take different referents in each context in which they are uttered (see Peet [2016: 399]).

Each of these contextual candidates corresponds to an epistemic candidate for the expression ‘there isn’t any food’:

> **Epistemic candidate 1:** <There is no food prepared for the party>.
> **Epistemic candidate 2:** <There is no food that the speaker owns>.
> **Epistemic candidate 3:** <There is no food in this room>.

(β) describes a situation in which the hearer cannot determine from the available evidence which of several possible contextual candidates is correct and cannot recover the accurate content of the testimony from the epistemic candidates.

We shall now turn to Peet’s argument that the safety condition of knowledge is not satisfied in situations in which both (α) and (β) obtain. The safety condition is as follows:

> **Safety condition**: S’s belief is safe iff the belief continues to be true in all close possible worlds in which S believes the target proposition via the same method of belief formation M that S uses in the actual world.[2]

In other words, if a belief can be held in a way that accurately tracks the truth of the target proposition even if the circumstances change, then the belief is safe. Peet argues that this safety condition does not hold in situations falling under (α) and (β), and to demonstrate this point, he examines the following example:

> **Matt and Sally**:[3]
> Matt and Sally are at Matt’s house. Sally says ‘I am hungry, is there any food?’. Matt responds, ‘Sorry, there is not any food. Let us order a pizza’. In this case, his response should not be understood as conveying that there is no food in the world; instead, there was no food in some restricted domain. However, there are many ways that the domain could be restricted, and therefore, many epistemic candidates, for example:

[2] The safety condition presented here is based on Pritchard [2007: 281], but the wording has been adjusted for this paper. Advocates of the safety condition have characterized it slightly differently (*cf.* Williamson [2000], Sosa [1999]).

[3] This case was originally presented by Peet [2016: 401].

(1) There is no food belonging to Matt.
(2) There is no food belonging to Matt or Tom (Matt's house mate).
(3) There is no food that Matt is willing to share.
(4) There is no food that Sally likes that meets the above criteria.

Peet argues that, in this case, it is difficult for Sally to recover the correct content of the testimony from the epistemic candidates (1) to (4) in a way that satisfies the safety condition. The first factor that makes it difficult to satisfy the safety condition is that it is difficult for the hearer to rule out incorrect epistemic candidates. Suppose, for example, that Matt claims 'there is no food' based on his knowledge of (1), and thus (2) is not the proposition that Matt asserted. However, from Sally's perspective, it would be difficult with the limited cognitive resources available in the interpretive scenario to determine from this utterance alone that Matt's testimony did not mean (2), and thus to exclude this from the list of epistemic candidates.

Besides, the epistemic candidate that a hearer chooses depends on her interpretive tendencies and background information. For instance, suppose that Sally knew that Tom would share his food with anyone whenever he had any. She might then take this knowledge into account when interpreting Matt's utterance. In that case, a possible world in which Sally chooses (2) as the content of Matt's utterance rather than (1), the actual content of his utterance, could easily have been realized. So, even if (1) were successfully recovered in the actual world, this would only be attributable to luck. This is because there is a close possible world in which an incorrect epistemic candidate is selected. Therefore, in the case of *Matt and Sally*, where the recovery problem arises, it is difficult for Sally to form a belief in a way that satisfies the safety condition.

Moreover, using the same method in the close possible world that led to the acquisition of true beliefs in the actual world does not necessarily lead to the acquisition of true beliefs in the same way that it does in the actual world. Suppose that in the actual world, Sally interprets Matt's utterance 'There is no food' as meaning (2), based on her information that 'Tom is a person who is always ready to share his food', and the content of Matt's utterance is indeed (2). Here, Sally's belief that <the content of Matt's utterance is (2)> is true. However, the same belief becomes false if Sally forms it based on the same information in the possible world in which Matt simply utters 'there is no food' in sense (1); without any consideration of whether Tom has any food, Sally will have a false belief this time. Therefore, there is a close possible world in which Sally forms a belief about Matt's testimonial content in the same way that she does in the actual world, but in which her belief will be false. So, Sally's belief does not satisfy the safety condition.

