Public Justification and the Veil of Testimony[1]

Sometimes political life feels unforced. Other times it can feel like being a rat in a rat-king, a composite being that forms when many rats accidently knot their tails together and get violently dragged around by the common will.[2] Like such rats, we can find ourselves tied up in associations that we can hardly leave by choice, dragged or threatened to be dragged by the vicissitudes of a political will that barely answers to our own. Although we cannot expect release from all the associations tying us together, we obviously ought not live like rats in a rat-king if we can help it.

Avoiding this fate requires *perspectival conciliation*: Acts of political authority expressing the political will must be acceptable to each of our perspectives.[3] Furthermore, how we achieve this aim ought to be consistent with the respect we owe each other as free and equal persons. My focus is on one proposal about how to achieve perspectival conciliation in accordance with this constraint. Its spirit is captured by Jeremy Waldron in the claim that "the social order should in principle be capable of explaining itself at the tribunal of each person's understanding."[4] And this proposal is more precisely expressed in what political philosophers have called the *Public Justification Principle*. This is the principle that the actions of political

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[2] Rat-kings are merely rumored to exist. See Reilly (2017) for a history of purported occurrences.

[3] Perspectival conciliation is presupposed in the aim of the philosophical theory known as political liberalism to explain how coercive institutions ought to exist under conditions of reasonable pluralism. See, for instance, Rawls 2005, pp. 133-134 and 2001, p. 3; Freeman 2007, p. 8; Quong 2011, pp. 138-144; and Vallier 2019, p. 6. The relevance of my considerations is not restricted to this tradition of theory, since its critics also acknowledge the importance of perspectival conciliation, often under the guise of 'non-subjugation'. See, for instance, Enoch 2015, pp. 114-116, 138 and Wendt 2019, p. 45, fn. 21.

[4] Waldron 1987, p. 149.

authorities – for our purposes, impositions of coercive laws – must be justifiable to all who live under them.[5] But how does public justification bring about perspectival conciliation? I argue that testimony plays a larger role here than has been acknowledged.

It is no surprise that public justification and testimony are closely related. After all, justifications typically involve exchanging statements. Yet I claim more than this. In many cases, it is not possible to satisfy the Public Justification Principle without some persons having to depend on testimony from others. This claim ought to be surprising because satisfying the Public Justification Principle requires all persons to be respected as free and equal. If some persons cannot accept the social order without depending on someone else's testimony, then they seemingly have failed to be respected in the relevant sense, and the social order seemingly has failed to explain itself at the tribunal of their understanding.

These concerns are misplaced. If it can be shown that making persons dependent on testimony in appropriate circumstances suffices to satisfy the Public Justification Principle, this would establish that public justification is compatible with such dependence. Plausible empirical observations could then support the claim that dependence on testimony is in many cases necessary for public justification. This, at any rate, is how I establish the article's main claim.

[5] Other aspects of authority that philosophers have claimed require public justification are the basic structure of society (Rawls 2005, p. 35), laws produced by democratic co-authorship (Bird 2014, p. 202), and rules of social morality (Gaus 2011, p. xvi). I choose to focus on coercive laws for illustrative convenience. My main points can be modified to apply to any of these other aspects.

1) The Case of Transparencia

We can establish the sufficiency claim by appealing to cases set in a realistic utopia. By 'realistic utopia', I mean a situation in which all persons have realistic reasoning powers, restrictions on their time, and dispositions to form reasonable disagreements but always conform to their epistemic and moral obligations as they reasonably see them. This argumentative strategy is defensible because any requirements for public justification that are too demanding in such a context are too demanding in our own. To this end, consider the following case.

Transparencia is an island nation that has no history of political corruption. Its government informs everyone about what laws are created by sending emails that everyone is expected to read. These emails state not only the content of the laws but also contain side commentary describing the penalty for breaking them, the conditions under which they apply, and some justification for their creation.

W is one such law. It says that drinking from plastic water bottles within 10 meters of any natural body of water is illegal. The side commentary about W states that the penalty for breaking it is a 1,000 dollar fine. It contains descriptions of the law's key terms that suffice to prevent citizens from accidently breaking it. However, the only justification explicitly given for W is equivalent to the statement 'W is a good law.'

Before receiving this email, nothing spoke for or against W for any citizen. The politicians involved in writing the law and email are nevertheless credible testifiers. They have an excellent testimonial track record in that the vast majority of their past assertions have been dependable and they have never lied. Furthermore, they are committed to making laws only for

reasons that all persons can be reasonably expected to accept. W is no exception. It is supported by such reasons, it's just that citizens have no direct access to them. The only reflectively accessible reasons for them to accept W are given by the email's content and the credibility of the legislators.

Lastly, all Transparencia citizens are committed to accepting propositions that are asserted by credible testifiers in the absence of defeating evidence. If the citizens didn't share this commitment or one functionally equivalent to it, all of them would not properly gain beliefs though testimony. Since testimony is an indispensable source of a vast number of anyone's beliefs, all of them *ought* to have such a commitment.

