



Revista Iberoamericana de Argumentación

ἐπεὶ δὲ ταύτην τὴν ἐπιστήμην ζητοῦμεν

Director
Luis Vega

Secretaria
Paula Olmos

Edición Digital
Roberto Feltrero

Argumentation and Testimony

SERGIO NOVANI
Departement of Legal Philosophy "DI.GI.TA"
University of Genoa
Via Balbi, 30/17- 16126 Genoa (Italy)
novanisergio@libero.it

RESUMEN

El trabajo parte de las siguientes preguntas: 1) ¿es la argumentación por testimonio una argumentación epistémica? 2) si lo es, ¿de qué clase de argumento epistémico estamos hablando? 3) ¿sería de tipo reduccionista o anti-reduccionista? Trato de responder a estas preguntas partiendo de un análisis filosófico de la argumentación por testimonio e intentando sacar las consecuencias filosóficas del mismo. Muestro que hay, al menos, dos vías principales para analizar la argumentación por testimonio: la reduccionista, la de Hume, y la anti-reduccionista, la de Campbell, que comportan distintos requisitos epistémicos. Mi propuesta pretende enfrentarse a la segunda de ellas que, en último término, resulta fallida en casos de procesos criminales. En procedimientos en los que el juez debe declarar la culpabilidad solo en caso de que no haya "duda razonable" al respecto, el modelo de Hume parece ofrecernos mayores garantías que la versión de Campbell.

PALABRAS CLAVE:

anti-reduccionismo, argumentación, reduccionismo, testimonio.

ABSTRACT

This paper starts with some questions: 1) is the testimonial argumentation an epistemic argumentation? 2) and then, if so, what epistemic argument are we talking about? 3) and, again, is it reductionist or is it non-reductionist? I try to give some answers to these questions, starting with a philosophical analysis of testimonial argumentation and then trying to draw some philosophical consequences. I show that there are at least two master ways about testimonial argumentation: a reductionist, Hume's way, and a anti-reductionist, Campbell's way and that these impose distinct epistemic demands. My proposal is motivated against the second which is shown to be ultimately unsuccessful in criminal trial. In a process like ours, which requires the Judge to pronounce conviction if and only if the guilt "is" beyond any reasonable doubt, Hume's testimonial argumentation appears to act as method of operation offering more guarantees than the version of Campbell.

KEYWORDS: anti-reductionist, argumentation, reductionist, testimony.



Copyright © Sergio Novani

Se permite el uso, copia y distribución de este artículo si se hace de manera literal y completa (incluidas las referencias a la Revista Iberoamericana de Argumentación), sin fines comerciales y se respeta al autor adjuntando esta nota. El texto completo de esta licencia está disponible en: <http://creativecommons.org/licenses/by-nc-sa/2.5/es/legalcode.es>

1. INTRODUCTION

What does reductionist mean? It simply means that someone considers the testimonial argumentation insufficient, a source (topic), then, which needs - in order to have epistemic value - to use other sources of argument. In itself, it expresses a limited epistemic charge, it must find the comfort of other good arguments. In what sense? In this sense: following testimonial argumentation x is submitted to me, "Palestra di Botta e Risposta is located in Piazza Capitaniato"; may I say

- (i) I can believe in this testimonial argumentation and therefore know x only because I got testimonial argumentation that Palestra di Botta e Risposta is located in Piazza Capitaniato, or
- (ii) have I to find some good evidence to support this testimonial argumentation In epistemological environment,¹

if you answer (i) you are "gullible", "fundamentalist" and therefore anti-reductionist; if you answer (ii) you are "anti-gullible", "suspicious" and therefore reductionist. This is the reason why someone must be considered as a suspicious, reductionist arguer: when he considers his testimonial argumentation as an imperfect source of knowledge, which is perfected gradually through only personal accumulation of evidence. It means that further argumentations, or other different evidences are required to bear and support the initial argumentation.

I would like to start this research with some questions: first, 1) is the testimonial argumentation an epistemic argumentation? 2) And then, if so, what epistemic argument are we talking about? 3) And, again, is it reductionist or is it non-reductionist?

In this work we will try to give some answers to these questions, starting with a philosophical analysis of the testimonial argumentation and then trying to draw some philosophical-proceedings consequences. It is argued that there are at least two master ways about testimonial argumentation: a reductionist, Hume's way, and a anti-reductionist, Campbell's way and that these impose distinct epistemic demands. This paper, this proposal is motivated in contrast to the second way of thinking about testimonial argumentation which is shown to be ultimately unsuccessful in criminal trial. Finally, a diagnosis is offered of why our concept of testimonial argumentation should have the kind of structure dictated by reductionist epistemology.