Thus, regarding testimony that involves E-qdr, where the correct context cannot be determined from the evidence at hand, the safety condition is not satisfied, and we cannot acquire testimonial knowledge. These are the recovery problems that Peet presents.

3 Davies' response to the recovery problem

Davies [2018] provides a counterargument to Peet's recovery problem. According to him, there is a method of belief formation that can retain safe beliefs even in situations in which the recovery problem arises. He calls this method the "e-method".[4] The method involves believing the proposition implied by each epistemic candidate for the testimonial content.

Let us see how this method works based on the *Matt and Sally* case. First, the kind of epistemic candidate for a given testimony varies depending on the hearer's evidence. According to Davies' analysis, at least two pieces of evidence are available in the *Matt and Sally* cases: the first is that Matt's utterance is a response to a prior request from Sally. Sally says, 'I'm hungry', and then asks if there is any food. Therefore, Matt's response, 'I'm sorry, there is not any food', means that he is saying that there is no food for Sally and cannot be interpreted as saying, for example, that there is no food for the cat. Another piece of evidence available to Sally is information about Tom's willingness to share his food. If she interprets Matt's utterance based on these two pieces of evidence, the epistemic candidates will include (1)–(4) and exclude possibilities such as <there is not any food for the cat>. Therefore, the e-method recommends that Sally should believe the proposition implied by all of (1)–(4). What, then, is the proposition that all these candidates imply? It would be a disjunctive proposition consisting of the epistemic candidates (1)–(4): <what Matt said is either there is no food that fits (1), or there is no food that fits (2), or there is no food that fits (3), or there is no food that fits (4)>. According to Davies, if, following the e-method, Sally believes this disjunctive proposition, her belief about the content of Matt's utterance will be safe.

Indeed, if the epistemic candidates for the testimony 'there is not any food' are exhausted by (1)–(4), then one of them is always the correct interpretation. Thus, as long as the hearer believes the proposition that all of these candidates imply, her belief is always safe. Let us see how this point plays out with the *Matt and Sally* case. If the possible epis-

[4] See Davies [2018: 56].

temic candidates for the interpretation of Matt's utterance are exhausted by (1)–(4), then (1), (2), (3), or (4) is the correct content of the utterance. So, if Sally believes the disjunctive proposition that <What Matt said is either that there is no food that fits (1), that there is no food that fits (2), that there is no food that fits (3), or that there is no food that fits (4)>, her belief is always true and safe.

For the above reasons, Davies holds that we can have safe beliefs even in the face of the recovery problem by adopting the e-method. Therefore, it cannot be said that underdetermination by evidence will make it more difficult to hold a safe belief about the content of testimony. Indeed, his argument would be true regarding the *Sally and Matt* case. The e-method is also likely to be useful in many other cases.

However, Peet's and Davies' arguments consider only simple testimonial cases in which the speaker makes an utterance only to communicate a proposition. Based on these simple cases, they have then tried to conclude whether the recovery problem is a threat to testimonial knowledge in general. However, one type of testimony is not so simple and has complex functions. I call such testimony "dual-function testimony". A typical example of this is consent testimony such as 'I agree to lend you my car'. Davies' e-method is ineffective in tackling the recovery problem for this kind of testimony. So, the validity of either Peet's or Davies' view depends on the types of testimony concerned. In the next section, I show that consent testimony is a dual-function testimony with characteristics that differ from ordinary testimony and that Davies' e-method does not work effectively for this type of testimony.

4 Consent testimony as a counterexample to the e-method

Davies' e-method tells us to believe in the proposition implied by each epistemic candidate when recovering the content of an utterance. Therefore, the hearer can use this method only when she can explicitly grasp all of the epistemic candidates. In other words, Davies' method is useless in the case of testimony containing an epistemic candidate that is included in the list of epistemic candidates but that the hearer cannot grasp. One example of this is consent testimony. Consent testimonies are utterances such as 'I consent to a blood transfusion' or 'I agree to lend you my car'. If such utterances are obtained, the hearer can use these testimonies as a basis for testimonial knowledge that <the speaker has agreed to a blood transfusion> or <the speaker has agreed to lend me her car>.

