

The Structure of Judicial Trust

Xieyang Geng

Law School, Beijing Normal University, Beijing 100875, China

cxcy24@126.com

Abstract

The structure of judicial trust refers to the connection and combination of various constituent elements in the process of judicial trust formation. The study of the structure of judicial trust is to study the question of who trusts, trusts what ,why trusts, and how to trust.Judicial trust mainly includes three structural elements: trust subject, trust object and environment circle. The research on the structure of judicial trust helps to reveal the inherent organic system of judicial trust, and thus recognizes the function of judicial trust and lays the foundation for studying the formation mechanism of judicial trust.

Keywords

Judicial trust, Subject structure, Object structure.

1. The Subject Structure of Judicial Trust

To study the formation of judicial trust psychology, it is necessary to explore the behavioral characteristics and behavioral motives of judicial trust subjects. The subject of judicial trust refers to the party that trusts others. Judicial trust is a kind of psychological activity with expectation, so the trust subject should have basic behavioral ability and thinking ability. The author defines the subject of judicial trust as citizens, or the public. According to Aristotle, citizens refer to people who participate in political activities or judicial affairs. The subject of judicial trust does not include social organizations, but is limited to natural persons. Because trusting others is a kind of psychological activity, only natural persons can choose to trust or not to trust. In contrast, trust objects can be organizations or institutions. Depending on the degree of judicial participation, the subject of judicial trust can be further subdivided into litigants, lawyers, witnesses , judges, prosecutors, and the public. The study of judicial trust must proceed from the subject of trust, that is, the citizen itself. So we need to analyze how the trust subject forms the cognition and evaluation of the judiciary in the process of communication and interaction with the judiciary. At the same time, it is necessary to analyze how the reform of the judicial system and the operation of the judicial process have an impact on the psychology of citizens. The subject of judicial trust is a natural person with certain ability to act and think, and is influenced by various factors such as political system, economic activities, and social culture. At the same time, whether the trust subject will trust others is also closely related to his own trust tendency and trust culture. His own trust tendency can be called "basic trust" or trust impulse. Erickson believes that the basic trust of the individual is basically completed in his infant stage. If the baby is well cared for and can get a sense of security from the surrounding environment, he will have a basic sense of trust, and vice versa. Basic trust can be said to be the core of people's healthy personality. Trust culture, on the one hand, regulates the behavior of the trust subject, and on the other hand regulates the behavior of the trust object. So trust culture can constrain both sides of the trust relationship, and bring a general sense of security to all parties. In this context, people are more willing to trust others. Therefore, in a country with high trust culture, the degree of judicial trust is generally higher.

Judicial trust is the social behavior made by the trust subject. Max Weber puts forward four behavioral motives about social behavior: the first is purposive rationality; the second is value rationality; the

¹ See Erickson, E. H. *Childhood and Society*. New York: Norton, 1963. pp247-274.

third is emotional condition; the fourth is tradition or customary habit. Weber believes that the actual behavior is determined by the combination of the above factors. And the decision of the trust subject is also affected by the above four behavioral motives.

1.1 The Value Rationality of the Judiciary—Justice

Value rationality refers to the pure belief of the actor in the ethical value, aesthetic value and religious value of a particular behavior. The value rationality of the judiciary refers to the value standard of judicial conduct from which it obtains legitimacy and the public's voluntary compliance. In order to gain the public's trust, the law should contain the value that is consistent with the roots of the human spirit, that is, "something that is eternal or at least relatively eternal".

What is the "eternal concept" or value of the judiciary? There are different views in the history of legal thought. The school of empirical law proposes that there is no eternal or absolute moral value criterion applicable to all ages and all nations in human history. The only thing that exists is the relative value criterion. The jurist should only study the real legal system. Hart and Fuller launches a debate on the relationship between law and morality. Fuller advocates that law and morality are inseparable, and proposes the inherent morality of law, i.e. generality, openness, clarity, consistency of official behavior, stability, non-contradictory provisions, feasibility. Hart proposes that law and morality are not necessarily related, but people should obey the "minimum natural law." Pound divides the origin of the authority of the legal order into direct origin, ultimate origin and moral origin. The direct origin is the coercive power of the law. The ultimate source is the recognition and consent of the people, and the moral source is justice. Even in a world of cultural diversity, justice is still the most important value of law and the judiciary.