Is W publicly justified in Transparencia? On the one hand, it seems so. A standard way to become justified in accepting a proposition is to receive credible testimony supporting it.[6] Everyone in Transparencia has received credible testimony that W is a good law. This testimony has also been given sincerely by persons committed to making laws that everyone could accept. On this basis, it would be hard to deny that everyone in Transparencia has sufficient epistemic and moral reason to accept that W is a good law. Consequently, everyone in Transparencia is justified in accepting W. On the other hand, I anticipate that many will suspect that even if

[6] Accepting a law, for our purposes, consists in accepting the proposition that the law ought to be obeyed. To accept a proposition here means to treat it as true for epistemic and moral reasons. Belief in the propositions that justify accepting a law is not required because belief denotes a positive attitude, whereas public justification is compatible with some persons taking a neutral attitude like indifference towards the propositions that justify the law. There is nevertheless a connection between belief and acceptance. Belief that *p* entails acceptance that *p*, but not the converse. Acceptance that *p* is also incompatible with disbelief that *p*. For a comparison to another view of acceptance, see Bratman 1992, p. 9. For a helpful illustration of the contrast between treating a proposition as true and acting as if a proposition is true, see Ross and Schroeder 2014, pp. 264-268.

everyone in Transparence is *justified in some sense* in accepting W, W is nevertheless not *publicly justified*.

I claim that this suspicion is incorrect. The government's testimony suffices for W's public justification either in this case or one very similar to it.

A preliminary difficulty for establishing this claim is that 'W is a good law' is moral testimony. Philosophers note that something seems wrong about becoming vegan[7] or taking a stand against a war[8] merely because someone tells you to. Perhaps something is similarly wrong with accepting W merely because the government says that it is a good law.

Nevertheless, the reasons typically motivating concern about moral testimony do not apply to Transparencia. What some find objectionable is not all moral testimony but rather the claim that we can know or justifiably believe moral claims on its basis.[9] Accepting that *p* does not require knowing or believing that *p*. So, one can hold that being justified in accepting W on the basis of moral testimony is possible without rejecting this claim. I also grant that acts performed on the basis of moral testimony fall short of perfect virtue.[10] However, it would be a severe restriction if laws were not publicly justified unless everyone could conform to them as a perfectly virtuous act. Lastly, opponents of moral testimony typically focus on cases that are either controversial or objects of strong social consensus.[11] But W is by stipulation not

[7] Hills 2009, p. 94.
[8] Mogensen 2017, p. 261.
[9] See, for instance, Nickel 2001, p. 253; Driver 2006, p. 624; Hopkins 2007, p. 612-613; Hills 2009, p. 94-95; and McGrath 2011, p. 113.
[10] Nickel 2001, p. 257.
[11] Sliwa 2012, pp. 184-188.

controversial and is a law that citizens are antecedently neutral about. For these reasons, the moral testimony literature is largely irrelevant to our considerations.[12]

The most substantial difficulty for establishing the sufficiency claim is that philosophers disagree about which conception of 'justification' is relevant to public justification. These conceptions can be classified according to what I call requirements of coherence and requirements of connectivity. *Requirements of coherence* specify how a person's perspective must cohere with the law or the perspective others take on the law for it to be publicly justified. All views of public justification require, as a minimal standard of coherence, that persons have sufficient internal reason to accept the law relative to their perspectives. Other views additionally require that persons be able to defend or explain their acceptance of the law.[13]

Requirements of connectivity specify the character of the reasons a person must have to accept the law for it to be publicly justified. As mentioned, views of public justification require that the reasons persons have to accept the law are consistent with respecting them as free and equal.[14] Reasons given by threats, demands, or appeals to authority are incompatible with this standard. Other views additionally require that persons' acceptance of a law must possibly be the outcome of a sufficient exercise of their epistemic autonomy or that persons can understand why the law is worth imposing.

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[12] van Wietmarschen 2019 has recently argued that citizens' votes in a democracy ought not be directed by testimony, although they are permissibly informed by it. My claims are also compatible with this view. That testimony can justify laws once they are created does not entail that it permissibly directs their creation, whether through referendum or otherwise.
[13] Rawls 1997, pp. 768-769.
[14] For concise statements of this moral aspect of public justification, see Gaus 2010, pp. 186-187 and Larmore 2015, p. 78.

An initial examination shows that dependence on testimony is compatible with satisfying requirements of coherence and connectivity. Consider requirements of coherence. Transparencia citizens obviously have sufficient reason to accept W relative to their various perspectives. They can also justify accepting W to others simply by repeating what the government has said. They can defend W against criticism. If a dissenting citizen says that he read in the *Weekly Enquirer* (a local tabloid) that W is not a good law, for instance, another citizen can respond by using whatever she knows about the quality of the tabloid to defeat the objection.

Consider requirements of connectivity. The Transparencia citizens have been respected as free and equal. The government's testimony is sincere, and W has been made for reasons that all can be reasonably expected to accept. The government also did not talk over its citizens' heads, such as by giving testimony full of technical details.[15] One might object that the Transparencia government has made an appeal to authority. This is also not the case. The government has said, 'W is a good law.' The government did not say, 'You ought to accept W because we say so'. These assertions are distinct. The former is undermined by evidence that W is not in fact a good law. The latter is undermined by evidence that the government does not have the power to create obligations merely by giving commands. The former assertion provides reason for the citizens to obey the law irrespective of whether the government has this power. It leaves citizens free to conclude that W ought to be accepted themselves.