¹ Pritchard (2004). To get an idea of epistemology of testimony, see: Adler (1994); Audi (1997); Coady (1992); Cohen (1982); Fricker (1987); Goldman (1999); Lackey (1999; 2003); Lackey and Sosa (Eds.) (2006); Sosa (1994); Stevenson (1993); Vassallo (2003)

3. Argumentation and Testimony. S. NOVANI

In legal processes like ours, that require the judge to pronounce conviction if and only if the guilt "is" beyond any reasonable doubt, Hume's testimonial argumentation appears to act as a method of operation that offers more guarantees than the Campbell's version. In short, in a criminal trial it's better to be suspicious than gullible.

2. TESTIMONIAL ARGUMENTATION, AN EVERY-DAY MATE.

Let us try, then, to answer the first question: is the testimonial argumentation an epistemic argumentation? First, we can say that the testimonial argumentation is not (and this is obvious) only the one of the courtrooms (Vassallo, 2003: 25) but it is, knowingly or unknowingly, common in everyday life. An example? I have to go to Padua, Capitaniato Square. My wife, Elena, was several times in Padua and knows Capitaniato Square. I ask her about the way to go there. She recommends me to catch the train to Florence and, once there, to take the quick train Florence-Padua: "you will pay a bit more", she says, "but your trip will be more rapid and comfortable". Why should I not believe her? She is my wife; she is like at home in Padua and is an excellent traveler by train. I agree, I am her audience and accept without resistance; therefore her testimonial argumentation on the path to follow, the transportation means to use, the time of departure and arrival times, achieves its purpose, creates acceptance and, in this case, also my approval (Perelman and Olbrechts-Tyteca, 1996: 10). When I come to Padua, I ask an attendant at the station which is the way to Capitaniato Square and, again, I am faced with the testimony. I believe, in short, their suggestions on the shortest and fastest way to reach the square. Once arrived in Piazza Capitaniato, I enter the Faculty of Philosophy (I can see it by myself) and an employee at the entrance asks me my name, the reason for my visit and asks me also to show him my identity document. I provide him with all this information and the "gullible" employee believes what I say, then accepts my testimony on my "personal data". After visiting the Faculty, I have to go to the apartment and here we start again with testimonial argumentation. I ask a passer-by: "Where is Luzzatti Street?" After having bothered two apparently non-native passers-by, I finally find a true Paduan, who gives me the indication for the apartment in Via Luzzatti "it is ten to fifteen minutes far from here: go in that direction, then turn left and in front of that little street you will find, in fact, via Luzzatti". It's easier to do it than to say it, but how important is "to say it"? I thank the indigenous for his testimony and start walking toward my new home. Once I have taken possession of the apartment, I start reading the newspaper a colleague gave me in the Faculty (the usual scenario: he asks me: "Do you want to read it? I

4. Argumentation and Testimony. S. NOVANI

already read it; it is six p.m now, and I would throw it in the trash can". My answer: "Yes, thanks, I have nothing to read, at least no "newspaper"). I read the usual information, crime, sport, local news, up to the cultural section; there I stop to observe and read it with that mixed feeling of envy and sympathy arising from reading things that you will never write, because you can read, them with difficulty, you barely understand them, let alone write them. Let us admit, however, that we, after an excruciating effort, assimilate the arguments, or at least a few of them. So I think that what I read is true and I accept, blissful ignorance, a further testimonial argumentation. Sized with the usual despair due to the just enjoyed after-reading ignorance, I turn on the television to have a rest watching the usual movie, broadcasted many times. No movie. Only boring news. So, again, testimonial argumentations, "Marchionne threatens to move to the United States, even to China, no, to Russia, but...", "Workers, sign or you will go home (maybe to Marchionne's house!)". And so on. As usual, apart from these testimonial argumentations, which leave me frankly puzzled, I believe without resistance other (less conditioned) news, and I end up giving in to umpteenth argument, arguments from testifiers. One could go further and talk about other details, maybe relevant to the example, but I think that what has been said here is sufficient to say that testimonial argumentation is an epistemic argument, at work in many facets of our daily lives and that it covers a precise method for acquiring beliefs or knowledge, derived from our learning something through the words of others, either listened to or read.²

3. HOW IS TESTIMONIAL ARGUMENTATION?

Here we assume that the argument is a located argument.³ It is an argument in that it consists in inferring from utterances, that are the premises, a statement which is a conclusion. It is located because, unlike the demonstration that it is a-spatial and a-temporal, it is bound (the argumentative reasoning, of course) to the here and now. It is located in both time and space. A testimonial argumentation can be then defined as an argument that consists in inferring from evidence-statements that form the background, a sentence that is a conclusion. But unlike what happens in formal logic, the premises are not true. They are assumed to be true only by those who develop the reasoning and / or who listen and evaluate them. The value of truth pertaining to what is stated in the introduction depends on the level of belief both of those who state and those who

² If you have time, read absolutely Lackey (2010). It 's a wonderful book about how the Cinderella of epistemic sources, the witness, found in recent decades, not just the pumpkin, but how she perfectly fits the golden little shoe of epistemology.

³ Cattani (1990). See also, Coady (1992).

5. [Argumentation and Testimony](#). S. NOVANI

listen and evaluate the argumentation.