If the public is making the trust decision because of the value of the judiciary in pursuing fairness, then the behavior of the trust subject reflects the value rationality. In practice, there are quite a few persons who make trust decisions based on the expectation of pursuing fairness and the protection of rights. So the judiciary should meet such expectations of the public. On the one hand, the judiciary should achieve justice through unifying the application of law, strengthening the protection of rights, and regulating civil enforcement. On the other hand, the judiciary should fully consider the moral factors in judicial decisions and ensure that the judgments do not conflict with social ethics.

1.2 The Purposive Rationality of the Judiciary—Judicial Utility

The purposive rationality refers to the adoption of reasonable means to achieve the specific purpose of the actor. Purposive rationality is a basic motivation for citizens to choose to trust the judiciary. It refers to the quality and ability of the judiciary to meet the needs of citizens, that is, to maximize the benefits of the citizen as a rational economic man. Tocqueville believes: "One reason why Americans respect and trust the law is because of their concern for private interests." Only if the judiciary is effective, the public will choose it as a way of right relief. Only if the judiciary has practical effects on dispute resolution, order maintenance, and human rights protection, the public will choose to trust the judiciary. The judiciary, which cannot provide benefits to the public, will be abandoned by the public.

The purposive rationality of the judiciary is expressed in the following four aspects. The first is the relief of rights. The right that lacks access to relief is hard to be called the true right. Except a few issues of politics and military affairs, all rights are appropriate or possible to be remedied by judicial means and should be the subject of judicial power. If the scope of judicial protection of rights is small or artificially restricted, the usefulness of the judiciary to the public is greatly reduced, affecting the public's trust in the judiciary. The second is the enforcement of judicial decisions. If the judicial decisions cannot be enforced, it means that the party's remedies have been exhausted but justice is still not done, completely destroying the public's psychological basis for judicial trust. The third is the efficiency of judicial procedure. Justice and efficiency are the two main themes of judicial work. The slow judicial process will affect the life and social production of the parties and hinder the public's trust in the judiciary. The fourth is the cost of the judiciary. The most intuitive reflection of the interests of the judiciary is the ratio of judicial costs to judicial benefits. High judicial costs will inhibit

the public's willingness to choose judicial settlement of disputes and affect people's trust in the judiciary.

The public's direct or indirect experience of the above four aspects affects his cognition of the purposive rationality of the judiciary. After the rational measurement of judicial costs and judicial benefits, the public is willing to choose the judiciary as the first choice for solving the problem, then the purposive rationality of the judiciary is highlighted, which helps to form judicial trust.

1.3 The Emotional Factor of the Judiciary—Justice for the People

The third major factor affecting social behavior is emotional conditions. The conclusion of the law of the twelve table states that the happiness of the people is the highest law. Protecting people's well-being as the supreme goal is the fundamental way for the judiciary to gain emotional identity. Unless people think that it is their law, they will not respect the law. It is the fundamental task for modern justice to pay attention to the rights of every individual and to serve the collective well-being of the people. Justice for the people includes the following requirements.

The first requirements is that we should highlight the judicial protection of human rights. The judicial protection of human rights is the touchstone for measuring the character of the judiciary. The judicial protection of human rights includes: The first is the protection of legal rights and natural rights. The judiciary should not only implement the statutory rights of citizens as real rights, continuously eliminate the "hidden rules" in the judicial field, and expand the scope of dispute resolution; but also should exert its own initiative to transform certain natural rights into legal rights through judicial review and legal interpretation. The second is the protection of political rights, personal rights and property rights. As the awareness of civil rights increases, it can be foreseen that the public's appeal for political rights and personal rights will increase. The third is the protection of substantive rights and procedural rights. The court should not only achieve justice, but also achieve justice in a fair manner.