[15] One might object that the government has talked down to the citizens because it has released insufficient details about the law. I address this objection below.

Of course, one might say that an appeal to authority is being made in that the citizens must take it on the government's authority that W is a good law. Feasibly avoiding an appeal to authority in this sense requires providing a more robust testimonial content, one that gives citizens further reason to accept that W is good or to understand why W is good. Or, if one is a Rawlsian, one might think that W must be justified to the citizens by appeal to a reasonable balance of public political values and epistemic standards.[16]

We can address this concern by slightly changing the example. Suppose the government instead asserted, 'W is a good law because computer models show it will improve environmental health'. Environmental health and being supported by computer models refer to a public political value and epistemic standard. Transparencia citizens can then understand to a greater extent why W ought to be accepted. As before, they can explain and justify why W is good to others as well as defend its acceptance by simply repeating this more robust content. Something resembling this statement, at any rate, strikes me as the most that many of us can say to defend and explain many of the laws that we accept.

2.1) The Limited Resources Argument, Part1

One might nevertheless find my defense inadequate. First, one might object that satisfying requirements of coherence requires that persons are able to gain a richer understanding of the law or a greater discursive ability to defend and explain it than is possible through hearing one or two sentences. Second, one might object that requirements of connectivity are not satisfied simply because the Transparencia citizens depend on the government's testimony to accept W.

[16] Quong 2011, p. 219.

This objection is tantamount to a rejection of the possibility of testimony contributing to public justification whenever the propositions accepted via testimony cannot be accepted by non-testimonial means.

Let us call the views corresponding to these two objections *high-standard views*. Such views are frequently expressed. Some claim that public justification requires symmetric justificatory support relations between those who impose a law and those who accept it. Charles Larmore, for instance, says that the principle by which we coerce others ought to "depend on their reason just as we believe it draws upon our own."[17] Others claim that public justification requires shared access to the grounds of a justification. Thomas Nagel says that when you coerce someone, it must be the case that "they have what you have, and can arrive at a judgment on the same basis."[18] Abner Greene similarly tells us that the evidential basis for laws must not be like the contents of a "secret-box" that only few can look inside.[19] The view expressed by Waldron's quote arguably belongs in this family.[20]

Nevertheless, all high-standard views share a common problem: each is too demanding. We can see this by recognizing a few assumptions we must make about the utopias we use in our theorizing if they are to be realistic.

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[17] Larmore 2008, p. 149.
[18] Nagel 1987, p. 232.
[19] Greene 1994, p. 659.
[20] Christopher Bertram, in discussing the consequences of theoretical complexity for the ideal of democratic community, presupposes that a high-standard view is constitutive of this ideal. (1997, pp. 571, 574-575) Bertram claims that if one is committed to this ideal, then one must accept a burdensome constraint on the complexity of admissible political justifications. (1997: 575) I argue in this section that this democratic ideal is too demanding and in Section5 that reliance on complex scientific claims in crafting legislation is often practically necessary. The hybrid view of public justification that I ultimately present in this article suggests a way that one can accept a version of this ideal without incurring a burdensome complexity constraint. I consider Bertram's claim to be problematic only for those who are committed to an ideal of democratic community that is unrealistic to begin with.

First, we ought to assume that many persons living in a realistic utopia want to pursue the goods of family, friendships, meaningful work (which for many will not be in politics), and at least one hobby. Pursuing such goods is not the only way of life, but it is among those that deserve protection. One point of the state is to make such a life possible for those who want to pursue it. We should therefore secondly assume that any political theory requiring too much interference with the pursuit of these goods is a non-starter. And finally, we have already assumed that the persons in the ideal state have realistic powers of reason and practical demands on their time. A consequence of this third assumption is that with respect to a given standard of justification each person has a finite *justificatory capacity*, which is the maximum number of laws that can be justified for that person according to that standard without interfering too much with her pursuit of these goods.

Given these three assumptions, each high-standard view leads to what I call the *busy citizens problem*. They all make achieving perspectival conciliation through public justification require many citizens to exceed their justificatory capacity. This is plausible just given the sheer number of kinds of laws that we can expect a concerned citizen to care about. These include – but are not limited to – firearm regulation, recreational drug use, marriage, reproductive health, immigration, healthcare, rent control, the minimum wage, free speech, taxation, privacy, religious freedom, education, and food safety. For individuals to perform such tasks as mirroring the justificatory relations of lawmakers, accessing then judging a common evidential basis, or gaining a significant level of understanding or deliberative abilities with respect to only a few laws in each of these categories would undermine their capacity to purse the goods that

the state aims to protect. Public justification is therefore in danger of being self-defeating as a political theory under a high-standard view.

2.2) Interlude

Those who want to retain a high-standard view must react by modifying the Public Justification Principle. As currently stated, this principle is satisfied with respect to a law just when every person *can* become justified in the relevant sense in accepting that the law ought to be obeyed. If we suppose that the relevant sense of justification corresponds to a high-standard view, the basic problem is that when a person has a justificatory capacity of *n* laws and the state imposes at least *n*+1 laws, this person *cannot* be justified in accepting all these laws in the relevant sense.