If I say:

every A is B,

every B is C

x is an A,

therefore x is a C

I have developed a demonstrative reasoning (Boniolo and Vidali, 2002: 4-5). I have not argued: I reasoned without context, without referring to a real-world semantics, using the ability to conduct inferences, logically coded through diagrams and established rules.

If, on the contrary, I affirm:⁴

My dear friend Liana told me that Piazza Capitaniato is near Piazza del Signore

My dear friend Harold told me that Piazza Capitaniato is near Piazza del Signore

therefore Piazza Capitaniato is near Piazza del Signore

my reasoning is absolutely different. This reasoning, properly an argumentation, is developed assuming the general premise that "the friends who give the same indication, give a correct indication". And, of course, that premise is not quite true, nor mostly true. How can we say then that a testimonial argumentation is really an epistemic argument?

To give an answer we need to overcome the ontological discourse, and ask not "what" is the argument, but what is its purpose. In Perelman's opinion, for example, argumentation has not the purpose of inferring the consequences of certain premises, but that of creating or increasing the consent of an audience for the theses that are presented to it for approval (Perelman, 1981: 20). The argument will then be

⁴ So Olbrecht-Tyteca and Perelman: «... although no one can deny that the ability to deliberate and argue is a hallmark of being reasonable, the study of the means of evidence used to obtain the consent has been completely neglected in the past three centuries, by the logics and theories of the knowledge. This is due to what is not binding in the arguments put forward in support of a thesis. The very nature of the argument and the resolution is contrary to the need and the evidence, because they do not act where the solution is required, nor argue against the evidence. The scope of the argument is that of the likely and probable, to the extent that it escapes the certainties of the calculation» (Perelman and Olbrechts-Tyteca, 1966: 20).

6. Argumentation and Testimony. S. NOVANI

epistemically relevant if and only if: i) it raises or increases the consent of an audience⁵ and ii) such rise or increase will not be purely intellectual but will aim at inciting action, creating a willingness to action.

Creating or increasing the consent, means to realize, create, or strengthen the existing consent. It means, perhaps, even, creating or increasing in a decisive way, or it can also mean or increase in a non decisive way. According to Perelman, the argument is not an exclusive source: You can also give rise or increase in relative way and collect consent using other sources.

3.1. Hume's Testimonial Argumentation: When the Argumentation is Epistemically Suspicious.

We have two views. The first view that it can be is called reductionism (argumentation for suspicious): the reliability of testimony is justified by appeal to other sources along with familiar forms of inference, especially induction. We have a second view that it can be is called anti-reductionism (argumentation for gullible) who hold that testimony is a source of warrant in itself, not reducible to warrant derived from other sources, even if empirically dependent on them" (Toulmin, 1976: 89).⁶ It is like comparing Hume to Campbell.

It can be said that Hume recognizes the importance of testimonial argumentation⁷ (AT), if by "recognizing" we mean a concept that does not express an opinion other than that of prognosis. In this sense, AT is important in Hume's version but this does not mean giving it a positive or epistemic value. Hume, in fact, recognizes, sees the importance of AT, but he does not introduce the question by taking a position. He observes, he recognizes. That's all. There is no human weakness, according to Hume, which is as universal and as strong as the one we call "credulity" or too easy faith in the testimony of others. Why do we accept AT? Because we are too credulous, because we trust too much in the testifiers, because we are inclined to believe what they tell us. T testifies to S the proposition t, "in Padua,

⁵ «While a deductive system is presented as isolated from any context, an argument is necessarily located. In order to be effective, it requires a contact among subjects. The speaker (the one who presents the argument orally or in writing) must intend to pursue through his speech an action on the audience, that is on all of those he intends to influence» (Perelman, 1977: 791).

⁶ Toulmin says: «the located character of the argument requires, then, taking charge of all beliefs and knowledge that the audience or the other party, agrees» (Toulmin, 1976: 89). We "know" something (literally) if and only if we have a well-founded belief in it. Our belief is well founded if and only if we can produce good reasons that support it. And our reasons are really good (according to the most philosophical rules) if and only if we can produce a "final" or formally valid argument by connecting this belief to a starting point that is not questioned (and which preferably you can not put into question).

⁷ Hume (1996); Hume (1999).

7. Argumentation and Testimony. S. NOVANI

there is a dispute between the grammar school Pinter and grammar school Tullio"; S believes that testimonial argumentation. Testimonial reasoning could be shown as follows:

(1)