The second requirements is that the judiciary should serve the people. The service of the judiciary is reflected in the following aspects. The first is to serve the economic and social development. The judiciary should serve the adjustment of economic structure, properly handle commercial cases involving corporate governance, bankruptcy liquidation, and maintain the order of production and operation of enterprises. The judiciary should serve the development pattern driven by innovation, focus on increasing punishment and reducing the cost of safeguarding rights, and strengthen the judicial protection of intellectual property rights. The second is to protect people's livelihood. The judiciary should pay attention to the impact of policy changes on people's livelihood, properly handle disputes in the fields of health care and labor security, and safeguard the vital interests of the people. The judiciary should pay attention to the judicial needs of women, children and the elderly, and protect the interests of special groups.

To sum up, the judiciary should strengthen the judicial protection of human rights and serve the people, implement the concept of justice for the people, and enhance the emotional connection between the judiciary and the public, so as to help the trust subject to form judicial trust.

1.4 The Traditional Factors of the Judiciary - Historical Inheritance

The last element that determines social behavior is traditional factors and customary conventions. Traditional factors are important because they not only affect people's external behavior, but also deeply embedded in the human mind in the form of "historical memory" or "national character." The people in our country lack the concept of trusting law and justice, which leads to the weak social foundation of judicial trust. Despite this, the judicial tradition still deeply affects judicial system and judicial concepts, and is internalized as part of the collective memory of the people through generations. If a completely different judicial system is established without considering the judicial tradition, it will lead to public suspicion, exclusion and escape from justice.

In China, especially in the rural areas, the influence of traditional culture on the legal system is very far-reaching. Soft norms such as morality, village rules and customs affect people's modes of thinking

and behavior. Fei Xiaotong points out that there is a serious conflict between local ethics and judicial ethics. If a judge does not consider moral issues and ethical concepts, he will be difficult to dissolve into Chinese rural society. When the existing rules conflict with traditional ideas, the operational effectiveness of the law will be affected. At this time, the judge may make certain concessions and compromises to the traditional culture, or exert greater subjective initiative and wisdom to eliminate tensions and conflicts between law and tradition.

In the above situation, it is prone to the phenomenon that "the legal effect and the social effect are not uniform". On the surface, it is caused by the judge's "mechanical justice", and the deeper reason is the conflict between the external rule of law and the local cultural tradition. This requires the judge to use the mediation within the rigid legal framework to achieve the goal of balancing the interests of both parties. The use of mediation means is a rational choice to face the tradition and reality, and is the necessary way to cultivate judicial trust. At the same time, the introduction of judicial policies should fully consider the degree of acceptance of public opinion, otherwise it will affect the implementation effect and the formation of judicial trust.

From the above, the judiciary should consider the historical inheritance, respect the public order and good customs, and safeguard social welfare through judicial decisions. In the case, the public will make trust decisions based on the traditional factors and form judicial trust.

2. The Object Structure of Judicial Trust

The object of judicial includes judicial systems, judicial values, judicial organizations, and judicial personnel. The structure of the judicial system determines the complexity of the object of judicial trust. Therefore, citizens' trust in the judicial system is multifaceted and manifests in complex structural forms.

The structure of the object of judicial trust has similarities with the structure of the scientific theory system. Scholars propose that a complete scientific theory system consists of "hard core" and "protection belt". Hard core refers to the most basic and core theory, and protection belt refers to various auxiliary hypotheses of the core theory. The most obvious difference between various theories is the difference about the hard core. Similarly, judicial trust objects can also be divided into hard cores and protection bands. The judicial system and judicial value belong to the hard core part of judicial trust objects, while judicial organizations and judicial personnel belong to the protective belt.

2.1 Hard Core: Judicial System and Judicial Value

2.1.1 Judicial System

The so-called institution(system) is a kind of game rule, which is a series of constraints designed by people to limit each other's behavior.² Because the judiciary described in this article is limited to the court, the judicial system mainly refers to the trial system, implementation system and related systems of judicial organization and management.