Defenders of a high-standard view must hold their preferred sense of justification constant while changing the sense of 'can'. They will likely opt for a sense that is hypothetical. They could say, for instance, that the Public Justification Principle is satisfied just when every person can be justified in accepting a particular law *were it the case that* the number of laws each person cared about did not exceed her justificatory capacity and the law in question was among them. Or, *were it the case that* all persons had enough spare time to master the justification for the law.

Yet adopting any such hypothetical senses of 'can' creates a problem: It is tantamount to giving up the goal of perspectival conciliation. Critics have already made this point.[21] It can be true that a person would be justified in accepting a law were she to have the spare time to

[21] See, for instance, Enoch 2015, pp. 127-128 and Bertram 1997, p. 574.

master its justification while also being true that she appropriately considers the law to be unacceptable given the time she has. Of course, it is generally recognized that appealing to hypothetical conditions is appropriate in some cases, such as when an intoxicated person is unable to consent to a lifesaving medical procedure.[22] But cases of incapacitation are relevantly different from lacking justification for accepting a law simply because one chooses to pursue a reasonable array of goods while having normal powers of reason. I accordingly share the worry of critics that appealing to hypotheticals allows us to say that laws are publicly justified at the cost of inappropriately separating public justification and perspectival conciliation.

At the same time, I think that defenders of high-standard views also have a point. Rejecting all hypothetical standards is not a promising alternative. Let us concede that we must avoid the possibility of the law's being publicly justified to reasonable persons who are not conciliated with the law. To do so, we must endorse *at least* a low-standard view according to which a law's being publicly justified requires that all persons can be justified in accepting the law. The sense of 'can' here must be undemanding enough for the Public Justification Principle to be satisfied through the government's offering testimony about the law. But suppose we endorse *no more than* such a view. The outcome is that in some cases laws will be publicly justified even though some persons would not be justified in accepting the law were they to have enough spare time to comprehend its high-standard justification.

Transparencia is by stipulation not such a case, since the testimony the legislators give supporting W is backed by reasons that all can accept. But a case like this would occur if such reasons did not exist and the legislators simply lied about the law. A case like this could occur in

[22] Enoch 2015, p. 129.

an idealized context if the legislators reasonably but mistakenly thought that they were basing the law on reasons that everyone could accept. We should not say that the law is publicly justified in such cases. *Mere* testimony may justify in some sense, but it does not suffice for public justification. There must also be some hypothetical condition compatible with a high-standard view that is met, for example that persons would continue to be justified in accepting the law were they aware of the further reasons supporting it.

This is a significant result. Note that such a hypothetical imposes a strongly externalist condition on public justification: It can be met (or not met) even though persons cannot become aware that it is met (or not met) through any reasonably expectable amount of reflection or investigation. At the same time, a low-standard, internalist condition must also be met for public justification, one that is reflectively accessible without too much effort from everyone's perspective. What I am suggesting is a hybrid view according to which neither perspectival conciliation nor public justification occur unless both these internal and external conditions are met.[23] That these conditions are satisfied simultaneously must not be a matter of chance or accident. One way that this can happen is by the political authority appropriately giving testimony about the law that is based on reasons constituting a high-standard of justification.

[23] This hybrid view is unique among conceptions of public justification. Almost all other conceptions presuppose a sense of justification that is merely internalist. See Rawls 2005, p. 118 and 1997, p. 771; Gaus 2010, p. 184; Larmore 2015, pp. 82-83; Quong 2011, pp. 141-142; and Vallier 2019, pp. 41-42. An exception is Gaus in *Justificatory Liberalism*, where he argues that public justification requires "open justification," which is "weakly externalist" in that it is undermined by defeaters that a person may encounter. (1996, pp. 31-32) Yet open justification is not undermined by defeaters that persons cannot be reasonably expected to encounter, unlike the hybrid view's externalist condition. (Gaus 1996, p. 35)

2.3) The Limited Resources Argument, Part 2

Proponents of high-standard views are likely to still be unsatisfied at this point. Surely it is not enough for a law's public justification, they will say, that citizens are told a few things about the law, even if what they are told is appropriately based on more complex reasons. The government must additionally provide a pathway to appreciating the reasons constituting a high-standard justification.[24] Call the statement that if a law ought to be publicly justified, then the government ought to provide a pathway to such a justification for inquisitive citizens willing and able to take it the *Pathway Proviso*. In short, this proviso says that governments have a duty to leave no inquisitive citizens behind when it comes to the justification of a law.

Nevertheless, adding this proviso again makes satisfying the Public Justification Principle too demanding. It leads to what I call the *inquisitive citizens problem*. Imagine that you are part of the legislative body that has imposed W on Transparencia. Accordingly, you hold a Public Justification Town Hall to justify W to anyone who wants to come. Because everyone knows that the Public Justification Principle ought to be satisfied, everyone is expecting you to adhere to your own principles, including your commitment to leave no inquisitive citizen behind.