MAJOR PREMISE

T often testifies true testimonial argumentations to S

MINOR PREMISE

T expresses testimonial argumentation t to S

CONCLUSION

S believes testimonial argumentation t

Why does the testimonial argumentation work for S? Because, says Hume, S often receives testimony from T, then, is credulous⁸ and believes that also this time such testimony t is credible, believable. But that argument is not a good argument in Hume's opinion. Because of the fact that T "often" testifies, one cannot infer that his AT is a good AT. Hume says: «There is no human weakness which is as universal and as strong as the one we call "credulity" or too easy faith in the testimony of others. And also the most likely reason for this weakness is in the influence of resemblance». T is a good friend or only an acquaintance, it does not matter. He often provides us with some evidence, so why not to believe him? Because of the resemblance! It is the resemblance that leads S to believe, offsetting the testimonial argumentation. In order to deem a testimonial argumentation as epistemically significant testimony it is necessary, according to Hume, to overcome the conditioning of the resemblance, and to make use of the expertise. When we accept a fact as based on the testimony of another person, Hume says, faith comes from the same source of inferences, from causes to effects and from effects to causes, and nothing but the experience of the principles governing human nature can give us the certainty of the veracity of men.⁹ The experience, just the experience, is what makes the testimonial argumentation a good argument, that is what bishop Tillotson seems to be missing when he tries to

⁸ Although the experience is the true standard of this and all other judgments, Hume points out how rarely we adjust only with it: we have, however, a marked tendency to believe whatever is reported to us: apparitions, spells, miracles, everything which is mostly contrary to the experience and daily observation. It's because of credulity that we accept everything we are told, and this is not good because it leads us also to believe in the apparitions, spells and wonders.

⁹ So, again Hume: «This sort of reasoning [that the reasoning is apparent from the testimony], perhaps one could deny that it is based on the relationship of cause and effect. I will not bother to argue over a word. Just note that our security about some topic of this kind is derived only from the principle of our observation of the veracity of the human testimony and the usual conformity of facts to witnesses report. The reason why we attach some credence to the testimony and historians is not derived from a priori perceived connection between the testimony and reality, but from the fact that we are used to find a conformity between them» (Hume, 1996: 175).

8. [Argumentation and Testimony](#). S. NOVANI

explain that the authority of Scripture and Tradition «is based on the testimony of the apostles, who were eyewitnesses of those miracles of our Saviour, by which He proved his divine mission» (MacCosh, 2009:195). What evidence do we have for Christian Religion? According to Hume certainly a kind of evidence that is weaker than the evidence we have about the truth of our senses, «since even for the first authors of our religion it was not greater, it is clear that it had to decrease in going from them to their disciples; nor can anyone trust as much in their testimony as in the immediate object of his senses» (Restaino, 1974: 158).

In Hume's opinion (1) should be corrected in this way:

(2)

MAJOR PREMISE

T often testifies truth to S

MINOR PREMISE

T testifies t to S

MINOR PREMISE

Remark O1, O2, O3, O4, On, confirms t

CONCLUSION

S believes t

Hume tells us that we must trust in testimony because experience and observation show that it is reliable, but the solution proposed (by Hume) does not define the testimonial argumentation, when assisted by the experience, as the reasoning that leads to certain conclusions, but only to approximate ones. Of course, if Hume's inductive reasoning would lead to a conclusion such as "every testimony, if based on experience, corresponds to reality", it would be not logically valid because his conclusion (if they are based on observation, all the evidences correspond to reality) would not follow deductively from the premises: we cannot exclude the logical possibility that the conclusion is false, even though the premise may be true. I mean, are we willing to say that we must have a valid deductive justifiable reasoning to believe that, based on observation, all testimonies correspond to the reality? I do not think so. We are certainly more inclined to think that the conclusion of Hume is merely approximate and belongs within the type of conclusions affirming that "if based on observation, all the evidence might correspond to reality, unless other evidence and other epistemic sources".

9. Argumentation and Testimony. S. NOVANI

3.2. The presumption in favor of the testimonial argumentation: the Gullible

Campbell, unlike Reid,¹⁰ does not deem credulity a virtue. Testimony, in the Reverend's opinion, influences in a natural and original way our belief, before experience does. A confirmation is found in the fact that the first consent, given by children to the testimony, prior to any experience, is in fact the most unlimited, and that through a gradual human experience it is gradually challenged and reduced within narrower limits (Campbell, 1797: 14-15). The conclusion of critical analysis, confirmed by experience, is therefore against the argument proposed by Hume as the base of his arguments. In fact, Campbell highlights that «our mistrust of the testimony is the result of the experience, is more philosophical, because more similar to the truth, than affirming that our confidence in the testimony has this foundation. Consequently, the youth which is lacking in experience, is credulous; maturity, by contrast, is suspicious. It would be exactly the opposite, if the doctrine of this author (Hume) were right». But bringing the testimonial argumentation prior-to-experience, involves the risk of being irrational, a-philosophical, inexplicable. Campbell is aware of the difficulty of defending the thesis of the priority of the testimonial argumentation on the ground of the rigorous, rational argument and tries to find a solution to the limitations of human nature: «There are, and there must be in human nature, some originating foundations of belief, beyond which our research cannot proceed, and which therefore cannot be rationally explained» (Campbell, 1797: 15). Therefore he introduces another "inexplicable" epistemic principle, the memory, placing it as the testimony, prior to experience, although Hume implicitly considers it as the base of everything. So, according to Campbell, there are original, inexplicable principles, because they are the basic principles of our knowledge and experience. What rational explanation may have principles as "similar causes always produce like effects" and "the course of nature will be the same tomorrow as it was yesterday, and is today", principles that Hume recognizes neither intuitively obvious nor deduced from premises and, however, he considers them as conditions in all reasoning arising from experience? In short, what rational explanation can Hume offer about his belief in memory information, which is impossible to question and explain? (Campbell, 1797: 16). In truth, according to the