Because consent testimony is an utterance of consent, the characteristics of consent testimony can be ascertained by ascertaining the characteristics of consent. Consent has the function of transforming an action that would normally be considered an infringement against the person or property of the consenting subject into something that is morally permissible. For instance, injuring another person's body or using another person's car without ownership rights is not morally permissible because it damages another person's bodily or ownership rights. However, if a right-holding subject states, 'I consent to the medical treatment that involves injuring my body' or 'I consent to lend you my car, which I own', then such actions are transformed into morally permissible ones. According to Chadha [2021], this is possible because consent enables the subject to temporarily waive her rights to her person and property, freeing others from the moral obligation to respect these rights. Thus, consent functions by altering the moral status of an action. Because consent has this function, consent testimony has both of the following two functions:

(i) To convey to hearer H the propositional content that <speaker consents to H doing φ> (where φ is the action that is morally impermissible without the speaker's consent).

(ii) By performing (i), H's performance of φ is rendered morally acceptable.

The range that function (ii) affects depends on the mental attitude of the consenting subject. In fact, according to the mainstream position on the conditions for consent, consent can be established only when the following two conditions (A) and (B) are satisfied:[5]

(A) consenting subject S has an affirmative mental attitude MA to φ.

(B) S performs a communicative act that communicates MA to the hearer.

Therefore, actions for which the consenting subject lacks an affirmative mental attitude do not satisfy (A). As such, these actions do not fall within the scope of consent and do not become morally permissible. Social practices such as medicine have accepted the importance of this mental attitude for valid consent. Walker [2012] demonstrates this point using the following hypothetical case: suppose that a doctor suggests the removal of the patient's appendix, and the patient utters the consent utterance p, but the patient incorrectly believes that <the appendix is in the leg>. In such a case, Walker says, the patient does not

[5] *Cf.* Goodin [2024], Guerrero [2021]). In addition to this position, there are the positions stating that only (A) is necessary and sufficient for consent and that only (B) is necessary and sufficient *cf.* Goodin [2024: 195]). However, the mainstream position is to impose both (A) and (B) as conditions for consent, *cf.* Goodin [2024: 196].

correctly understand the target action of the consent; therefore, even if she is uttering p, this would not constitute consent. As the patient does not understand that the doctor's plan for medical treatment is to remove the appendix, the patient does not agree to the action that the doctor is actually proposing.[6] Walker's example provides a reason to think that the scope of effect of (ii)—altering the moral permissibility of an action—depends not only on the speaker's utterance but also on the action toward which the speaker has an affirmative attitude.

To consider the scope of (ii)'s effect, Chadha's [2016] view is also helpful. Chadha maintains that consent, whether explicit or non-explicit, is basically conditional[7] and cannot change the moral permissibility of actions outside the scope of these conditions. For instance, if I consent to lend my car to a friend, it does not necessarily mean that I am consenting that <he uses the car so roughly that the tires wear out faster>, and if one consents to sexual intercourse with someone, this does not necessarily mean that they consent to the act taking place without contraceptives. In social practice, the fact that the car owner did not specify in advance how to use the car should not be taken as the owner's admission that the car borrower may use the car however they please. Thus, it is normal for consent to be accompanied by some explicit or non-explicit conditions that limit its scope of application, and consent does not change the moral permissibility of acts beyond the scope of these conditions.[8] If a person consents to your use of a car as long as you use it cleanly, their consent does not permit the use of the car in an unclean manner. To know what action is morally permissible, therefore, it is essential to know the exact scope of the action to which the consenting subject has an affirmative attitude.