The meeting starts as expected. You ask if everyone is justified in accepting W at least insofar as your testimony that W is a good law is credible, and they say yes. Then someone asks for a statement justifying W and you give it, J_0. Then someone asks for a statement justifying J_0 and you give it, J_1. (Perhaps justifications are not always as stilted, but they can be modeled as going on through something like this process.) This keeps up until you reach statement J_n, at

[24] By a 'pathway', I mean something like a series of steps which, if taken, result in achieving a high standard of justification.

which point you realize you are running out of time. Yet the citizens continue to sincerely request more because they have not yet reached a high-standard of justification. You are suddenly filled with dread, because you plan to impose many other laws, and you expect each will be as difficult to justify as W.

Since a theory of public justification should not include an assumption about how inquisitive citizens will be, such an escalating situation cannot be ruled out in principle. One might suggest that the government set aside resources into a 'public justification fund', and only offer justifications until this fund is exhausted. This suggestion, while prudent, does not solve the problem. If the government's obligation to justify laws according to a high-standard is important, then it is equally important that the government justify why it cannot meet this obligation. When this fund is exhausted, the government ought to justify both that it has been exhausted and why it could not have been made larger. Since either fact is no more reflectively accessible to the inquisitive citizens than considerations that bear directly on the acceptability of a law, the result is still either resource exhaustion or a violation of the Pathway Proviso.

The inquisitive citizen problem shows that the theory of public justification is again in danger of being too demanding in a self-defeating way, this time not for citizens but for governments. Since governments ought not be committed to exhausting their resources on public justifications, it seems that the Pathway Proviso is false. One may be tempted to respond that the Pathway Proviso should be amended to state that a pathway must exist only *within reason*. I am sympathetic to this thought, but 'within reason' demands explanation. Offering such an explanation is the purpose of the next section, which completes my argument that

Transparencia is an example of how dependence on testimony can suffice for public justification.[25]

3) An Explanation Based on Trust

To understand better what 'within reason' could mean, we should examine what motivates our judgments about the right level of justification. That level seems in many cases above the justification available in Transparencia and below that available at the end of the inquisitive citizens problem. At the same time, it does not seem plausible for this level to remain invariant across cases. Sometimes a higher and sometimes a lower level of justification is necessary to satisfy the Public Justification Principle.

The most plausible explanation for these judgments involves trust. It will take some term-building to see how. Trust, as I mean it, is an attitude in which a person relies on a subject in spite of an un-eliminated possibility of error.[26] We can roughly say that the level to which person S trusts a subject Q that *p* is given by the stake that would be lost by S if not-*p*, as well as both the amount and quality of S's assurances that *p* independent of Q. A large stake and few

[25] Our limited resources such as reasoning power and time, as well as the extent to which persons care about the social order being justified to them, are aspects of what Rawls calls "the subjective circumstances of justice." (2005, p. 66) Although Rawls is aware of these particular aspects, he does not adequately acknowledge the difficulty they pose for meeting requirements of publicity. For instance, he says that a full justification of the public conception of justice need be only publicly available, as opposed to publicly known, because "some will not want to carry philosophical reflection about public life so far." (2005, p. 67) But he considers neither that some might want to carry such reflection further than their resources allow – thus leading to the busy citizens problem – nor that some might want to carry such reflection further than what political authorities have the capacity to accommodate – thus leading to the inquisitive citizens problem. I thank an anonymous reviewer for urging me to add this observation.

[26] Trust is typically considered an interpersonal attitude distinct from reliance or prediction. (Vallier 2019, pp. 25-26) I intend my use of 'trust' to be consistent with this view without requiring it because this relation may be held towards both persons and institutions. In the latter case it is arguably closer to a mode of reliance than an interpersonal attitude. See Gelfert 2014, p. 177.

or poor assurances yield high trust. High-trust situations are not always high-risk situations: I can have high trust that my climbing partner will not drop the only rope holding me when she can get away with it, even if there is in fact a low risk of her doing so.

Trust has both an *actual* and a *prospective* sense. S can say, 'I don't trust Q very much that *p*' even if S is not trusting Q concerning *p* in any way. S is then using 'trust' prospectively. The level of prospective trust you put in a subject is the level of actual trust that you are willing to put in that subject. To be willing to put some level of actual trust in a subject means that if the subject requests your actual trust up to that level, then you give it. If you are willing to put high actual trust in a subject, then prospectively you trust that subject highly, and vice versa.

Finally, there is *default trust*.[27] S's default trust in Q is given by the highest prospective trust that Q is entitled to normatively expect from S in a trust episode. Default trust is the trust you can normatively expect others to place in you without further interaction with them, given the details of the context and your past interactions. Default trust can accumulate for new trust episodes in various ways, such as by others seeing that their trust in you has been well placed in the past.