¹⁰ In Reid we read: «The Author of Nature, wise and generous, who wanted us social creatures and wanted us to get the biggest and most important part of our knowledge from the information provided by others, has instilled in our nature - because of his proposal - two concordant principles. The first one is a propensity to tell the truth and to use the sign language to communicate our real feelings. Another original principle instilled in us by the Supreme Being, is a disposition to trust in the veracity of others and believe what they tell us. This is the counterpart of the first one, so can we call the first one the principle of truthfulness, and if we want a name for the second, we call it the principle of credulity. It is clear that in matters of testimony, the scale of human judgment is inherently prone to the side of belief, and turns to this side alone, when there is nothing on the opposite side. Should it not be like this, no sentence uttered in the speech would be believed, until they were examined and tested by reason, and most men would be unable to find reasons to believe in a hundredth of what they are told» (Reid, 1975: 108)

10. Argumentation and Testimony. S. NOVANI

Reverend, the memory has with experience almost the same relationship as it has with the testimony: «If we had not previously trusted or believed in the memory, we would not have been able to gain experience» (Campbell, 1797:16-17). In Campbell's opinion, until the author of the *Essay on Miracles* does not meet these demands of rational explanation of the basic principles of experience and knowledge, his reflections on the testimonial argumentations, based on the theory of the basic experience over the testimony, are not sufficiently motivated and lack demonstrative and persuasive force.

Let us summarize. There is no human weakness, according to Hume, which is as universal and as strong as the one we call "credulity". We are therefore naturally credulous and this psychological disposition prevents us from producing good arguments. The only way to have good arguments is through experience. Campbell, as we have seen, refers to everyday experience and family to deny Hume's axiom, that is the argument that the evidence of the testimony comes only from experience. The testimony, in Reverend's opinion, influences in a natural and original way the belief, before the experience does it.

In Campbell's opinion (2) should be corrected in this way:

(3)

MAJOR PREMISE

T often testifies truth to S

MINOR PREMISE

T testifies t to S

CONCLUSION

S believes t if and only if experience E does not produces confutation.

Then, the testimonial reasoning changes. We must not, again according to Campbell, reject the testimonial argumentation until it is properly confirmed by experience, but on the contrary, we must recognize that there is a strong presumption in favor of the testimony, until it is properly refuted by experience. If we were not guided by the presumption of evidence, if we did not believe any argument except those proved by experience, we would end up restricting our field of knowledge to a few limited beliefs. This is Campbell's opinion. The difference between this opinion and Hume's opinion is clear: Hume is explicit in defining the observation as an arbiter of the argumentative testimonial game. If there is no confirmation of the experience, there is no testimonial argumentation. Campbell seems to argue that we must instead accept the testimony, at

11. Argumentation and Testimony. S. NOVANI

least until an eventual refutation by experience occurs.

4. THE TESTIMONY IN THE PROCESS: GULLIBLE OR SUSPICIOUS? CASES IN WHICH "CAMPBELL'S WAY" IS NOT CONVINCING.

So far we have treated the testimonial argumentation in relation to every-day cases. Do things change when it comes to trial testimony, when we are in the courthouse, which is perhaps the ideal setting for this epistemic source? It depends on how we interpret it. Here, our interpretation of the testimony cannot be other than the one limited to its epistemic-argumental penetration. In short, we can ask whether the testimonial argumentation is an antireductionist epistemic source (and therefore good for gullible) or reductionist (and therefore good for suspicious). So, whether the argument does not need another epistemic support, as Campbell argues, or whether, instead, it can not give anything if it has no purpose and always requires the use of other sources to support it.

Which analysis of testimonial argumentation should be chosen? It depends on the context. Let us try to explain it through some examples.

Let us examine, for example, the Barreca crime. "The killer is 13 years old". The court case of the monster of Balsorano is "shot" with this title, on the front page of every newspaper on August 27, 1990. A series of circumstances and concomitants (objective and non objective) generated a story that was the most important subject not only in the media but also in discussions among people, about who had killed the little Cristina:¹¹ the father or the son? We mentioned objective and non objective circumstances. It's the end of the summer of '90, the murder of a girl of 7 years, in a desolate village in Abruzzo, is discovered. According to reports of the investigators (powered by launches, perhaps too hastily, by the information agencies) the little girl had been raped and murdered by a monster using a stone. These two last elements (sexual abuse and stones) were found soon as completely unfounded. In the late evening of August 26 came the clamorous confession of the little cousin, who was thirteen years old. This was deemed, perhaps too hastily, as the solution of the case. But, surprisingly, son Mauro gave yet another version (the tenth) and accused his father, claiming to have seen him from the top of a shed, while killing the baby. The witness becomes decisive, sufficient to support the accusation, in fact an epistemically anti-reductionist testimonial argumentation. Although the defense was able to obtain from the Court the order to visit the scene of the crime, in order to demonstrate the inability of the witness to see, from that shed, the hypothetical scene of the crime, the

¹¹ To learn more, read De Nicola (2003).