From these points, we can formulate the condition for successful communication of consent testimony as follows:[9]

Condition for communicating consent testimony (hereafter CC): The proposi-

[6] *Cf.* Walker [2012: 52–3]). In addition, Beauchamp holds that it is core to the consent that it is an autonomous act of the consenting subject S, which requires that S understands the target action of the consent φ without misconception and intentionally consent to φ (see Beauchamp [2010: 55, 65].

[7] This feature is mentioned by Chadha [2016: 344] and Cappelen & Dever [2019: ch.11]).

[8] *Cf.* Chadha [2016: 342–3].

[9] A reviewer has suggested the importance of focusing on the unique features of consent testimony that distinguish it from ordinary testimony (the dual function) and how this dual function creates specificity in the condition under which the testimony is conveyed. I thank the reviewer for the helpful suggestion.

> tional content of consent testimony about action φ is correctly communicated to hearer H iff H has a correct belief about the scope of φ that has become morally acceptable by virtue of function (ii) of the testimony.

CC must be met for the following reasons. The hearer needs to receive the consent testimony because she wants to perform an action that is made morally acceptable only by function (ii) of the speaker's consent testimony. Therefore, if the scope of consent is misunderstood, and the hearer performs an action that is still not morally acceptable, there is no point in obtaining the consent testimony. In other words, to perform the action that the hearer wants based on the consent testimony, it is necessary to understand correctly the content of the testimony in its exact scope. From the above, we can see that the conditional clause of CC must be satisfied.

A mistaken belief in the scope of consent can result in morally unacceptable actions that violate the rights of the consenting subject. For instance, suppose that you are a patient who consents to some cancer treatment to the extent that your fertility is preserved. Your doctor mistakenly believes that your consent to the treatment is not conditional on preserving fertility. In this situation, if the doctor performs the invasive medical procedure based on this mistaken belief about the scope of the consent, you may suffer the significant harm of unwanted infertility. In addition, the doctor is at risk of litigation for breaching medical ethics and failing in their duty of verification if they act without sufficient evidence to determine the scope of consent.[10] Therefore, it is highly problematic for hearers of consent testimony to fail to hold epistemically safe beliefs about an accurate scope of consent. So, we must be able to recover the scope of the consent accurately when we obtain consent testimonies.

Furthermore, the responsibility for ascertaining the scope is usually placed on the hearer of the consent testimony. For instance, in situations of informed consent for medical treatment, the physician who receives the consent is responsible for ensuring the extent to which the patient is willing to consent, including consent to the specific medical procedures involved in that treatment.[11] This is reasonable considering the asymmetry of the risk that the consenting subject and the hearer each take. The action to which the subject will consent targets something to which she originally has a right (*e.g.*, property or her own

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[10] A similar point is made by Guerrero [2021].

[11] *Cf.* Kleinig [2010: 16].

body), and the hearer is the one who performs the originally impermissible action with the subject's consent. Therefore, in the event of the hearer misunderstanding the scope of consent, the consenting subject may suffer an infringement.

In summary, the successful communication of a consent testimony requires the hearer to have the correct belief about the explicit/non-explicit scope of the consent. In addition, the responsibility to identify the scope accurately falls more heavily on the hearer than on the speaker.

However, it is my view that the situation of recovering the scope of such consent testimony falls under (α) and (β); hence, the recovery problem also arises for this testimony. Moreover, because the CC condition must be met for the successful communication of consent testimony, it is more difficult to resolve the recovery problem than it is with ordinary testimony. In this case, Davies' e-method does not work effectively.

To illustrate this point, let us consider the utterance 'I consent to your use of my car'. As mentioned earlier, consent is usually accompanied by some conditions, even if they are non-explicit, so presumably this simple utterance also contains some non-explicit conditions. For instance, the consenting subject may have intended by this utterance to allow the use of the car as long as *the car was not driven roughly*, which would wear out the tires prematurely. Or she may have intended to permit the use of the car as long as *it will be kept clean*. Thus, the specific conditions included in an utterance of consent vary depending on the context of the utterance. Therefore, it can be said that the utterance of consent should also be regarded as containing a context-sensitive expression (this expression falls under (α)). And there is more than one contextual candidate. Depending on the number of these contexts, there are also multiple epistemic candidates. For instance, in the car-borrowing case, the following candidates would be considered:

Consent to use a car:
Speaker S: 'I agree to lend you my car'.