Now we're ready for the explanation. Justifications play an important role in building and maintaining trust relations in that giving a justification that *p* results in lowering the actual trust you demand of others in demanding that they rely on you that *p*. In the limit, justifications eliminate the need for trust between persons entirely. This happens when your justification of *p* to someone consists in showing her that *p* can be readily deduced from beliefs that she

[27] My notion of default trust is idiosyncratic in that it carries no connotation of unreflectiveness and is expected by default by the trustee, not given by default by the truster. For contrasting uses of default trust, see Railton 2004, p. 186 and Walker 2006, pp. 83-85.

already firmly held before your interaction. When the level of actual trust demanded in a situation is greater than the level of default trust, a justification is needed to bridge the gap. Once it is bridged, however, any further justification is superfluous and cannot be properly demanded from the other party. The inquisitive citizen problem exemplifies a superfluous demand. So, to say that a government must provide a pathway to higher justification 'within reason' is to say that such a pathway must be provided only to the extent that it is necessary to bridge the gap between the actual trust demanded in a case and the default trust in that case. It may be kind or helpful to provide justification that *p* to inquisitive citizens once you can normatively expect them to trust you that *p*, but it is not required. You are permitted to leave them behind.

This account plausibly suggests a relationship between trust and public justification that is significantly different from the one proposed in recent work by Kevin Vallier. Vallier offers what one might call a *justification-first* account: The public justification of a number of social norms or laws is a necessary condition for trusting that others will comply with those norms or laws.[28] The present account, by contrast, is *trust-first*. Testimony must be trusted in order to have justificatory force. So, if testimony about a norm or law brings about its public justification in a case, trusting that testimony is a necessary condition for justification in that case. Vallier might reply that trust in testimony presupposes the public justification of various social norms governing speech acts, such as assertion. But this in turn raises the question of how *these* norms came to be justified. I claim – but cannot here prove – that the dialectic must bottom out in normative expectations that others trust various sources of information, such as perception,

[28] Vallier 2019, pp. 6, 68, 72, 143-144.

memory, and testimony. The idea that trust is a necessary condition for the rational justification of our beliefs has been suggested by several philosophers.[29] Unfortunately, I do not have the space to pursue the contrast further here; I offer it as an issue worth further inquiry.[30]

Irrespective of how this dialectic turns out, the fact remains that testifiers can properly expect others to accept their testimony only if there is no gap between the level of actual trust acceptance of their testimony requires in a case and the level of default trust in that case. What influences the level of default trust in a case is a complex topic. But we ought to at least agree that high levels of default trust are possible. High levels of default trust often exist between persons in general society. We are normatively expected to not opt out of many daily tasks where others could injure or exploit us, such as sharing a seat on public transportation, being alone with a stranger, or responding to a request for assistance.

At the limit, levels of default trust can become so high that testifiers do not need to provide extra assurances to properly expect others to accept their testimony. When levels of default trust reach this limit, we have a minimal case in which the Pathway Proviso can be satisfied, namely, a case in which no pathway is required. Transparencia is an instance of such a minimal case. A high enough level of default trust has built up in Transparencia that the government no longer needs to provide a pathway to higher justification to properly expect their citizens to accept its content.

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[29] See, for example, Lehrer 1997, p. 6; Foley 2001, p. 4; Railton 2004, p. 186; and Wright 2004, p. 194.

[30] I see my view as overall complimenting Vallier's in that it provides additional reason to join him in thinking there is an important relation between trust and public justification. Another way I take our views to contrast is that Vallier does not consider the role justification plays in lowering the need for trust and thereby making public justification possible.

My claim is not that levels of trust in Transparencia were always this high; the political authorities plausibly had to make more of a pathway available to the citizens in the past to establish their testimonial track record supporting this high level of trust. But given that a high level of trust has been achieved, the testimony about W contained in the email, so long as it is backed by good reasons, suffices for W's public justification. Although it might be nice of the government to provide more of a pathway, it is not required. Dependence on testimony is accordingly compatible with satisfying the Public Justification Principle.

4) Extent of Dependence.

In non-utopic situations, where there is more danger that testifiers are deceiving us or fail to establish an excellent testimonial track record, levels of default trust cannot be as high as in Transparencia. Laws consequently require more substantial justification than W in many cases. Either the content of testimony about the law must be more complex, or a more extensive path to higher justification must be available for inquisitive citizens willing and able to take it. Nevertheless, accepting this content or following this path often must involve some persons being dependent on testimony. So, in many cases, dependence on pure informative testimony is necessary for public justification.

This dependence is often necessary because we have limited resources of reasoning power and time. The acceptability of laws in many cases rests on the status of empirical claims. People ought to accept gun regulations only if they would in fact reduce gun violence; accept immigration reforms only if they would in fact not have significant negative impact on the economy and public safety; accept vaccination regimens only if they would in fact substantially

improve public health; accept environmental regulations only if they would in fact substantially contribute to the wellbeing of humans and their habitat; and so forth. Empirical considerations are even central to the acceptance of daylight savings time laws, with proponents of perpetual Daylight Saving Time pointing to studies purportedly showing that switching times increases the number of heart attacks[31] and opponents pointing to studies purportedly showing that switching decreases crime rates.[32] It is no exaggeration to say that empirical considerations crucially bear on almost every policy in ways similar to those just stated.