12. Argumentation and Testimony. S. NOVANI

technician in charge considered it possible. So, from there you can see, from there you can see the crime scene. From there, behind the shed, Mauro has seen his father killing little Cristina.

During the process, the testimonial argumentation was decisive, despite serious doubts, although the view was not certain, indeed it was the subject of considerable concern. The conclusions of the judge on the testimonial argumentation of Mauro Perruzza, may have been as follows:

MAJOR PREMISE

T often testifies true testimonial argumentations to n persons

MINOR PREMISE

T expresses testimonial argumentation t to G

CONCLUSION

G believes testimonial argumentation t, despite the abundance of doubts/hesitations

4.1. "Hume 's way"

And what if the witness is the injured party? It often happens, in case of sexual offenses, that the victim is the only witness. In this case, should the testimony be subjected to a more "severe" critical analysis? In short, if the witness is a foreign person, can we be more sure about the reliability than if it is the victim himself testifying? Perhaps, should attention move from the subject to the object, questioning about the description of the abuse and the statements (about how, time, etc.)?

As usual, it depends. It depends on the context. For example, let us consider a decision of the Court of Venice, dated 17.7.1998.¹² A minor girl is raped. One of her friends is accused. There are no external testimonies. The only testimony is the one the minor girl gives, who is also the victim. Of course, if the only source of evidence, as is this case, is represented, as on other occasions¹³ by the testimony argumentations of the injured party, perhaps accompanied by false statements made by other people (for example, some friends purposely instructed) to support the version of the events, the importance of the assessment of the subjective credibility of the victim, becomes

¹² Let us consider the Judgment of the Court of Venice, Sect. II, judgement 17.7.1998. During the hearings, the child showed: i) "mnemonic deficiencies", ii) a number of contradictions in her version of events, then it appeared that the accused had an easily verifiable alibi, and that witnesses, who were friends of the child, had provided false testimony.

¹³ For instance: Supreme Court 9159/10 e 22049/06.

13. Argumentation and Testimony. S. NOVANI

crucial. If, then, there are several contradictions that arise from education, the particular conditions in which the minor girl lived, her state of subjection to her mother, her brother's special relationship within the family, then the argument cannot be evaluated a-critically, in short, it cannot stand alone and must, be re-read according to the experience, observation, as Hume suggests .

In this case, the testimonial-argumentative reasoning might be following:

MAJOR PREMISE

Testimony t of the victim of sexual abuse PVRS is often true

MINOR PREMISE

PVRS testimonies t to G

MINOR PREMISE

PVRS suffers from memory insufficiency and lived for a long time with her family in a state of subjection

MINOR PREMISE

PVRS's brother has always had a special relationship with the family

MINOR PREMISE

There are false statements of friends, DFA, in favor of the version of PVRS

CONCLUSION

G can believe PVRS if and only if he submits to criticism the testimonial argumentation, so if and only if, he critically evaluates each incident reported, if and only if, there are observations O1, O2, O3, O4, On, which confirm t.

4.1. When the testimonial argumentations are epistemically sufficient: "Campbell's way"

On other occasions, however, the testimonial argumentations seem to be epistemically sufficient. One example: While visiting a castle,¹⁴ M t falls to the ground due to the slipperiness of the floor, covered with wax. The only witness to this fact confirms the event and says: "It is true that the floor was slippery, I risked falling too. This did not happen because I was able to grasp the handrail". The judges on the merit rejected the claim as the fact was not proved and the testimony was inadmissible because it was evaluative. M then applies to the Supreme Court and the Court admits the claim. It believes that as to the testimonial evidence, the evaluations – even though they cannot be object of proof, since the witnesses may not express the evaluation of the fact – may contribute to the conclusion of the court if they are appreciations of absolute

¹⁴ Supreme Court, Civil Sect. III, 22 April 2009, n. 9526.

14. Argumentation and Testimony. S. NOVANI

immediacy, almost inseparable from the perception of the same historical fact.¹⁵

The court also rejects the thesis of the Court of Appeals, which had denied the importance of the statement of the witness who said that he held the handrail to avoid slipping. Supreme Court says that if a witness claims to have risked falling (apparently referring to a slip off avoided because of being able to hold on to something) we are facing with a circumstance to be considered as purely factual and independent (though closely related) from the perception of slipperiness (autonomy is demonstrated by the fact that this perception can also exist in the absence of a risk to slip); and if the situation is like this, merely assert that this claim (which actually concerns the predicted fact), "... it is not particularly important, as it refers to the fact that the floor was slippery..." appears as a statement without concrete, logical and sufficient reasons.

