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To cite this article: Charlotte Knowles (2021): Articulating Understanding: A Phenomenological Approach to Testimony on Gendered Violence, International Journal of Philosophical Studies, DOI: [10.1080/09672559.2021.1997389](https://doi.org/10.1080/09672559.2021.1997389)

To link to this article: <https://doi.org/10.1080/09672559.2021.1997389>



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Published online: 18 Nov 2021.



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# Articulating Understanding: A Phenomenological Approach to Testimony on Gendered Violence

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## ABSTRACT

Testimony from victims of gendered violence is often wrongly disbelieved. This paper explores a way to address this problem by developing a phenomenological approach to testimony. Guided by the concept of 'disclosedness', a tripartite analysis of testimony as an affective, embodied, communicative act is developed. Affect indicates how scepticism may arise through the social moods that often attune agents to victims' testimony. The embodiment of meaning suggests testimony should not be approached as an assertion, but as a process of 'articulating an understanding'. This account is deepened in the discussion of testimony as a communicative act. It is argued that testimony must be considered as a relational whole, and thus our aim in receiving victims' testimony should be to honour the relational conditions under which the truth of testimony can be heard. Approaching testimony as the collaborative process of enabling an understanding to be articulated can enhance our conception of gendered violence, whilst also better serving the victims of gendered violence by helping to overcome the lack of trust and excessive scepticism with which victims' testimony is often met.

**KEYWORDS** Testimony; gendered violence; Sexual assault; rape; phenomenology; Heidegger; feminism; disclosedness; moods; shame; empathy; non-propositional understanding; embodiment; assertion; truth; trust

From jurors to police officers, as well as in the media and in public discussions more generally, studies repeatedly demonstrate people's tendency to disbelieve and distrust truthful reports of gendered violence and particularly rape (Dinos et al. 2015; Dellinger Page 2011; Belknap 2010). This is especially striking given that the primary worry regarding testimony, particularly in the philosophical literature, is that we often too easily trust agents' testimony without a solid basis for so doing (Moran 2018; Faulkner 2011). The aim of this paper is to explore how we might develop new ways of approaching testimony on gendered violence which enable us to understand, address and ultimately overcome the misplaced scepticism with which such testimony is often met.<sup>1</sup>

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Much valuable work has already been done in this area. Feminist analyses of patriarchy and structural analyses of gendered violence and ‘rape culture’ illuminate the portrayal of ‘he said, she said’ narratives and the normalisation of sexual violence, helping to explain why it is often very difficult for victims’ testimonies to be heard and believed (Brownmiller 1975; Fricker 2007; Manne Manne, 2018).<sup>2</sup> Various studies have demonstrated the effects of rape myths on people’s ability to understand and effectively evaluate gendered violence (Peterson and Muehlenhard 2004; Dinos et al. 2015; Dellinger Page 2011). The analyses of feminist epistemologists have been highly instructive regarding the way distortions in our epistemic environment can interfere with our knowledge practices regarding rape and gendered violence, and how we might try and correct these (Haslanger 2012; Jenkins 2017; Hänel 2020). However, the contention of this paper is that there may be issues beyond epistemic distortions and conceptual and cognitive deficiencies that help to explain why testimony on gendered violence is often wrongly disbelieved.

To explore these additional possibilities, this paper examines how the phenomenological concept of ‘disclosedness’ – a tripartite relation constituted by mood, understanding and discourse, which makes possible our relation to the world – can be employed to enhance our understanding of what testimony on gendered violence is and how it communicates.<sup>3</sup> This approach is inspired by the recent work of Zahavi and Fernandez (Fernandez 2020; Fernandez and Zahavi 2020), which explores the possibilities of applied phenomenology, and specifically the idea that our empirical and qualitative endeavours and our concrete practices can be enhanced if they are guided by key phenomenological concepts. I begin with a brief account of phenomenology and what it is to be guided methodologically by such a tradition. I then examine the way in which moods are necessary for understanding, but how the moods belonging to, and generated by, oppressive social contexts can nevertheless serve to conceal more genuine understandings of the phenomena. I focus on the moods of shame and ‘himpathy’ as specific examples to explain how the testimony of victims of gendered violence may be erroneously disbelieved. In light of this analysis, I turn to consider how we might facilitate more genuine and undistorted understandings of victims’ testimony. I suggest that in many cases, victims’ initial testimony does not take the form of an assertion, but instead is the articulation of an affective, embodied and potentially non-propositional understanding. I argue that everyday, direct, agonistic methods for pursuing the truth of victims’ testimony are often unsuccessful, because they are premised on a partial understanding of testimony as assertion, which ignores the embodied, affective and relational dimensions of understanding and communication. In order to genuinely understand the truth of victims’ testimony, we should approach testimony through a phenomenological lens and focus our efforts on facilitating an open, responsive and yet sufficiently rigorous

atmosphere in which victims of gendered violence can more effectively testify about their experiences, and in which the truth of such testimony can more easily come to light.

## 1. Applying a Phenomenological Lens

Phenomenology concerns itself with grasping how phenomena, i.e. what appears – whether this is entities, others, situations or ideas – are given to consciousness. It strives to clearly understand what appears, how it appears and what makes such appearing possible.<sup>4</sup> Phenomenology begins, although it does not end, with first person experience. It seeks, as Cressida Heyes puts it, ‘to provide descriptions of lived experience from a first-person perspective, attempting to bracket the subjective particulars in order to find some essentially shared qualities’ (Heyes 2016, 364).

This characterisation stands in stark contrast to the way phenomenology is often perceived by other disciplines and branches of philosophy, which tend to reduce phenomenology to an uncritical stance of what something ‘feels like’.<sup>5</sup> By contrast, phenomenology in its classical form, as developed by theorists like Edmund Husserl, Martin Heidegger and Maurice Merleau-Ponty, seeks to point us toward some of the universally shared features of human existence that make our experience of the world possible. In this form, phenomenology does not endorse a kind of individualistic relativism, which uncritically accepts any subjective feeling as valid. Instead it can be understood as an approach which strives for intersubjective agreement about the way the world is, what makes possible certain interpretations and ways of encountering phenomena, and which seeks to say something at a more general and universal level about what it is to exist in the world as we do.