Confirming or disconfirming such empirical claims requires complex methods of investigation, such as statistical analysis, computer modeling, and a myriad of domain-specific techniques. As such methods become increasingly advanced, we require increasingly more technical knowledge and training not only to understand the theory of how these methods work but also to assess particular instances of their application. This comes at a cost from the standpoint of high-standard views of public justification. More complex justifications are more difficult to appreciate in the ways these views demand. At the same time, we should not seek to limit the use of complex methods. The success of science to predict and control events shows that such methods are our best way for knowing or at least confirming empirical claims relevant to laws, even if we may question the extent to which science reveals the underlying metaphysical structure of the world.

I admit that many of the above remarks are themselves empirical claims, but they are ones that many readers will agree are confirmed by their experience. The result is that while

[31] Sandhu, Seth, and Gurm, 2014.
[32] Doleac and Sanders 2015.

political philosophers have acknowledged that experts of some kind are helpful in making decisions about which laws to accept,[33] this turns out to be an understatement. Experts are not just helpful. In many cases, we cannot reasonably expect individuals to be justified in accepting a law without depending on the testimony of one or more persons that the empirical evidence adequately supports the law's imposition.[34] This testimony is the product of a complex network of testifiers comprised of politicians, scientific experts, members of the media, and so forth in which citizens are embedded and through which their connection to a high-standard justification is mediated.

We should consequently expect features of these networks such as their arrangement and composition to crucially influence whether a law is publicly justified.[35] This is the case even though we cannot reasonably expect citizens to discriminate whether the networks in which they are embedded have such features. Accordingly, what these features are and how they influence public justification is worth considering.

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[33] For instance, Gaus 2011, p. 252.

[34] Epistemologists have often observed that the ideal of the autonomous knower, who frequently depends on none but herself in gaining knowledge, is not only unrealistic but undesirable. See, for example, Fricker 2006, and Hardwig 1985. My main contention in this section is that we cannot and should not see our political situation as an exception to this general observation.

[35] This conclusion cross-cuts issues concerning the relevance of scientific expertise to public justification, such as the expert identification problem and the interpretation of Rawls' stricture that we may appeal to scientific results in justifications when they are based on methods and conclusions that are not controversial. (Rawls 2005, p. 224) No matter whether one thinks that both the methods and conclusions of science must be non-controversial among the public to meet this stricture – like Jønch-Clausen and Kappel (2016, p. 123) – or that only methods must be – like Badiola (2018, p. 429) – either aspect of science often cannot be accepted by the public except through trusting testimony. And even if philosophers such as Anderson in her 2011 are correct that the public is generally competent to judge which experts are trustworthy, the public often cannot be expected to reliably apply the criteria for making these judgments without trusting testimony. A typical citizen often cannot judge whether a purported expert is "continuing to repeat claims after they have been publicly refuted" or is "advancing crackpot theories" without depending on someone's testimony that the refutation in question has occurred or that the purported theories in question fail to meet minimum scientific standards. (Anderson 2011, pp. 147-148)

5) Consequences and Prospects.

Providing a full theory of testimonial networks and their relation to public justification is a massive undertaking. My intention in what follows is to consider a few very simplified examples to give the reader a rough idea of the relevant considerations. A testimonial network can be thought of as a set of persons and the various relations of testimonial dependence between them that constrains how they exchange information. The networks I consider contain just three citizens, A, B, and C. I presuppose that there is a law that C cannot be justified in accepting without first being justified in accepting a proposition, *p*. To accept this proposition, C must depend on the testimony from A and B in the way each network describes.

A person's assertion that *p* in a network is an outcome of her applying a set of relevant norms to a set of relevant propositional information. A norm or item of information is relevant just when a person either relies on it in assessing whether *p* or she judges that she should have relied on it. The networks I consider are idealizations both in that each person accepts a proposition only if doing so accords with her own norms and information and in that each person's information is coherent with respect to the perspective of every other person. For instance, if ~*q* is in C's information set, then *q* is not in the information set of anyone else. The idea is that disagreements among persons in the network arise only concerning how to judge the information held in common between them. By making such relations clear, we can consider what impact each kind of network has on *p*'s public justification.

In a Disparate-Norms Network, the set of epistemic norms that A, B, and C each ascribe to are all non-identical. This makes justifications fragile. Suppose that C is committed to accepting an epistemic norm only if it is consistent with current science. However, on the

norms that A is committed to, it is permissible to accept propositions by reading tea-leaves. Suppose that A accepts that *p* on this basis and could not have relied any other norm to do so. C and B need not know this. In fact, testifiers often do not make explicit the source of the information they report.[36] Furthermore, the network is arranged such that C must accept that *p* by depending on B's testimony that *p*, and B in turn must accept that *p* by depending on A's testimony that *p*.

It is not plausible that *p* is publicly justified for C in this network. The presentation of *p* is identical from C's perspective to a case where B and A have the same norms as her. But if C were informed of A's norms and information, C would not accept that *p* given A's information because C would not accept A's norms. In short, *p* is publicly justified to C as the product of a network of testifiers only if C's norms and information would not cause her to retract her acceptance that *p* upon learning the relevant norms and information of each testifier and how that testifier contributed to the network.