Contextual candidate a: S has in mind the use of the car on condition that the mileage is kept below a certain value.

Contextual candidate b: S has in mind the use of the car on condition that it is kept clean.

Contextual candidate c: <Contextual candidate a> and <Contextual candidate b> both apply.

Contextual candidate d: S has in mind the use of the car without any particular condition.

Epistemic candidate a: <S consented to use of the car on condition that the car will be kept within a certain mileage limit>.

Epistemic candidate b: <S consented to use of the car on condition that the car will be kept clean>.

Epistemic candidate c: <S consented to use of the car on condition that the car will be kept clean, and the car will be kept within a certain mileage limit>.

Epistemic candidate d: <S gave unconditional consent to using the car>.

As discussed above, there are also multiple contextual and epistemic candidates regarding the scope of consent. Therefore, the task of establishing the correct context of the testimony and recovering the corresponding content also arises for consent testimony.[12]

However, (β) holds in the situation of recovering consent testimony, as it is difficult to determine the exact content of the utterance from the available evidence. There are two factors that make this difficult:

Factor 1: the conditions attached to consent are often non-transparent, even to the consenting subjects.

Factor 2: in the case of recovering consent testimony, the properties of the action-token contained in the testimony must be recovered accurately.

Let us first consider factor 1. Suppose, for example, that the consenting subject imposed the condition <clean use of the car> in lending the car. Suppose, however, that she cannot precisely enumerate the conditions under which the car can be said to be clean. When the car is returned, the consenting subject becomes aware that the smell of garlic has permeated the interior. It is only now that she realizes that *getting into the car after eating garlic an leaving*

[12] Chadha [2021] argues that the testimonial utterance's descriptive content determines the testimony's scope. If this is the case, one might say that consent testimony that does not mention the scope of the consent should be understood as epistemic candidate (d). However, this way of thinking is problematic in the following respect: descriptive content is also subject to interpretation and cannot be accurately recovered by anyone. We shall see this point below.

the smell in the interior was not within the scope of her utterance 'clean use of the car'. So, it is possible that consenting subjects can only roughly verbalize the range of acts to which they are prepared to consent. A more practical example would be a situation in which a doctor obtains consent for a medical procedure from a patient who lacks sufficient medical knowledge. It may be difficult for the patient to grasp the doctor's explanation of what is included in the scope of a medical procedure accurately and to recall and consent to it. Patients who cannot fully grasp the content of a particular medical action φ may also have difficulty verbalizing the precise extent to which they are prepared to consent when they consent to action φ.

Factor 2 also causes some problems, making it difficult to recover the contents of consent testimonies compared to ordinary testimonies. Suppose that we want to know the truth of the proposition (p) that <S bought a bracelet>. We acquire the testimony that 'S bought some bracelet or other'. At this point, we do not know the properties of the bracelet (whether it is elegant, grand, or shabby) or whether it was purchased with cash or by card. But, as long as we have the coarse-grained testimony 'S bought some bracelet or other', we have no problem accepting this as evidence for believing p. The situation is different with consent testimony. If we want to know whether S consents to a particular act, we must grasp the properties of the action-token contained in the content of the consent testimony. For instance, consenting subjects may consent to *cautious* car use but not to *rough* car use. In other words, the consenting subject consents to car-use actions with the property <cautiousness>, but not to car-use actions with the property <roughness>. Regarding consent testimony, then, we must recover the detailed properties of the action-token contained in the testimony. However, because of factor 1 (consenting subjects themselves are often unable to verbalize the scope of their consent in detail) we have difficulty discerning the properties of the action-token.