Although all agents are differently situated in the world in virtue of their specific concrete existence, this concrete existence depends upon and reflects more fundamental, universal structures of human existence. This idea is expressed in the distinction between concrete, ontical or ‘*existentiell*’ facts of an agent’s existence or situation; and the fundamental ontological or ‘*existentiale*’ structures of human existence (Heidegger [1927] 1962 [hereafter BT], 33–4).<sup>6</sup> Shared, universal features such as embodiment, moods and the social world, when considered through a phenomenological lens, can be understood as the enabling conditions that make possible the human way of Being-in, and encountering, the world. By understanding the *existentiales* that help to constitute our way of Being-in-the-world, we are in a better position to understand why things appear to us as they do, and how they might appear differently, thus laying the ground for us to distinguish between genuine and deficient modes of understanding and interpretation. That is, the difference between understandings and interpretations which are

grounded in the phenomena and those which are not,<sup>7</sup> the latter of which serve to conceal or 'hide' the phenomena (BT, 60) and close them off (BT, 213).<sup>8</sup>

In more recent phenomenological work, so-called 'critical phenomenologists' have employed the tools of classical phenomenology in the service of political philosophy and social critique. Critical phenomenological investigation begins from the same point as classical phenomenology in that it is concerned with the appearance of phenomena. However, critical phenomenology turns its attention to the social constitution of our Being, and phenomena such as gender, race and sexuality. Critical phenomenologists suggest that pervasive social structures, such as patriarchy, should be understood to function in the same way as *existentiales*. This is not because they cannot be changed, but because both historically and in the present moment, such structures play a key role in conditioning our experience of the world and informing our concrete modes of existence in systematic and thoroughgoing ways (Guenther 2019). In viewing social structures such as patriarchy in this way, critical phenomenology explicitly addresses the role of the social and of power in constituting what appears, how it appears and what makes such appearing possible. By foregrounding the social and intersubjective constitution of our existence, and attending to phenomena such as race, gender, sexuality, oppression and power, critical phenomenology seeks to illuminate our everyday ways of understanding the world in a manner that is more directly political in nature. In this paper I draw on both classical and critical phenomenological concepts to explore the way in which testimony on gendered violence appears to us, and how it might appear to us differently.

### **1.1. Taking a Phenomenological Approach to Testimony**

Most philosophical treatments of testimony assume that testimony is primarily the subject matter of epistemology. To approach testimony as an epistemological issue is to focus on the grounds we have for trusting and believing the testimony of others (Moran 2018, 37). A phenomenological perspective puts this starting point into question. To begin from a phenomenological perspective means that rather than beginning by asking how we can come to know the world (or know the truth of someone's testimony), we must take a step back and ask what makes knowing the world – or for our purposes, knowing the truth of someone's testimony – possible?

The answer given by phenomenologists is that the reason we can come to know the world at all, is because our existence is constituted by always already Being-in a world with which we are fascinated, concerned,

involved and enmeshed (BT, 88). We are only able to ask questions about how we know the world because we already experience the world as a possible object of knowledge, and it is this insight – of the enmeshment, co-constitution and involvement of the human being and the world – that should guide any attempts to know and understand the world and our encounters with and within it. Taking a phenomenological approach to testimony, therefore, means situating concerns with knowledge (and as I shall argue, truth) within a broader, holistic whole and examining how various aspects of our Being-in-the-world, including affect, embodiment, discourse and the kinds of relations we have with others, can affect how we come to grasp, understand and evaluate testimony. To approach testimony from a phenomenological perspective is thus to begin by asking what makes understanding testimony possible. And the preliminary answer to this question is ‘disclosedness’.<sup>9</sup>

Disclosedness describes the way in which the human agent is related to the world. Disclosedness is constituted by three elements: mood, understanding and discourse. These are *existentiales* which determine how we are opened onto the world. Mood clarifies how we first have a relation with or are ‘attuned to’ the world. Our attunement is how we make sense of the world. The fact that we are attuned to the world is what enables us to move around it in the meaningful way we do. But attunement already invokes a notion of understanding: every understanding has its attunement, and every attunement has its understanding (BT, 182). Through understanding we come to grasp what is possible in light of the way we are attuned to the world. Finally, discourse is the concrete expression of our understandings and attunement, it describes how we articulate, express and communicate these meaningful relations.

By approaching testimony through the lens of disclosedness, I aim to examine how our understanding of testimony on gendered violence can go wrong, and how this ‘going wrong’ often manifests itself in terms of failing to accord sufficient trust to victims. This lack of trust means victims’ testimony is often approached with undue scepticism, thus blocking the truth of the testimony and a genuine understanding of the experience of gendered violence from coming to the fore. This is a particularly pressing matter in formal legal contexts, where such scepticism and the improper handling of victims of gendered violence negatively impacts rates of reporting and conviction.<sup>10</sup> But even our informal, interpersonal interactions can be enhanced by a phenomenological understanding of testimony, because it can help to bring about the conditions under which the truth of victims’ testimony can be heard and a more genuine understanding of gendered violence, guided by this truth, can come to light. However, in order to reach this point, we must begin by illuminating the concept of disclosedness, starting with its first aspect: mood.

## 2. Moods and Our Attunement to Meaningful Worlds: affective Orientations

A key phenomenological tenet is that consciousness is intentional. That is to say, seeing is always seeing as. I do not just encounter abstract textures, colours and shapes, which I must then mentally assemble into particular entities, or class under particular concepts. Rather, I immediately encounter the table as a table, the chair as a chair, the person in the coffee shop as a person. But not only do I always see as, I also see something as something in a particular way. I encounter the table as lovely, as ugly, or as something to which I am indifferent, and these various ways of encountering entities open up different possibilities for interacting with them. If I encounter the table as lovely I might display it proudly, if I encounter it as ugly I might not. Whereas if I am indifferent to the table, I might not even really attend to it, apart from in its function as somewhere to place my coffee.