Judicial system belongs to the hard core part of the judicial trust objects. If the public does not recognize the judicial system, the judicial system is difficult to play a role in achieving the functions of resolving disputes, establishing rules, and restricting public rights. The judicial system is difficult to operate efficiently without the public trust and respect. Compared with the traditional judicial system, the modern judicial system is trustworthy. The trustworthiness of the modern judicial system is closely related to its formal rationalization. The rationalization of this form makes the judicial system consistent, clear and predictable. In addition, the trustworthiness of the judicial system lies in the existence of a supervision mechanism, so that the results live up to the expectations of the trust subject. It is because of the existence of these supervisory systems that trust subjects can be confident in ensuring that the risk of trust is low.

² See North, D. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press, 1990, p.3.

It can be seen that due to the formalization and rationalization of the modern judicial system, it is possible to ensure the predictability of judicial power. The public can form a relatively stable psychological expectation for the judicial system, thereby independently arranging daily life, designing trading plans, and planning the future.

2.1.2. Judicial Value

Judicial value refers to the social value maintained and demonstrated through judicial trial activities, mainly including justice, freedom, humanity, and efficiency. The justice value means that the judiciary must aim at the pursuit of justice and demonstrate fairness and justice through judicial activities. Judicial justice is divided into substantive justice and procedural justice. The substantive justice is relative and limited, because people do not have the rationality and ability to eliminate wrong cases, and procedural justice itself does not guarantee the substantive justice of each case. The role of procedural justice is to ensure that the judicial decision is accepted by the parties, and to restrict the arbitrariness of the judge.

The freedom value requires the judiciary to become a weapon to protect civil liberties. On the one hand, the judicial decision should define the legal and reasonable boundaries of freedom. On the other hand, the judiciary must provide the guarantee for the relief of freedom. The humanity value means that the judiciary must respect the value of human beings, safeguard human dignity, and protect human rights through judicial channels. The effectiveness value requires maximizing the use of judicial resources, promoting the convenience litigation mechanism, and maintaining the rights and interests of litigants in a timely manner.

Judicial value belongs to the hard core part of the judicial trust objects. Judicial value implies the expectation of the public to the judiciary, and provides a conceptual basis for the judicial system. It is of great significance to the reform of the judicial system and the operation of judicial power, and plays a value-leading function. Therefore, only the public believe that the judicial system can realize the values of justice, freedom, humanity and efficiency, they can truly trust the judicial system.

2.2 Protection Belt: Judicial Organization, Judicial Personnel

2.2.1. Judicial Organization

Organization refers to a collection of relatively clear boundaries, standardized orders (rules), authoritative levels, communication systems, and member coordination systems (procedures). The judicial organizations described in this article refer to courts at all levels. The judicial organization is the realistic carrier of judicial power, with the mission of explaining the law, finding the facts, resolving the disputes.

In the judicial trust relationship, the judicial organization is in an advantageous position. On the one hand, the trust subject cannot punish the judicial organization's breach of trust by stopping cooperation. On the other hand, it is difficult for the trust subject to find an alternative trust object. Therefore, judicial organizations should assume primary responsibility for the formation and maintenance of trust. The distinguishing feature of the judiciary is that in the judicial process, the parties involved in the litigation are provided with a specific form of participation; in this form of participation, the participants provide evidence and debate rationally for the judicial decision in favor of themselves.³The above distinguishing features of the judiciary can be summarized as Participation Thesis.⁴Any measure to enhance such participation will improve the judiciary. Any measures that undermine this participation will undermine the integrity of the judiciary itself. At present, judicial organizations still have shortcomings in guaranteeing the participation rights of litigants.

2.2.2. Judicial Personnel

³ See Lon L Fuller, The Forms and Limits of Adjudication, 92 HARV. L. REV. 353 (1978), p364.

⁴ See Melvin Aron Eisenberg, Participation, Responsiveness, and The Consultative Process: An Essay for Lon Fuller, 92 Harv. L. Rev. 410.1978-1979, p411.

