

The Formation Mechanism and Influencing Factors of Judicial Trust

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Abstract

The formation and development of judicial trust has its own laws, and the disclosure of such laws helps to propose countermeasures for cultivating judicial trust. The research on the formation mechanism and influencing factors of judicial trust mainly investigates the dynamic mechanism and influencing factors in the process of judicial trust formation, how the various factors interact, and how to promote the formation of judicial trust.

Keywords

Judicial trust, Formation mechanism, Influencing factors.

1. The Formation Mechanism of Judicial Trust

Considering the research of the formation mechanism of trust by various scholars, this paper summarizes the formation mechanism of judicial trust into four categories, namely, cognitive generation mechanism, rational choice mechanism, institutional shaping mechanism and cultural cultivation mechanism.

1.1 Cognitive Generation Mechanism

The theory of cognitive generation is based on the exploration of individual psychology, emphasizing the important role of individual personality in the process of trust formation. According to the theory of cognitive generation, the individual's trust tendency mainly comes from the experience of his early years. If a person has a successful experience of trust during his childhood, he tends to be positive about the "trustworthiness" of others, and he is willing to trust in strangers. Moreover, once the trust personality is formed, it is more difficult to change unless there is a major deception.

Erickson believes that the basic trust of an 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. 1Psychologist Rotter believes that trust is a general expectation of an individual's speech or written commitment to others, which is derived from his past life experiences. When an individual's expectation of the trust object is realized, his trust tendency is strengthened, and he is willing to give trust to others, thereby generating a stable trust personality. 2Some scholars believe that people's level of trust is closely related to their trust position, and trust position refers to the overall attitude of the individual about whether to trust others. A person with a relatively high position of trust usually thinks that others are credible, and even if there are some judgmental errors, the high-trust position will not be easily changed. 3

People with a relatively high position of trust usually have a positive attitude towards society and humanity, and generally tend to think that others are reliable and kind. Therefore, even if the information is incomplete, even if the trust object proves to be untrustworthy, people with a relatively high position of trust are more inclined to trust others. People with a relatively low position of trust are skeptical about society and humanity. In the case of incomplete information, they tend to choose

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

² See Erickson, Rotter, J. B. "A new Scale for the Measurement of Interpersonal Trust". *Journal of Personality*, 1967, (4) .

³ See Riker, W. H. "The Nature of Trust". In Tedeschi, J. T. (Ed.). *Perspectives on Social Power* . Chicago: Aldine Publishing Company, 1971. pp63-81.

distrust. In the eyes of people with a relatively low position of trust, trusting others is very risky. The formation of low-trust position is often closely related to the baby stage or early life experience. If a person grows up in a broken family or a bad community, or if his family relationship is not harmonious, he will have a higher probability of holding a low trust position when he grows up. The personal trust position, once formed, is relatively stable and will not change easily.

In summary, the theory of cognitive generation believes that trust is a personality trait and relatively stable. A person's early life experience plays an important role in the formation of his trusting personality and trust position. For the formation of judicial trust, the theory of cognitive generation means important reference value. The cognition of judiciary is an important variable for the public to form trust in the judiciary. The formation of judicial trust psychology comes from the recognition and acquisition of past experience of trust subjects. The public can approach the judiciary, understand the judiciary, and recognize the judiciary through direct methods (participation in litigation and enforcement activities) or indirect methods (media reports), and thus form a psychological trust or distrust of the judiciary. Cognition of the judiciary is the starting point for the formation of judicial trust. Therefore, if we can change the public's participation in the judiciary, improve the litigation service work, and create a good image of the judiciary, we can affect the public's perception of the judiciary, and thus change the public's trust of the judiciary.

1.2 Rational Choice Mechanism

The philosophical basis of the rational choice mechanism is utilitarianism, and the premise of the rational choice mechanism is "rational people", which assumes that the pursuit of maximization of self-interest is human nature. Some scholars use rational choice theory to explain the generation of trust, and believe that trust subjects pay trust, which is based on calculating their own benefits and risks. According to the theory of rational choice, trust subjects choose to trust others only to enhance their own interests. Because trust itself means risk, trusting others is to put their own resources under the control of others. Therefore, if the trust object is a credible person, it is very likely to obtain the expected benefits; if the trust object is not a credible person, trust subject will suffer very large losses. Based on the above ideas, in the view of rational choice theory holders, rational people do not easily make trust decisions, and rational calculations of interest and risk comparisons are made before decisions are made.