These insights are captured in the idea that the way in which we come to understand ourselves, the world and others is determined by how we are attuned to the phenomena via certain moods.<sup>11</sup> Moods not only determine how we encounter entities, but more fundamentally they make possible our ability to direct ourselves towards entities as such (BT, 175). That is to say, I can only Be-in the world in the way that I am – interacting with entities, others and generally going about my business – because I find myself oriented to the world through the mood I am in, and I am always in a mood. Although indifference, for example, may seem like the absence of a mood, it is still a specific way of being attuned to the phenomena: it gives us a certain way of orienting ourselves towards entities, interacting with others, and comporting ourselves in the world. Even though moods play a key role in our ability to Be-in the world, we are often not aware of the mood we are in or the way it attunes us to the world. However, a lack of awareness does not indicate a lack of mood, rather it points to the pervasiveness of moods: they are so ubiquitous, for the most part we do not even notice them. Extreme moods draw our attention because they disrupt our normal way of Being-in-the-world, thus highlighting that our previous unobtrusive mood was something to which we did not attend, but which was nevertheless there as a background enabling condition allowing us to operate in the world in a way in which we are now unable to.<sup>12</sup>

Taking seriously the notion of moods and attunements in our approach to testimony on gendered violence helps to highlight the fact that there is no such thing as ‘bare’ or ‘neutral’ encountering. Whenever we encounter entities, ideas or others, we always do so in a particular way and with a particular kind of attunement.<sup>13</sup> But attunement informs not only *how* things become relevant, but also *whether* and *what* becomes relevant (or irrelevant). They thus determine not only *how* I encounter and (mis)

understand entities and possibilities in the world, but whether I encounter and understand them at all. Moods not only attach to individual objects, they can also be descriptive of our more pervasive way of Being-in-the-world. If I am attuned to the world through a mood of depression, for example, I may not see the same opportunities and possibilities in the world that I would encounter were I not depressed, although the factual content of the world remains the same in both cases. What this indicates is that our understanding of the phenomena can ‘go wrong’ at a deep, primordial level, and in a way that may be very difficult to uncover and correct.

To fully understand this claim, it is useful to emphasise that by ‘world’ phenomenologists do not just mean the entities in the world, or the concept of ‘planet earth’. Rather, a ‘world’ is a meaningful context. There is not just one world, there are multiple worlds, understood as the various relational contexts of meaning and webs of interactions in which entities within the world are situated, and from out of which they become significant for us.<sup>14</sup> The world is not something independent from the human agent, we are also bound up in this referential context of meaning and the way in which we are bound up with the world – the way we are attuned to, or oriented within a particular world – is determined by our mood. We can inhabit multiple worlds, by inhabiting multiple referential contexts of meaning. For example, we can simultaneously inhabit the world of the university, the world of contemporary Dutch life, and the world of global patriarchy. We may have different orientations and ways of Being within each of these worlds – which can also overlap and inform each other – not only because of the individual moods we find ourselves in, but because different worlds and different social contexts can have different moods.

Moods are not just our subjective states. They can belong to, and be generated by, social contexts.<sup>15</sup> We can talk about the mood of a culture, a historical period, an institution or a social group. Moods are ‘in each case already there, so to speak, like an atmosphere in which we first immerse ourselves in each case and which then attunes us through and through’ (Heidegger [1929] 1995, 67). Just as we do not always choose the worlds of which we are a part, we do not always choose the moods by which we are attuned to a particular world. We can internally reject the moods we are in, and the atmospheres into which we are immersed as a result of the world, culture or institution to which we belong, and to a certain extent we can change our moods, but we are never free of moods (BT, 175). Moods are what make understanding possible. Moods enable us to have a particular orientation in the world and make possible our encounters and interactions with entities and others, and our general comportment.

## **2.1. Affective Distortions: moods and Testimony on Gendered Violence**

The idea that moods not only describe our subjective states, but that they belong to – and can be generated by – social contexts, directs us to think about the kinds of social moods that may attach to contexts such as patriarchy, and the role such moods can play in agents' failure to trust, believe and genuinely understand reports of gendered violence. Patriarchy is an unjust social context that privileges some whilst disadvantaging others. In virtue of this, it is inherently unstable. But paradoxically we find that the patriarchal social structure is one that has nevertheless endured. From a phenomenological point of view, one explanation for this is that patriarchy attunes us to the world in a particular way that resists critique. One aspect of this resistance is that our existing social context, and the way it attunes us to the world, is familiar. We can therefore feel 'at home' in such an attunement, even if it is one in which we are disadvantaged, and thus it can be hard to imagine or pursue a different way of Being-in-the-world.<sup>16</sup> But such a lack of resistance not only arises in us as a result of certain moods, the resistance to critique can also lie in the mood itself.

As we saw in the previous section, moods can block understandings. If we combine this with the idea that moods can belong to, and be generated by, social contexts, structures and institutions, we can see that social moods have the possibility to block critical understandings and the possibilities of resistance that flow from them. The idea that moods can be an effective way of regulating social understanding and conduct is not new. We find the social and regulative role of moods articulated as far back as Plato (Protagoras 322c/1997, 758). In more recent philosophical work, we find affect appealed to as a key tool of the patriarchy. Diana Meyers, for example, emphasises the role of emotions in reinforcing patriarchal representations of womanhood, such representations she argues, 'galvanize emotional commitment and [thus] resist critique' (Meyers 2002, 27). Similarly, Sandra Lee Bartky discusses shame as a mood which attunes women to the patriarchal world and regulates our behaviour in unconscious ways (1990, 83–99). As Sara Ahmed suggests, shame can be usefully understood as 'the failure to live up to a social ideal', whether that ideal be one of race, class, gender or sexuality (2004, 106). As Bartky notes, however, this failure is not experienced at the level of propositional belief, instead it is evidenced by our orientation and comportment in the world. The fact that shame often does not manifest at the level of propositional belief makes it harder to counter and address. Accordingly, it is able to regulate our behaviour in more pervasive, longitudinal and thoroughgoing ways, whilst simultaneously concealing the reality of gender injustice. Shame camouflages the functional role of oppressive social structures by directing agents to look inwards and find fault in themselves, rather than in the world (Kosofsky Sedgwick 2003, 37).

The idea that certain moods can serve to disclose oppressive social reality in a way that it cannot be genuinely interpreted and understood, thus enabling the oppressive social structure to endure, is instructive for thinking about how truthful accounts of gendered violence may be encountered as deficient, (mis)understood as untrustworthy and untruthful, and ultimately disbelieved. What, then, are the particular moods that give rise to sceptical attunements to victims' testimony, and what more can we say about these ways of being attuned to the phenomena?