The key to the effective operation of a good judicial system lies in the actions of judicial personnel. The essence of judicial power is judgment. The public's trust in the judiciary mainly depends on their judgments. Judicial judgment directly affects the allocation of rights and obligations, the guidance of public behavior, and the formation of morality. Since the judiciary is regarded as the last line of defense for social justice, it is difficult to obtain other relief after exhausting judicial relief. Therefore, the public holds high hopes for the impartiality of judicial personnel to exercise the power of judgment.

The strength of judicial judgment depends on the degree of professionalism of judges. Judicature is a professional and rational activity. Firstly, it is an activity of "human rationality" rather than "natural rationality". Judges should have profound knowledge, meticulous logical reasoning, and rich judicial experience. The popular thinking and the simple justice concept do not meet the requirements of the sophisticated legal symbol system. Secondly, it is an activity that transforms "knowledge rationality" into "practical rationality" and transforms the abstract law into a specific law. Thirdly, it is an activity that transforms various contradictions and conflicts into technology and procedures. The above-mentioned characteristics of the judiciary determine that the judge possesses the characteristics required by the "career", that is, "a set of specialized but relatively abstract scientific knowledge or other intellectual structures and systems" as described by Posner. Therefore, the formation of a community of professional judges is an inherent requirement for the formation of judicial trust and a necessary condition for advancing the rule of law.

3. The Environmental Structure of Judicial Trust

The understanding of judicial trust cannot be separated from the environmental structure. The formation and development of judicial trust cannot be separated from the external environment including economic environment, political environment and cultural environment. The external environment determines the conditions and space for the formation of judicial trust.

3.1 Economic Circle

The economic structure in a specific time and space affects the judiciary. Therefore, the economic environment constitutes the material environment for the formation and development of judicial trust. Specifically, it is reflected in the following aspects.

Firstly, the level of economic development determines the level of legal development, and thus determines the form and extent of judicial trust. From the perspective of human history, different levels of social and economic development correspond to different modes of trust, and thus the form of judicial trust is also different. In China's traditional agricultural society, the level of economic development is relatively backward. Judicial trust belongs to interpersonal trust rather than institutional trust. In a self-sufficient farming society, the interaction between people based on blood and geography constitutes the basis of interpersonal trust. Each person forms different trust according to the strength of the relationship. As far as the judiciary is concerned, the people do not consider the legitimacy of the system. They support and trust the judges who can maintain justice. It is essentially an interpersonal trust based on personal virtue and ability.

Secondly, the change of the economic conditions determines the change of the mode of judicial trust. With the transformation of traditional society into modern society, institutional trust replaces interpersonal trust. Institutions and systems can provide more stable and efficient behavioral expectations, and institutions and systems become the environmental elements of daily life, providing a basic framework for the stability of modern society. With the establishment of the modern judicial system, China's contemporary judicial trust is mainly institutional trust. The shaping of the image of judges helps to gain the trust of the public because it fits the psychology of interpersonal trust.

Thirdly, the distribution of economic interests affects judicial trust. The so-called interest refers to the expectation that the public's needs will be satisfied. The pursuit of interests constitutes the driving force for the development of human society. Interests have their inherent hierarchical structure, and generally can be divided into personal interests, collective interests and social public interests. The

process of judicial judgment is actually the process of confirming, distributing and guaranteeing various interests. If the judicial decisions can realize the fair and reasonable distribution of interests, and provide timely relief to the infringed interests, the public will trust the judiciary. On the contrary, if the judicial decisions unfairly distribute the interests, the public will not trust the judiciary.

3.2 Political Circle

Judicial trust is not only closely linked to the economic environment, but also subject to the operation of political power. Aristotle believes that human beings are essentially political animals. The public's trust in the judiciary is influenced by political factors. Some scholars believe that there are seven background factors that influence the formation of trust. The first is the certainty of norms, the second is the transparency of social organizations, the third is the stability of social order, the fourth is the responsibility of power, the fifth is the arbitration of rights and obligations, the sixth is the enforcement of duties and obligations, and the seventh is the decision-making methods of government departments. Among them, the responsibility of power, the execution of responsibilities and obligations, and the decision-making methods of government departments can reflect the influence of political environment on the formation of judicial trust, that is, how the actions of administrative organs affect the public's trust in the judiciary.