The testimonial argumentations in the case of the castle, could be considered as follows:

MAJOR PREMISE

T often testifies truth to n persons

MINOR PREMISE

T is the sole witness of the slipping of M and testifies t to G

CONCLUSION

G believes t because experience E does not produces confutation during the probatory evaluation.

5. CONCLUSION

What analysis of testimonial argumentation should we choose? All depends on the context.¹⁶ What happens when we are faced with trial relates testimonial argumentations? We already examined it. It can happen that the testimony is decisive, or the only one, but it is not (deemed) as crucial, or, yet, crucial (although the only one). Sure, it depends on the context. But it also depends on the judge's ability to interpret the story of the case beyond reasonable doubt. The attitude of the judge before the testimony could be as follows.

The judge who follows Hume's theories will probably have the following point of

¹⁵ Supreme Court Judgment N. 5227 dated 07/04/2001; this case law is consolidated see also Supreme Court Sect. L, Judgment N. 16148 del 18/08/2004; Supreme Court Judgment N. 1479 del 30/01/2003; Supreme Court Judgment N. 5 del 02/01/2001; Supreme Court Judgment N. 2100 del 24/02/2000.

¹⁶ For example, in the context of our family, or when we are faced with people we love, we are inclined to accept the evidence, applying (consciously or unconsciously) an approach according to Campbell; however, if the context is foreign to us and we are in front of strangers, we are less likely to accept the evidence, and we may end up applying (consciously or unconsciously) a Humean approach.

15. Argumentation and Testimony. S. NOVANI

view:¹⁷

P1H The judge considers relevant and admits the testimony t of T;

P2H The judge listens and understands the testimony t of T and considers it as appropriate and no-evaluative;

P3H The Judge has no evidence against t;

P4H Judge's belief, that T's belief about t is justified, is grounded;

CH Then the judge is justified in believing beyond any reasonable doubt that t is real and in pronouncing his decision on the basis of T.

The judge who follows Campbell's theories would have following opinion:

P1C The judge considers relevant and admits the testimony t of T;

P2C The judge listens and understands the testimony t of T and considers it as appropriate and no-evaluative;

P3C The Judge has no evidence against t;

P4C There are no grounds allowing the Judge to believe, that T's belief about t is not justified;

CC Then the judge is justified in believing that t is real, and therefore beyond any reasonable doubt, and in pronouncing his decision on the basis of T.

What do we notice in the two analysis? They have some common elements. For instance, premises P1 and P2 are identical. Although they appear obvious in our everyday life, we have seen from the examples above how in the real trial they are not trivial at all and that their clarification involves important considerations.

Also P3 belongs to both analysis. Let us try to explain it in an intuitive way, through a few examples.

Let us assume that the court is given a diary written by a person P, which is a testimony of some proposition, "Luke was killed by Matthew, I saw it". It is obvious that the court in the subsequent proceedings against Matteo is not justified in believing that p is true, if it has some evidence in favor of another type of belief, i.e.: P is a mythomaniac or, he always wants to hide the truth, he uses drugs that for a long time have altered his visual capabilities. Or let us suppose that our judge hears a witness who communicates him a proposition such as "the murder weapon is in this room, in fact, I'm sure, is right there". If the judge does not see the murder weapon nor finds the weapon where P indicates, he has an evidence against p, and therefore he cannot justifiably believe p. Imagine, finally, a situation such as this: the judge has at his disposal evidence in favor of the belief that there are traces of blood at the crime

¹⁷ According to Stevenson (1993).

16. Argumentation and Testimony. S. NOVANI

scene. He carries out an inspection and the traces are no longer evident because the walls where they were have been covered with paint. The lawyer of the accused persons provides arguments like: "There are no traces of blood". As the evidence to the contrary is available, the court is not justified to believe what the lawyer asserts.

Premises (1), (2) and (3) are not sufficient.

Why? Let us consider a specific case. Suppose that the testimony p of T is "The floor of the castle is perfect, pure Carrara marble"; G cannot have any evidence to the contrary: for example, as far as he knows, this floor is perfect, has no anomaly. However, G can doubt of T: G perhaps knows that T is indeed a simple employee of the castle, however, concerned to do well with the owner; therefore his beliefs about p may not be justified, since it does not seek the truth, but is simply a useful belief which is communicated only to convince G that the floor is perfect. This case shows quite clearly that a premise with which we can integrate (1), (2) and (3) is the one of Campbell:

(P4C) There are no grounds allowing the judge to believe, that T's belief about p is not justified;

Since in this case, condition (P4C) is not fulfilled, we must conclude that G is not justified to believe that the testimonial argumentation "The floor of the castle is perfect" is true.

But also (P4H) leads us to the same conclusion:

(P4H) There are grounds allowing the judge to believe that T's belief about p is justified, because it is obvious that G has no reason to believe that T's belief is justified as to "The floor of the castle is perfect".