## ***2.2. An Analysis of the Social Moods that Undermine Trust in Women's Testimony***

Moods have more longevity the less obtrusive they are. Being attuned to the world through a mood of white-hot rage, for example, can only last so long because it directs us to the world in an unsustainable way, leading to fractious interactions with others and with the world. By contrast, indifference and similarly 'unobtrusive moods' can endure for longer periods, as they are less disruptive of our everyday way of Being-in-the-world, and so do not draw our or others' attention so directly. If social structures such as patriarchy can generate moods which are in some way experienced as the absence of a particular orientation or attunement – just the way things are – then it is easier for such moods, and the social structure they reinforce, to endure unquestioned.

A key contender for this kind of mood – or what we might better characterise as an 'overarching attunement', which more specific moods can instantiate – is tranquillity. When tranquillity characterises one's attunement to the world, one feels that everything is in the best of order (BT, 222). This may seem positive, but it can also manifest as a way of being 'tranquilized' (BT, 222) against problematic areas of the social structure in which one finds oneself. This attunement can therefore have a 'tranquilising' effect on agents (BT, 222). Finding oneself immersed in an atmosphere of tranquillity and attuned to the world in this way, means that the status quo can be preserved, as the possibilities for maintaining things as they are – or indeed doing nothing – are more visible and available than the possibilities by which things might be changed.<sup>17</sup> The essence of tranquillity is thus not necessarily a calm peacefulness, but a stubborn resignation to the world as it is.<sup>18</sup> Within this overarching or more general attunement, we can distinguish various moods that instantiate this tranquilized way of being attuned to the world.

Shame is one such example. In the case of gendered violence, the mood of shame plays a key role in underreporting, acting as a barrier to women testifying about and disclosing their experiences (Warman 2021, 10). Attitudes of shame are often encouraged by our social context as ways of understanding 'unfortunate' sexual encounters. Rape myths such as 'if you

were dressed provocatively you were asking for it', or if you were drunk or out late at night alone, then you are in some way to blame for your assault, encourage agents to find fault in themselves and their 'irresponsible behaviour'. Shame thus works to conceal the social reality, discouraging disclosures of gendered violence, and thus leaving unchallenged the structural factors that allow gendered violence to persist. But such moods do not work in isolation. We can also discern complementary tranquilising moods, which attune the receivers of such testimony. One such mood is 'himpathy'.

Himpathy names the phenomenon of expressing disproportionate sympathy for men accused of gendered violence, because of the way it will affect their career, marriage, social standing etc., instead of focussing on the harm caused to the victim (Manne Manne, 2018). Himpathy attunes us to the phenomena in an immediate way. It makes certain understandings possible, whilst obscuring others. Although we may not encounter this mood directly, or recognise the way in which it is attuning us to the phenomena, such attunements can become apparent by attending to how agents comport themselves in the world and communicate their understanding of events.

For example, a mood of himpathy can be seen to characterise the US mainstream media coverage of the Steubenville Ohio rape case in which two teenage boys were convicted of sexually assaulting an unconscious girl and documenting the assault on social media. In response to the ruling, CNN's Poppy Harlow stated that it was '[i]ncredibly difficult to watch what happened as these two young men that had such promising futures, star football players, very good students, literally watched as they believed their lives fell apart when that sentence came down' (quoted in Haidiri 2016). In her evaluation of the situation, Harlow articulates sympathy and sadness as her primary attunements and this influences the way she understands what has happened: it is a tragedy for these boys who will lose their freedom. By contrast, if she was attuned to the situation by a mood which did not instantiate the stubborn acceptance and 'not rocking the boat' orientation of tranquillity, such as anxiety or anger,<sup>19</sup> her articulation and understanding of the events, and the way she communicated these, would be very different.

Applying the analysis of moods to the context of himpathy and its attendant understandings of gendered violence, we can say that himpathy is a mood into which we are immersed, like an atmosphere, in virtue of existing in a patriarchal social structure that produces this mood as a way to '[prescribe] what can and may be ventured' (BT, 165). Specifically, himpathy facilitates a sceptical understanding of women who report experiences of sexual assault, especially from rich and powerful white men. It is an instantiation of a tranquil attunement in that it is a mood which preserves the patriarchal status quo by encouraging us to doubt women's testimony and pursue more robust demands of proof than are exacted of the victims of

other crimes. The agent attuned by himpathy may, at least in some cases, believe that an assault occurred. But even if we concede that the agent may in some sense believe the assault happened, we can still say that they do not *genuinely understand* the assault, because if they did, this would be evidenced by a different kind of comportment. Namely, they would not express excessive sympathy to the assailants and ignore or downplay the harms done to the victim.

### ***2.3. Sceptical Attunements: mood and Understanding, Some Preliminary Conclusions***

What the phenomenological account of mood suggests with regard to our ability to evaluate the testimony of victims of gendered violence, is that problems can arise not only at a cognitive level, for example in the misguided conceptual understanding or (mis)application of concepts such as rape, as most contemporary analyses suggest (Haslanger 2012; Jenkins 2017; Hänel 2020). In addition, problems may also lie at an affective level, which may be even further removed from our conscious awareness. My phenomenological analysis suggests that agents need not explicitly or consciously hold certain beliefs, endorse particular narratives or myths, or misapply particular concepts such as rape in order to fail to effectively and fairly evaluate cases of gendered violence. Rather, the problem can lie in the agent's non-propositional affective attunement to the phenomena and to the testimony of victims of gendered violence.

To be affectively attuned to the phenomena does not mean that an agent necessarily has strong feelings about it. Indifference can be understood as an instantiation of a tranquil attunement, in that it leaves things unquestioned and unchallenged. Moreover, moods such as indifference, which as I have argued are often experienced as an absence of mood, may wrongly lead agents to believe they are in fact taking an objective view on a matter. Indifferent agents may understand themselves as 'unemotional' or purely rational. However, it is not clear from a phenomenological perspective that these moods, in so far as they can be understood as instantiations of a more overarching tranquilised attunement, will be the ones that bring us closer to encountering the truth of an agent's testimony.

Taking seriously the role of moods and attunements in the context of testimony indicates that it may be harder to identify which agents may have deficiencies in their ability to properly evaluate testimony on gendered violence, as it will not only be the police officer, juror or 'person on the Clapham omnibus' who explicitly or implicitly endorses rape myths, or misunderstands or misapplies the concept of rape. It can also be the well-meaning feminist who unwittingly and unknowingly finds themselves

attuned via a mood of empathy, or the agent who is ultimately indifferent to gendered violence, and whose attunements may not be so easily brought out by normal modes of questioning.