Based on factors 1 and 2, we can say that consent testimonies can come with implicit conditions that neither the consenting subject nor the hearer can precisely grasp. For instance, in the case of *consent to use a car*, the explicit condition that imposes *keep the car clean* can be regarded as including the non-explicit condition *do not get into the car after eating garlic*. Moreover, the consenting subject cannot verbalize this non-explicit condition at the time of consent. However, she would acknowledge that she thought that she was imposing the condition if asked whether she intended to impose it. Therefore, although this non-explicit condition is implied in the condition *keep the car clean*, it is difficult to notice this at the time of consent, both for the consenting subject and for the hearer. In summary, unlike ordinary testimony, the successful communication of consent testimony requires that the conditional clause of the CC be satisfied. Furthermore, to satisfy this, the hearer must even make explicit the implicit scope of the consent scope that the speaker cannot fully verbalize, but factors 1 and 2 prevent the hearer from doing so.

In these situations, the e-method does not work. Given that the e-method is to believe the proposition implied by all epistemic candidates, it must be able to determine the complete list of epistemic candidates at a preliminary stage. However, it is difficult to identify this complete list of epistemic candidates without omission. Let us clarify this point using the case of *consent to use a car*. Epistemic candidates (a)–(d) apply to the utterance 'I consent to your use of my car'. Following the e-method, we should believe the disjunctive proposition implied by all of the epistemic candidates, which is <S gave consent to the use of the car under one of conditions (a), (b), (c) and (d)>. Is the belief safe? It appears not; each epistemic candidate can be further subdivided into sub-candidates. For instance, (b), <keep the car clean>, is further subdivided as follows:

(b_1) do not eat or drink in the car.

(b_2) do not get in the car with your shoes on.

(b_3) do not leave rubbish in the car.

(b_4) do not get into the car after eating garlic.

Because the complete list of epistemic candidates includes (b_1) to (b_4), to use the e-method, the hearer of the testimony must preliminarily grasp each candidate on the list. However, as mentioned earlier, factors 1 and 2 make it possible that the hearer is unaware of the possibility of some candidates such as (b_4) being included in the complete list of epistemic candidates. The hearer, then, cannot believe the proposition implied by all epistemic candidates. This is because if (b_4) is non-transparent to the hearer, she would believe that the right content for <keep the car clean> is one of (b_1), (b_2), or (b_3). Therefore, the e-method often cannot be used in consent testimony that involves factors 1 and 2. If the content of the testimony is, in fact, (b_4) in such a situation, the hearer will recover different content. In other words, there is a possible world in which the hearer believes the wrongly recovered content. This means that the hearer who attempts to recover the content of consent testimonies using the e-method will have unsafe beliefs, and hence the recovery problem cannot be solved by this method. From the above, we can conclude that Davies' e-method works only for some sorts of testimony and is ineffective for consent testimony in which both factor 1 and factor 2 are involved.

5 How can we cope with the recovery problem regarding consent testimony?

As Davies' e-method does not work for consent testimony, the threat of the recovery problem must be taken seriously with respect to this testimony.

If the e-method cannot be used, there are currently only two options for responding to the recovery problem of consent testimony. The first is to accept that beliefs based on consent testimonies are unsafe and that such beliefs are epistemically problematic. For instance, factor 1 prevents the giver of consent testimony from verbalizing exhaustively the range of acts to which she is prepared to consent. Thus, the speaker can be regarded as a subject who lacks the necessary qualifications and competence to be a witness, and we must conclude that beliefs based on such consent testimony are epistemically problematic.

This option presents a difficulty. To give an example, in our daily social practice we perform medical treatments based on the assumption that we have obtained testimony from the patient to support our belief that <we have obtained consent for the medical treatment>. However, suppose we adopt a policy of not recognizing the testimonial competence of testifiers with regard to consent testimony. In that case, we must regard such medical practices as epistemically problematic practices that rely on unreliable testimony. However, this might lead to real-life social practices that is based on consent testimony (such as consent-based medical practice) being seen as problematic and requiring more constraint than they currently receive.