In a Shared-Norms Network, by contrast, all persons accept propositions according to the same norms. Assume that the persons in a Shared-Norms Network are in this condition not by chance but because they are jointly committed to finding a set of shared epistemic standards for their judgments. In an instance of such a network where the testimonial dependence relations are arranged in the same way as the one just described, the proposition *p* would plausibly be publicly justified to C. This network's downside, however, is that acquiring and preserving a set of shared epistemic norms will be difficult in large networks under conditions of reasonable pluralism about norms. In this respect, such networks are arguably too

[36] Goldberg 2018, p. 102.

idealistic and, if they exist at all, easily change into a Disparate-Norms Network when new members join them or old members acquire new beliefs.[37]

The Encapsulated-State Network avoids some of the problems of the other two. In this network, C does not directly depend on any individual highly but rather on the network as a whole. This is because in this network *p* is asserted by the group (perhaps a government) according to internal procedures each member is committed to following. Suppose, for instance, that *p* is not 'asserted' by the group composed of A and B unless the assertion is voted approved by every member. If B adheres to norms C would accept and A adheres to tea-leaf-reader norms that C would not accept, C can nevertheless be justified in accepting the testimony that *p* from the group, even if A is the one who asserts that *p*. This is because the rules of the group ensure that none of its members asserts that *p* unless there is someone in the group who accepts *p* in a way that C would endorse.

A disadvantage of the Encapsulated-State Network is that this outcome depends on a representative existing in the group whose norms and information are compatible with C's and on the voting procedure requiring unanimity. With a majority voting procedure, it can happen that *p* is asserted by the group when all those who share C's norms form a minority that votes against assertion. Acceptance of *p* would not be justified for C in such a case. Yet insisting

[37] The contrast between the disparate and shared norms networks adds a level of complexity to the debate between convergence and consensus views of public justification. Both views hold that public justification requires everyone to have sufficient reason to accept the law. But whereas convergence theorists hold that the reasons people have to accept the law can be different, consensus theorists hold that these reasons must be the same, or at least mutually acceptable. The propensity of testimony to mask the reasons supporting it suggests an extra challenge for convergence theorists, since a network of testifiers with different and incompatible reasons, like the Disparate-Norms Network, is liable to produce merely apparent public justifications. At the same time, the encapsulated and extended state networks below suggest that persons giving testimony on the basis of different reasons can nevertheless publicly justify laws. So, while testimonial networks are relevant to the debate between consensus and convergence views of public justification, their implications for this debate are not straightforward. I hope to pursue this issue in future work.

against a majority voting procedure is not likely to be practically viable because a unanimous vote is often difficult to obtain.

Finally, there is the Extended-State Network. B is an agent outside the government whose norms and information are compatible with C's. A is a representative in the government who asserts that *p* but whose norms are not compatible with C's. Instead of B's giving her own rationale for every assertion A makes, C knows that if A's assertions are not acceptable according to C's norms and information, then B will speak against them. Otherwise, B remains silent. So, in this network, it is not A's testimony that justifies C's acceptance that *p* but rather A's testimony in combination with B's silence that ~*p*.[38]

The advantage of the Extended-State Model is that in enables persons to justifiably accept propositions even if no one whose norms and information are compatible with hers represents her in the government. A disadvantage is that it will be difficult for the government to co-ordinate with agents outside it like B. There is no mechanism within the government that ensures that it will not create a law that such agents will correctly identify as not justified based on their norms.

This cursory survey by no means exhausts the possible models of testimonial networks. It also leaves much out, such as what influences justification when there are a vast number of testifiers, how conflicting testimony or information influences justification, and so forth. These and other topics are plausibly worth further inquiry.

[38] For an extended discussion of how such silences can function as testimony, see Goldberg 2010, ch. 6.

6) Conclusion.

By now we have seen that testimony is in many cases necessary for public justification. The limitations of resources like reasoning power and time frequently require us to trust the testimony of others to gain conciliation with the laws that political authorities impose. Whether the Public Justification Principle is thereby satisfied depends on the properties of the network of testifiers through which we receive this testimony and whether this network appropriately connects us to a higher standard of justification. In realistic cases, this means that conciliation may not in fact be warranted even though it appears to be from our limited perspectives.

To take a broader, speculative look, this view of public justification suggests that a desire for a deeper conciliation with our social world cannot be satisfied. Hegel remarks that, "Human beings must acknowledge and scrutinize in their own thoughts whatever is said to be normative, whatever in the world is said to be authoritative; what is to rank as established must have authenticated itself by means of thought."[39] It is difficult to not hear a similar sentiment behind Waldron's oft-quoted line expressing the spirit motivating public justification that opened this essay.

We may expect what is authoritative to explain itself at the tribunal of our understanding, but for better or worse, the increasing complexity of the social order makes grasping such explanations frequently impossible. While this order has given us an unprecedented store of communal knowledge, on the individual level it has resulted in the facts receding behind a veil of testimony. Some persons of privilege may see further behind this veil than others, but no one can penetrate it completely. Through building political communities

[39] Hegel 1990, pp. 131-132.

that foster trust and constructing good testimonial networks, we can hopefully make life under this veil more than bearable. Perhaps this will not completely save us from living in a human rat-king, but it seems the best we can do together.

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