Sceptical approaches to testimony, and understandings guided by moods such as empathy and shame, as well as public (mis)understandings such as rape myths, conceal the truth of victims' testimony by leading us to encounter it as untrustworthy. These kinds of (mis)understandings block the possibility of reaching more genuine understandings of gendered violence that would be based on and guided by victims' real experiences. The question is, then, how can we become open to the truth of victims' testimony?<sup>20</sup> A phenomenological approach rejects the idea that in order to do this we will need to free ourselves from moods. Moods are necessary for understanding. Rather, a phenomenological approach suggests that we need to find a new way of attuning ourselves to and attending to victims' testimony, which will enable us to encounter it in a more genuine way. To do this we must deepen our understanding of the testimonial encounter as a communicative act by examining phenomenologically what it is to give and to understand testimony, and how testimony communicates.

### 3. Embodied Understandings and Discourse

Testimony is an instance of discourse. Discourse is the way we communicate our understanding of the world and our interpretation of phenomena. Discourse is often linguistic. It involves our ability to use the right words and have them understood in the right way.<sup>21</sup> But discourse is not essentially linguistic. We can communicate our interpretation of the world, and our understanding of the phenomena, just as much – and perhaps sometimes even more effectively – through, for example, a gesture (BT, 200) or by remaining silent, than through a linguistic utterance (BT, 208). Moreover, our embodied modes of communication may undercut and contradict our linguistic utterances. Even though I may say I love the birthday present you bought me, my forced smile and the tone of my voice may communicate quite the opposite. In the case of the undesired birthday gift, I am attempting to conceal my attunement to, and understanding of, the situation. However, there are also cases in which our bodily and non-linguistic modes of expression can communicate our ways of understanding and making sense of the world that do not reach the level of propositional belief.

In her analysis of gendered shame Bartky focuses on her students' modes of comportment: hesitations in their speech, false starts, reticence in handing in work, excessive apologising, physically compressing their papers on submission, hunching their shoulders, bowing their heads, etc. (1990, 88–89). These modes of comportment articulate the students' attunement to themselves, their world and others and the non-propositional understanding they

have. As Bartky puts it, shame is ‘a mode of Being-in-the-world wherein their [the agent’s] inferiority is disclosed to inferiorized subjects, though, paradoxically, what is disclosed fails, in the typical case, to be understood’ (1990, 97). Bartky’s students may not say that they think they are intellectually inadequate or that their work is insufficient, and may even disown such interpretations when they are attributed to them (1990, 89–90), but nevertheless their negative self-understandings are communicated through their modes of comportment and their shameful attunement to themselves and their situation.

Moods and attunements not only make understanding possible, they can also play a role in expressing our (non-propositional) understanding in the way they are lived on the body and manifested in our modes of comportment. In other words, our understanding of the world and interpretation of phenomena is often expressed in a doing rather than a saying. Just as JL Austin famously analysed the way in which speech can be actions, phenomenology encourages us to attend to the ways in which actions can be speech. This is not to recommend that we engage in an unlicensed interpretation of body language. Rather, it is to encourage us to explore how conceiving of understanding and discourse as embodied can reorient us to the testimonial encounter in a new way that can enable the truth of victims’ testimony to more easily be heard.

### 3.1. *Articulating Understanding*

In the philosophical literature and in public discourse more generally, testimony is most commonly approached as a kind of assertion: the speech-act of stating a proposition that the speaker represents as true.<sup>22</sup> Such representations of truth might manifest themselves in terms of offering assurances, or expressing the belief in the truth of the assertion (Owens 2006, 105–6). Testifiers may also proceed by reasoning with their audience or trying to persuade them (Hinchman 2020). But in each case, treating testimony as a linguistic act of assertion implies that the testifier clearly and explicitly grasps what they wish to communicate. Particularly with regard to testimony on gendered violence, this assumption is one we might put into question.<sup>23</sup>

Gendered violence is a shock. Understood phenomenologically, a shock is something that breaks us out of the everyday. As Gayle Salamon describes it, ‘such an event seems actually to change the nature of the world around us, breaking our modes of understanding, our habits of seeing, our ways of hearing’ (Salamon 2018, 64). In her moving and courageous philosophical memoir *Aftermath*, Susan Brison describes how she found herself Being-in-the-world in a new way in the wake of her violent rape, disconnected and disjointed from her normal life, experiencing a sense of ‘unreality’ (2000, 9).

Given the potential of gendered violence to unmoor us from our everyday ways of understanding, Being, seeing and hearing, the understanding we have of such events may not be immediately or wholly propositional. Instead it may be better characterised by what Alexis Shotwell calls ‘difficult-to-say knowledge’ (Shotwell 2017, 79), all those forms of knowledge that are integral to our everyday lives – tacit, embodied, affective and socially situated knowledge, but knowledge that is not necessarily, immediately or primarily propositional. This may be particularly true in cases such as unacknowledged rape or rape while unconscious, where the nature of the assault means that a clear and explicit understanding of the event is denied to the victim, who is prevented in various ways – whether by conceptual blockages or a cocktail of drugs and alcohol – from having a secure, explicit, propositional understanding of their assault.<sup>24</sup>

Recognising the importance of non-propositional knowledge, particularly when it comes to our understanding of profound bodily change (Shotwell 2017, 84), suggests that when agents testify about their experiences of gendered violence – and particularly in victims’ initial testimony about their assault – they may not necessarily be making assertions, but instead trying to articulate an understanding that is in part non-propositional. To conceive of testimony as an articulation, means we cannot simply approach the testimonial encounter as the transfer of facts or information from one mind to another.<sup>25</sup> Testifying about rape is not the same as telling someone where the library is or recounting a shopping list. Testimony qua discourse is a process of articulation, both in the sense of establishing and stabilising meaning.<sup>26</sup>

As was argued in Section 3, what we understand is not always propositionally available to us, but this does not mean that we lack an understanding.<sup>27</sup> Rather, we have an understanding that – in order to be testified about – needs to be articulated in the double sense of being expressed and being built up into an explicit, concrete and propositional understanding.<sup>28</sup> Accordingly, my focus here is not primarily on the hermeneutical injustices that can prevent agents from fully conceptualising their experience.<sup>29</sup> I maintain that the victim does understand their experience, even if this understanding has yet to be propositionally articulated. Rather, I want to explore how these understandings can be blocked from being more explicitly articulated by social, affective, embodied, discursive and environmental features, as well as the relation between the speaker and their audience.