If one wishes to avoid such consequences, there is a second way of dealing with the recovery problem of consent testimony. This approach does not aim for exact recovery of the content of the testimony, but rather to obtain knowledge of more limited propositions. Specifically, rather than the standard approach of recovering the complete content of the speaker's testimony in a proposition of the form <the content of the speaker's testimony is p>, the approach I offer is to recover it in a proposition such as <the content of the testimony includes epistemic candidate x>. This approach shifts the goal to obtaining testimonial knowledge that is useful to some extent in social practice without recovering the complete content.

Let us formalize this approach by referring to Pritchard's [2022] argument. To understand Pritchard's argument, it is necessary to keep in mind the premise that each possible world has a distance from the actual world, close or far. To illustrate this, let us suppose that S has a gun that can load six rounds and is about to play Russian roulette. Suppose further that there are the following possible worlds:

(w_1): S fired a gun loaded with three rounds, and the bullet hit S.

(w_2): S fired a gun loaded with one round, and the bullet hit S.

In this context, it is important to note that w_1 is much closer to the actual world than w_2. This is because w_1 has a three-in-six chance of realization, whereas w_2 has a one-in-six chance. Therefore, w_1 is more likely to occur. Among the possible worlds, there are worlds that are closer to the actual world and some that are further away.

Building on this, Pritchard proposes a way to evaluate what risks are likely to be realized when performing an action φ. He offers the following hypothetical example:

> In determining whether taking a plane is risky it might matter a great deal whether the risk event in play is (i) the plane crashing, (ii) the plane crashing over the ocean, or (iii) being killed in a plane crash. (Pritchard [2022: 12])

He supposes that the possible world in which (i) is realized is close to the actual world and can be easily realized, while the possible worlds in which (ii) and (iii) are realized are far away from the actual world and do not exist in closer possible worlds. In this case, the act of taking a plane is dangerous when evaluated relative to risk event (i) but not when evaluated relative to risk events (ii) and (iii). He proposes this kind of modal assessment of risk relative to the targeted risk event.

This approach is useful in considering the recovery of the content of consent testimony. Let us examine this approach in relation to a recovery problem in the case of *consent to use a car*. The consenting subject uttered, 'I agree to lend you my car' and there were the following epistemic candidates for the content of this utterance:

Epistemic candidate a: <S consented to use of the car on condition that the car will be kept within a certain mileage limit>.

Epistemic candidate b: <S consented to use of the car on condition that the car will be kept clean>.

Epistemic candidate c: <S consented to use of the car on condition that the car will be kept clean, and that the car will be kept within a certain mileage limit>.

Epistemic candidate d: <S gave unconditional consent to using the car>.

In this case, the risks of misinterpretation include the following:

Risk_a: the risk of erroneously believing that it is permissible to travel long distances without paying attention to the mileage when using the car.

Risk_b: the risk of erroneously believing that it is not necessary to pay particular attention to the car's cleanliness when using it.

Of course, it is desirable to completely recover the testimonial content and eliminate both risks of misinterpretation. However, factors 1 and 2 make it highly difficult to grasp all epistemic candidates and obtain propositional knowledge of the exact content of the testimony.

On the other hand, less work is required to focus, for example, on only epistemic candidate (a) and determine whether this candidate is included in the testimonial content to exclude misinterpretation. If we can successfully complete this task, we can eliminate Risk_a. Besides, if we know in an error-free way whether or not the content of the testimony includes epistemic candidate (a), while we will not have complete propositional knowledge of the content of the testimony in the form <The exact content of the speaker's testimony is p>, we will know the truth or falsity of the proposition <The scope of the consent testimony of speaker S includes the condition of driving within a certain mileage>. Furthermore, once we obtain this knowledge we can avoid the risk of outcomes that the consenting subject does not want, such as driving over the mileage, even if we cannot achieve complete recovery of the testimonial content. That is, we can obtain safe knowledge relative to Risk_a if beliefs about the proposition <the content of the testimony includes epistemic candidate (a)>, which concern only the specific epistemic candidate (a), can be obtained in a way that satisfies the safety condition.