It 'clear that premise (P4H) is stronger than (P4C).

It requires, in fact, something more: for example, in the case under consideration, to have reason to believe that the belief T in relation to p is justified may involve the need to appeal to further evidence (to a reliable witness, for instance an expert) able to ensure G that such floor is actually perfect, because these characteristics have been empirically "verified".

One relevant difference between the weakest precondition (P4C) and the stronger precondition (P4H) is the following one: in (P4C) the testimony is epistemically considered *ex ante*, as worthy of belief, unless you can disprove it, and in (P4H) the testimony is epistemically considered *ex post*, as unworthy of belief, as long as you do not have reason to believe in its justification. So what kind of testimonial argumentation

17. Argumentation and Testimony. S. NOVANI

should be chosen?

In legal processes like ours, which require the judge to pronounce conviction if and only if the guilt "is" beyond any reasonable doubt, Hume's testimonial argumentation appears to act as method of operation offering more guarantees than the version of Campbell. In short, in a criminal trial it's better to be suspicious than gullible!

REFERENCIAS

- Adler, J. (1994). "Testimony, Trust, Knowing". *The Journal of Philosophy* 91: 264–275.
- Audi, R. (1997). "The Place of Testimony in the Fabric of Justification and Knowledge". *American Philosophical Quarterly*, 34: 405–422.
- Boniolo, G. and P. Vidali (2002). *Strumenti per ragionare*. Milano: Bruno Mondadori.
- Campbell, G. (1797). "A Dissertation on Miracles, Containing an Examination of the Principles Advanced by David Hume". In *Essay on Miracles* (pp.1-122), Edimburgh: Thomas Tegg.
- Cattani, A. (1990). *Forme dell'argomentare. Il ragionamento tra logica e retorica*. Padova: GB edizioni.
- Coady, C. A. J. (1992). *Testimony*, Oxford: Oxford University Press.
- Cohen, L. J. (1982). "What is Necessary for Testimonial Corroboration?". *British Journal for the Philosophy of Science*, 33: 161–164.
- De Nicola, A. (2003). *Presunto innocente. Cronaca del caso Perruzza*. Milano:Tracce.
- Fricker, E. (1987). "The Epistemology of Testimony". *Proceedings of the Aristotelian Society* Supplementary, 61: 57–8.
- Goldman, A. I. (1999). *Knowledge in a Social World*, Oxford: Oxford University Press.
- Hume, D. (1996). *Enquiry Concerning Human Understanding*. Bari: Laterza.
- Lackey, J. (1999). "Testimonial knowledge and transmission". *The Philosophical Quarterly*, 49: 471–490.
- (2003) "Non-reductionism in the Epistemology of Testimony". *Nous*, 37: 706–735.
- (2010) *Learning from words: testimony as a source of knowledge*. Oxford: Oxford University Press.
- Lackey, J. and E. Sosa (Eds.) (2006). *The Epistemology of Testimony*, Oxford: Oxford University Press.
- MacCosch, J. (2009). *The scottish philosophy*. Carlisle: Applewood Books.
- Perelman, C. (1977). "Argomentazione". En: *Enciclopedia Einaudi* (p.791, Vol.1), Torino: Einaudi.
- (1981) *Il dominio retorico*. Torino: Einaudi.
- Perelman, C. and L. Olbrechts-Tyteca (1996). *Trattato dell'argomentazione*. Torino: Einaudi.
- Pope John Paul II (1998). *Fides et ratio, I rapporti tra fede e ragione. (Relationship between faith and reason)*, Roma: Edizioni Piemme, pp. 79-81.
- Pritchard, D. (2004). "Testimony". In: R. A. Duff, L. Farmer, S. Marshall and V. Tadros (Eds.) *The Trial on Trial: Truth and Due Process*, (pp. 1-20, Ch.6), Oxford: Hart.
- Reid, T. (1975). *Ricerca sulla mente umana e altri scritti*. Torino.UTET.
- Restaino, F. (1974). *Scetticismo e senso comune*. Bari: Laterza.
- Sosa, E. (1994). "Testimony and Coherence". In: B.C. Matilal and A. Chakrabarti (Eds.), *Knowing from words* (pp. 59-67, Ch. 5), Dordrecht: Cluwer Academic Publ.
- Stevenson, L. (1993). "Why Believe What People Say?". *Synthese*, 94, 3: 429–451.
- Toulmin, S.E. (1976). *Knowing and Acting. An Invitation to Philosophy*. New York: Macmillan.
- Vassallo, N. (2003). *Teoria della conoscenza*, Bari: Laterza.
- Walton, D. (1997). *Appeal to Expert Opinion*, University Park: Pennsylvania State Press.

18. [Argumentation and Testimony](#). S. NOVANI

SERGIO NOVANI: Sergio Novani conducts research in the department of Legal Philosophy at the University of Genoa. His interests include argumentation theory, legal and social epistemology, linguistic rhetoric and dialectical analysis. He is the author of several papers and three books in the areas of argumentation and epistemology.