In their recommendations for phenomenologically guided qualitative research, Allan Køster and Anthony Vincent Fernandez argue that being informed by phenomenological concepts in our interpretation of the experiences of others means that we are looking for and are ‘dealing with a level of experience that is inherently difficult to access and does not often reveal itself

in everyday reflection' (2021, 17). This insight is particularly useful for thinking about ways of approaching, receiving and understanding the testimony of victims of gendered violence. What such encounters can ultimately lead us to understand is not necessarily something that is immediately available to the victim themselves or the receiver of the testimony.<sup>30</sup> This is the sense in which it can be useful to conceive of the testimonial act as articulating an understanding. Phenomenologically, what we are seeking to reach through the testimonial encounter is not just the victim's propositional understanding, but the more fundamental way they are attuned to their world.<sup>31</sup>

As has been widely documented, preconceived ideas about what gendered violence is, what a victim of gendered violence is like and how they should react to such an experience, greatly impede our ability to understand and appreciate gendered violence in its many and varied forms (Mardorossian 2002), and even to conceptualise it when it is something we experience ourselves (Jenkins 2017). If we focus only on the immediate propositional understanding victims have of their experiences, we are liable to be led by these pre-existing public (mis)understandings. To attend to a speaker's testimony from a phenomenological perspective is thus to try to 'push beyond (or below) these scripted narratives in an attempt to evoke descriptions of pre-reflective and often embodied experiences that have not previously been reflected on or narrated by the interviewee' (Køster and Fernandez 2021, 17).

This does not mean that those receiving testimony must act as 'pseudo-therapists', or should think of themselves as uniquely able to draw out the 'real' understandings that are somehow unavailable to the agent who is testifying. Rather, the point is that a phenomenological conception of testimony as an articulation of understanding indicates that the truth of victims' testimony may not be immediately available and reportable in the way the model of assertion implies, and thus we need to think carefully about the conditions under which these truths can come to light.<sup>32</sup>

The success of a communicative encounter depends on a variety of linguistic and non-linguistic features. We need to be able to say what we mean and have it understood. This does not mean assuming victims' testimony is already fully formed and simply needs to be expressed, but rather appreciating that the ways in which testimony is expressed – and how this process of expression can be affected by both linguistic and extra-linguistic factors – can affect what is able to be communicated and propositionally understood by both parties in the testimonial encounter. From a phenomenological perspective, physical, environmental, social, affective, embodied and relational factors can be seen to be as integral as linguistic and epistemic features when considering how communicative acts can go wrong and how testimony can fail to be genuinely understood or fully articulated. Features such as a pleasant room temperature, appropriate lighting, and the

arrangement of furniture; a cup of tea, open body language or a friendly smile, may do more to enable the truth of a victim's testimony to come forth than the direct and aggressive pursuit of 'the facts' that belong to more traditional practices of gathering evidence.

#### 4. Discourse as Being-with Others

In 2019, *The Independent* newspaper reported that in the UK only 1.7% of reported rapes end in prosecution (Dearden 2019). One of the key reasons cited for this was the particularly invasive way in which victims were handled and 'evidence' was pursued. The newspaper reported that 'the most common outcome for rape cases [not reaching conviction] was listed as "victim does not support action" (40%), followed by other "evidential difficulties"'. The article went on to report the concerns of campaigners who 'warned that increasing numbers of victims are dropping complaints after being asked to give police their mobile phones for examination, or allow blanket access to health records and other personal information' (Dearden 2019). Viewed through a phenomenological lens, we can see this handling of cases of sexual assault and rape as potentially stemming from an implicit understanding of testimony as an assertion, thus leading to a direct and aggressive attempt to establish the truth claims of the testimony. But if we take heed of our foregoing phenomenological analysis, which suggests that testifying about one's experience can be an attempt to articulate a non-propositional understanding, we can see why such aggressive and direct means of pursuing the truth of victims' testimony may be inappropriate and ultimately counter-productive, serving to conceal rather than reveal the truth of the testimony. Approaching testimony through a phenomenological lens suggests that we can most effectively reach the truth of an agent's testimony – and thus a more genuine understanding of gendered violence – not by direct and aggressive means of questioning, but by approaching the testimonial act as a collaborative process of meaning articulation.

Understood phenomenologically, we are not isolated individuals but rather are always 'Being-with' others, meaning that we are co-constituted in and through our relations with others. Being-with is an *existential* of human existence. Rather than there being an initial separation between agents, there is an initial and fundamental 'togetherness'. One of the primary ways in which this togetherness is manifested, is in discourse and communication: our ability to express our understandings and interpretations of the world to others. Being-with is what makes discursive and communicative encounters possible. Attempting to communicate with another being, relies upon a recognition of them as someone with whom it is possible to communicate. I do not stop and ask the map on the station wall for directions, I identify a being who I believe will understand me and will be able to respond.

This answer and response structure is what Kelly Oliver argues characterises subjectivity itself and what makes possible testimony in general (2019, 337). Oliver understands testimony as an instance of witnessing, which is constituted by the double meaning of ‘eyewitness – testimony based on first-hand knowledge and bearing witness to something beyond recognition that can’t be seen’ (ibid.). In most testimonial analyses, the focus is on the testimony given, whereas a phenomenological approach to testimony encourages us to give equal focus to the testimony received. Only because we are relational subjects, capable of engagement, is testimony possible, so to understand what testimony is, and how it communicates, we must consider it as a relational whole.<sup>33</sup>

For testimony to manifest itself fully, a receptive audience, a hearer, a listener, are just as important as the speaker. But as was argued in the previous section, communication is not just about the conveying of information from one mind to another. At a more fundamental level, communication, and testimony in particular, is a way in which we can Be-with the Other (BT, 205). It is through communication that we express ourselves in our relational Being: we speak and are heard. In Brison’s account of her assault, she describes the necessity of repeatedly speaking about her trauma and the importance of being listened to, stating that ‘it can be retraumatising when people refuse to listen’ (Brison 2000, 16). As she characterises it, ‘others’ inability to respond made me feel like I had died and no one had bothered to come to the funeral’ (11). To refuse or fail to hear is not only a testimonial injustice in Fricker’s (2007) sense of the term, something that harms the agent as a knower. Phenomenologically understood, it is also an ontological harm: a refusal to allow someone to express themselves as a subject.<sup>34</sup>

Barbara Applebaum elucidates this point in her discussion of the kind of attention we should give to the other who is testifying about their experience. She emphasises that in receiving testimony and bearing witness we should not be listening for confirmation of something that we already know, but instead ‘listening “to hear something new, something yet beyond comprehension”’ (Applebaum 2010, chapter 4). As Applebaum argues, the aim in receiving testimony should be to draw

our attention to a type of listening that does not require prior agreement and in fact is a response in which agreement and disagreement is . . . tentatively suspended . . . it is not the recogniser’s approval but rather an acknowledgment of one’s humanity that is paramount (Applebaum 2010, chapter 4).