This approach aims at acquiring knowledge that is restricted to proposition p_2, *i.e.*, <the content of the speaker's testimony contains the content of epistemic candidate x>, rather than knowledge of proposition p_1, which accurately recovers the complete content of the testimony, *i.e.*, <the content of the speaker's testimony is p>. Therefore, we evaluate whether the hearer's belief satisfies the safety condition for the belief about p_2 instead of p_1. In so doing, we obtain propositional knowledge that specifically concerns whether a condition of the content of epistemic candidate x is imposed on the scope of the speaker's consent about φ.

Of course, this knowledge alone does not provide a complete picture of the testimonial content. For instance, suppose that in the case of *consent to use a car*, we know that <the testimonial content contains epistemic candidate (a)> is true. However, suppose also that the correct epistemic candidate is actually (c), and the condition of clean use of the car was also imposed. In this case, knowledge of <the testimonial content contains epistemic candidate (a)> alone does not capture all of the conditions of the consent. However, knowing whether or not the consenting subject imposed a certain condition on the consent is more valuable than no knowledge at all. In addition, the risk can be reduced in practice by requiring the hearer to use her plans for using the car to acquire knowledge of the relevant epistemic candidate. Suppose that the hearer plans, for instance, to cover more than a certain mileage. In that case, she should acquire knowledge of a proposition about epistemic candidate (a) that pertains to that condition. Using this approach, we can reduce the risk that the hearer will perform an action that goes beyond the scope to which the consenting subject has an affirmative mental attitude.[13]

This approach is a better way than Davies' e-method to cope with the recovery problem of consent testimony, for the following reason. Suppose we know that (a), (b), (c), and (d) are epistemic candidates for a given consent testimony <T>. If we use the e-method, we believe in the disjunctive proposition that is implied by all of the epistemic candidates, so we still do not know exactly which of the epistemic candidates (a), (b), (c), or (d) is included in the testimony. However, in the approach that I propose here, by obtaining specific propositional knowledge for one epistemic candidate (here I suppose epistemic candidate a), we can obtain knowledge of whether or not the proposition <T includes at least content of the epistemic candidate a that impose condition X to φ> is true. This e-method, which believes in the disjunctive proposition, does not provide this knowledge. Therefore, both approaches have limitations in that they cannot fully recover the content of the testimony. However, my proposed approach is more useful in practice than the e-method for dealing with the recovery problem of consent testimony.

In summary, unlike ordinary testimony, consent testimony is a dual-function testimony that, in addition to its function of communicating propositional content, also has the function of a speech act that alters the moral permissibility of a particular action. Because the CC condition must be met for the successful communication of this type of testimony, resolving Peet's recovery problem is more difficult here than it is for ordinary testimony. Moreover, as seen above, the e-method cannot be used for consent testimony where factors 1 and 2 hold, so unless other effective methods emerge, this issue must be dealt with by an approach along the lines of what I propose. This approach is to change the

[13] This approach was developed based on the editor's suggestion that it is important to eliminate the risk of the most dangerous misinterpretation. I thank the editor for the useful suggestion.

target propositions for acquiring knowledge from the full testimonial content to a more limited one, like some epistemic candidates. However, because this approach also has limitations, we must acknowledge the seriousness of Peet's recovery problem about consent testimonies where the e-method cannot be used and continuously consider what approach is appropriate specifically to this type of testimony.

6 Conclusion

Davies proposed the e-method as a way of dealing with Peet's recovery problem. This is an important and helpful method, but it cannot be used for consent testimony with a dual function where both factor 1 and factor 2 hold. Thus, we must deal with the problem in other ways where consent testimony is concerned. We should therefore avoid lumping all testimonies together and seeking a general solution to the recovery problem that applies to all of them. Instead, we should take into account the characteristics of each type of testimony and consider measures to deal with the threat of the recovery problem according to the characteristics of each type.[14]

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[14] I am grateful to the anonymous referees, the editor, Hironori Mori, Masahiro Murayama, Shintaro Shirakawa and Takaaki Matsui for very helpful comments.

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