The responsibility of power requires that power will be exercised cautiously in a responsible manner. If the power of administrative organs is limited and subject to the supervision of other agencies, the risk of abuse of power is low, and the public is more willing to trust public authorities, including the judiciary. If the public thinks that the process of making political decisions is in line with ethical requirements and can safeguard the interests of the public, they will trust the government. On the contrary, if the exercise of political power is arbitrary and irresponsible, then the public has to bear the uncertainty of power exercise, it is difficult for the public to trust the judiciary. If the public thinks that political decision-making only protects the interests of a few elites and neglects the public interests, they will choose not to trust.

The enforcement of responsibilities and obligations means that violations of the rules can be effectively pursued. If the public believes that administrative organs can effectively punish violations of the rules, they will feel a sense of security, universal trust will be formed, and trust in the judiciary will increase. On the contrary, if administrative organs condone the illegal act, trust is difficult to establish.

The good decision-making method of government departments requires that administrative organs will respect the personality, dignity and individuality of each citizen. If administrative organs treat each citizen as the subject of rights, respect his personality, and protect him from violence and manipulation, the public will have a sense of security and easily form trust in the judiciary. Conversely, if the personality and dignity of each citizen will not be respected, then widespread mistrust is easy to form. If the administrative organs give citizens a certain degree of trust, and the citizens will not be monitored, checked and supervised unless there are sufficient evidences, citizens will trust administrative organs and the judiciary accordingly.

In the field of judicial trust, there is a phenomenon of diffuse trust. The so-called diffuse trust means that if the public trust some departments of government, he tends to trust other departments of government. Therefore, the level of trust of the public in the administrative organs will affect their level of trust in the judiciary. If the public thinks that the administrative organs performs well in terms of the responsibility of power, the enforcement of duties and obligations, and the decision-making methods of the government departments, they will trust the administrative organs, and also trust the judiciary.

3.3 Cultural Circle

Human psychology (including judicial trust psychology) cannot escape the influence of the cultural circle. Culture plays an important role in the formation and development of trust. The difference in social culture leads to different trusts. In some social cultures, people tend to trust others, that is, the

level of trust will be higher, while in other social cultures, people's level of trust will be low. The culture of trust, on the one hand, regulates the behavior of the subject of trust, and on the other hand, regulates the behavior of the object of trust, thus binding both sides in the relationship of trust, and bringing a general sense of security to all parties. In this context, people are more willing to make trust decisions.

In a society with high trust culture, the trust object has broken through the kinship and clan restrictions. Therefore, people are more willing to trust the judicial system. The culture of high trust plays a role in the development of judicial trust. On the contrary, in a society with low trust culture, people generally hold pessimistic attitudes and tend to distrust strangers. So people are not willing to trust the judicial system. It requires the judicial organs and judicial personnel to make greater efforts in order to achieve certain results.

Max Weber believes that under the influence of Confucianism, the trust of Chinese society is a special trust. People generally have a distrustful attitude towards strangers. Among the traditional Chinese culture, there are relatively few elements of trusting the law and the judiciary. The Chinese legal tradition is most influenced by Confucianism. Under this circumstance, the ancient Chinese society became a duty-based society, people have to fear the law and will not trust the law, and litigation is considered to be an improper act. In the event of disputes, people are reluctant to choose litigation, and local officials are trying to resolve legal disputes through moral education. Local officials also often regard "decades without litigation" as their achievements in education and governance. The judicial power is attached to the administrative power, and the independent legal professional community cannot form. Therefore, influenced by the traditional culture, the cultural atmosphere of judicial trust is relatively weak. Even today, when the foreign judicial system and judicial concept are gradually introduced, the influence of traditional cultural concepts is still far-reaching.