The orientation that such an understanding recommends does not involve being overly credulous. Rather, it means focussing on the way in which our interaction with a testifier has the ability to either block, or enable to come to the fore, the genuine but perhaps non-propositional understanding they have of their experience. With regard to a phenomenological approach to

testimony, the analysis of discourse and communication suggests that in the first instance our concern must be directed towards holding ourselves open to the other and their testimony, rather than focussing on whether what they say conforms to what we think we already know about gendered violence. Actively attempting to orient ourselves to the victim and their testimony in this way can open up the possibility of new ways of becoming attuned to the testimonial encounter, which can then give rise to new articulations, by making space for the victims' non-propositional understanding to be articulated.

In concrete terms, and in both formal and informal contexts, this might involve listeners reflecting on their own conduct, attending to their mood and attunement to the situation, and to the agent who is testifying, and attempting to become mindful of any preconceptions about gendered violence that they may be bringing to the interaction.<sup>35</sup> By actively attending to the way one approaches a testimonial encounter, agents receiving testimony are better placed to ensure they are not (unwittingly) creating an unsympathetic or hostile environment through their verbal, non-verbal and embodied modes of communication, or their propositional or non-propositional (mis) understandings of gendered violence. As Carine Mardorossian argues, there is no singular rape narrative that can codify what it is to experience rape or how one should respond to such an experience (2002, 754). Listeners should therefore attempt to change, or at least become aware of, potentially interfering preconceptions and attunements, such as those described in section two, which can form the backdrop to an interaction, and may block the articulation and genuine reception of a victim's testimony.<sup>36</sup> Agents should interrogate the questions they ask victims in order to ensure they do not rely on or invoke pre-existing understandings of gendered violence that may hamper the giving of testimony, or make the listener unreceptive to the testimony with which they are presented. Questions such as 'what were you wearing?', even if asked innocently, can invoke rape myths. Accordingly, such questions may lead a victim to feel that their testimony is viewed as untrustworthy, which may undermine their ability to effectively testify about their experience, thus preventing the truth of their testimony from coming to the fore.

Particularly in formal contexts, a recognition of the importance of Being-with and an integration of this into reporting practices, could help to remove barriers to victims' effectively testifying about their assaults, and help to improve rates of reporting. The significance of Being-with for effective communication emphasises the importance of consistency, and implies that victims should not be made to recount their experience multiple times to different police officers. Such an approach implicitly assumes the testimonial encounter can be reduced to the reporting and receiving of facts. However, to pursue testimony in this way can negatively affect the victim

and their ability to articulate their testimony. The demand to repeatedly cover the same ground may reinforce the feeling that the victim is not being properly heard or listened to. Moreover, when these practices are compounded by structural and institutional failings, like in the case of Marie Adler,<sup>37</sup> they can prevent victims of gendered violence from reporting assaults because of the hostile atmosphere in which they are expected to testify and the lack of adequate support to pursue a conviction.<sup>38</sup>

Inappropriate handling of testimonial encounters, whether in formal or informal contexts, may result in despondency or frustration on the part of the testifier, which is more likely to produce ‘anomalies’ or ‘inconsistencies’ in their testimony. In light of the analysis of Being-with, we can observe that such ‘anomalies’ may not necessarily signal an absence of truth, but instead may be the result of frustration at the way the testimonial encounter is being handled. Moreover, a phenomenological approach to testimony suggests that ‘anomalies’ may also arise because of what articulating one’s testimony can involve. As was described in [section 3.1](#), testifying about gendered violence can be a way to stabilise meaning and make (propositional) sense of one’s experience. One way of doing this is to articulate one’s experience in different ways. In light of this understanding, a phenomenological approach to testimony is well placed to highlight the difference between ‘anomalies’ or ‘inconsistencies’ that undermine the truth of victims’ testimony, and the process of (re)articulating one’s experience in a new way in order to come to a more explicit propositional understanding of it. To receive the truth of victims’ testimony, we should not orient ourselves to the testifier and their testimony in a sceptical or a credulous way. Rather, we should aim to orient ourselves in such a way that we are open to grasping something we do not yet understand.

## 5. Conclusion

In this paper I have argued for a phenomenological approach to testimony guided by the notion of disclosedness. I have examined the way in which moods, attunements, embodiment and our social setting can play key roles in what we communicate and what we can come to understand or fail to understand. On this basis I have recommended rethinking testimony as a collaborative process of enabling a potentially non-propositional understanding to be articulated. To conceive of testimony not as an assertion, but as an articulation of understanding is not only an intellectual exercise. It encourages us to create the conditions under which victims can effectively testify about their experiences. This can involve focusing on our bodily and affective orientation, it can mean being mindful of the physical, environmental and social factors which act as the backdrop to the discursive encounter, and the linguistic and extra-linguistic elements of discourse that

can facilitate or block the effective giving and receiving of testimony. Guided by these insights, we become better placed to receive the truth of victims' testimony in an undistorted way, and thus move closer to a more genuine understanding of gendered violence that is based on this truth.

## Notes

1. By gendered violence I mean psychological, physical or sexual harm directed at individuals because of their sex or gender identity. However, my primary focus is on sexual violence.
2. This is an indicative, not an exhaustive list.
3. Some points may generalize to testimony from all victims of crime (see particularly Sections 3.1 and 4), but I do not develop these possibilities here. I do not specify the gender of the victims I discuss because gendered violence can be experienced by people of all genders, although it predominantly affects women and trans folk. By 'victim' I mean any agent who has experienced gendered violence.
4. To talk of 'appearance' and 'phenomena' is not to endorse the Kantian distinction between noumena and phenomena. Phenomenologists do not believe there is anything "behind" the phenomena of phenomenology' (Heidegger [1927] 1962, 60). Rather, the phenomena, what appears, is the thing itself, although 'what is to become a phenomenon can be hidden' (Ibid).
5. For a discussion of the limitations of this characterisation of phenomenology see Guenther (2017).
6. Additionally, there are different 'modes' of encountering the phenomena. In genuine modes we get to the phenomena as they really are, whilst deficient modes conceal and distort the phenomena, leading to misunderstandings. For Heidegger, from whom I draw this distinction, this is expressed in terms of the contrast between 'authentic' and 'inauthentic' modes of Being and understanding (BT, 68).
7. On this distinction see Knowles (2013).
8. A key example later in the paper is how social moods and scripts can lead us away from the possibility of genuine understanding, by concealing the phenomena that are being interpreted and discussed.
9. 'Disclosedness' is a Heideggerean concept (BT, 169–219). I use it as a frame for my phenomenological analysis of testimony, but in my elaboration and application of this concept, I extend and develop Heidegger's original formulation.
10. A representative case is that of Marie Adler. Adler was raped in 2008, but police failed to believe her testimony and charged her with false reporting. Her attacker went on to rape numerous other women before being caught by a separate police force in 2011. For a detailed philosophical discussion of this and similar cases see Hänel (2020).
11. I use 'mood' to refer to a particular way of being attuned to the world. I use 'attunement' to describe a more constant way of being connected to and making sense of the world. Overarching attunements can be instantiated by various moods, as I discuss in Section 2.2.
12. Dreyfus uses the term 'absorbed coping' to describe our everyday intentionality (1991, 69–72). Unobtrusive moods are a key aspect of this, facilitating our seamless engagement with the world.

13. This is similar to the claim from standpoint epistemology that all knowledge is situated (Lennon 1997, 37). Phenomenological analyses also emphasise the roles of our social, cultural and historical location in affecting what we know and understand, as I discuss in Sections 2.1 and 2.2. What the phenomenological analysis adds, is the role of affect in this process as a necessary and enabling condition for knowledge and understanding, both at an individual and social level.
14. For a classical phenomenological discussion of the notion of world see Heidegger (BT, 97–100), for ‘world’ in a social and political phenomenological context see Lugones (1987).
15. Heidegger argues that the social world ‘needs moods and “makes” them for itself’ (BT,178).
16. On this point see Bhandry (2020, 180), Meyers (2002, 9) and Knowles (2019, 257).
17. These possibilities only become visible through more disruptive moods, most significantly anxiety. See Heidegger (BT, 228–235).
18. Blattner makes a similar point about our everyday ways of being attuned to the world (2013, 325–6).
19. The phenomenological point here is not that moods of anger and anxiety are caused by the situation, although they inform and make possible our understanding of it. Rather, it is because we are attuned to the world in, for example, an angry way, that we can experience the particular situation as one of injustice.
20. I focus on the question of how we can become open to the trFuth, rather than whether victims are telling the truth because, as Belknap observes, the far more significant problem in cases of gendered violence is underreporting, not false allegations (2010, 1335).
21. Various features such as the authority of the speaker and the social and cultural backdrop of the utterance, can affect its linguistic success. For discussions of the ‘silencing’ of women’s refusals of sex, see Langton (1993). In Sections 3.1 and 4 I identify various social, embodied and environmental features that affect agents’ ability to effectively give and receive testimony.
22. Owens states that ‘any epistemology of testimony presupposes some account of assertion’ (2006, 105). In public discourse, this implicit understanding is manifested in ‘he said, she said’ understandings of gendered violence, like those documented in *Roll Red Roll* (2018), which explores the reactions of townsfolk in Steubenville Ohio to the now infamous rape case.
23. This is not to say that testifying about gendered violence can never take the form of an assertion. Asserting that you have been assaulted and demanding to have your testimony heard can be a very empowering thing to do. Rather, my claim is that assertion should not be the only way we think about and approach testimony on gendered violence, particularly in the kinds of cases I discuss below.
24. On unacknowledged rape see Jenkins (2017), on rape while unconscious see Heyes (2016).
25. Heidegger makes this point about communication in general (BT, 205).
26. Wrathall also makes this point about discourse (2011, 130–1).
27. Catala (2020) makes a similar point.
28. This is not to imply that propositional and non-propositional understandings are hierarchically ordered, or that an agent only genuinely understands something when it has been propositionally articulated. As we have seen, our

understanding can also be expressed non-propositionally (Section 3), but in the case of testimony, propositional understanding is usually necessary in order for the testimony to be fully linguistically expressed and understood by others.

29. As is the focus of Jenkins' (2017) analysis.
30. I discuss this further in Section 4.
31. Again, this analysis applies primarily to the initial reporting of gendered violence, whether in a formal or an informal context, rather than, for example, giving testimony in a courtroom. In the courtroom, the model of testimony as assertion may be more appropriate because viewing testimony as an 'articulation of understanding' may wrongly lead jurors to believe that the victim does not know what they wish to communicate and that this indicates the unreliability of their testimony.
32. Again, I am referring primarily to the initial articulation of the victim's testimony, and do not mean to suggest that gendered violence is an unclaimed experience, or that the victim lacks an understanding, or cannot understand what has happened to them.
33. Lackey (2008) also makes this point, although from an epistemological perspective.
34. Lobb (2018) makes a similar point.
35. On this point see Yap (2017).
36. For an indication of how one might alter one's attunement, see Knowles (2021, 233–5).
37. See footnote 10.
38. On this point see Manne (2018, esp. chapter 7).

## Acknowledgments

Thanks are due to Anthony Vincent Fernandez and to Lisa Herzog for helpful comments on earlier drafts of this paper, as well as to those in attendance at the 'Themes from Testimonial Injustice and Trust' workshop, hosted online by University College Dublin in June 2021, and my colleagues in attendance at the department of Ethics, Social and Political Philosophy's online work in progress session at the University of Groningen in January 2021. Thanks are also due to the contributors and attendees at the 'Understanding Gendered Violence' workshop organised by the CRASSH centre at the University of Cambridge in spring 2021, and to Christopher Clarke and Rosie Worsdale, for organising the event and inviting me to contribute to the workshop for which this paper was originally conceived.

## Disclosure Statement

No potential conflict of interest was reported by the author(s).

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