The study of trust and cooperation strategies in game theory focuses on the logic of rational choice theory. Through the simulation experiments, Axelrod finds that for a single game, it is more effective for the actor to choose betrayal. In many games, the optimal choice is not betrayal, but "one revenge for one revenge". "one revenge for one revenge" means that the actor takes the opponent's last strategy each time. If the opponent chose to trust last time, then the actor will also choose to trust this time, so the trust relationship will be maintained until the opponent begins to choose to betray.⁴ If the opponent chose to betray last time, then the actor will also choose to betray (ie, distrust) this time, and retaliate against the opponent's last betrayal. Studies have shown that "one revenge for one revenge" strategy is of maximum benefit to the actors. It can be seen that to enhance the trust between actors, it is necessary to increase the number of games. Through long-term game, the actor finally finds that mutual trust and cooperation are the best choice for all parties.

Coleman believes that the trust subject must consider three factors. One is the potential gain (G) that the trust choice may achieve for himself, and the other is the potential loss (L) that the trust choice may cause to himself. The third is the probability of the trust object being trustworthy (P). When the product of the potential gain and the credible probability exceeds the product of the potential loss and the probability of untrustworthiness, ie, $G \cdot P > L \cdot (1 - P)$, the rational person will choose to pay the trust because it can benefit himself. If the rational person finds that $G \cdot P < L \cdot (1 - P)$, that is, the product of

⁴ See Axelrod, R., *The Evolution of Cooperation*. New York: Basic Books, 1984, pp.73-87.

the potential gain and the credible probability is less than the product of the potential loss and the probability of untrustworthiness, then his optimal choice is not to trust, thus avoiding bigger losses.⁵ Hardin's point of view also belongs to the theory of rational choice. Hardin believes that trust is not a simple expectation of goodwill and reliability of others, but an "implicit interest." The choice of trust is related to both the actor's own interests and the interests of others. The reason why the trust subject is willing to trust others is that trusting others will act for his own interests, and doing so is in the interest of others. Therefore, trust is specific. The trust subject maybe choose to trust others in a specific matter, and not to trust others in other matters.

The theory of rational choice has a certain explanatory power for the formation of judicial trust. The public is committed to trust based on communication and interaction with the judicial system. In order to avoid the risk of trust, the public needs to analyze the object of trust before making a decision, and form a basic judgment about whether the object of trust is credible. The formation of this judgment depends on a comprehensive understanding of the judicial information. If the public has analyzed that the potential benefits of trusting justice are greater than the potential losses, and the probability of the judicial authorities being trustworthy is high, the public will choose to trust the judiciary. In other words, the public trusts justice because they believe that such trust implies their interests and that trustees will act for their own benefit. According to the theory of rational choice, the judiciary should enhance its credibility, reduce the probability of dishonesty, so that the public is more willing to trust the judiciary after rational calculation. How to change the self and reduce the information asymmetry, let the public think that trusting the judiciary is a good thing, is a subject that needs continuous research.

1.3 Institutional Shaping Mechanism

Institutional shaping theory believes that institutions are the most important foundation of trust. If you want to reduce the risk of trust, you need to appropriately restrict the freedom of others. The most important limitation is the institutional limit. The so-called institution is a kind of game rule, which is a series of constraints designed by people to limit each other's behavior.⁶ Institutions can effectively constrain the behavior of trust objects through mandatory forces, reducing the uncertainty of behavior. So trust subjects can gain a sense of security and are more willing to make trust decisions.

Luhmann divides trust into interpersonal trust and institutional trust, and believes that in the case of incomplete information, institutions provide a solid guarantee for the formation of trust. The effective operation of institutions makes it possible to take disciplinary action against dishonesty, greatly reducing the risk of trust and motivating people to trust. Zucker divides trust into characteristic trust, process trust and institutional trust, and emphasizes the important role of institutional trust. He believes that the rise of institutional trust has promoted the prosperity of the US economy.⁷

Political scientist Offe believes that the reason why we are willing to trust others is because of the guarantee of institutions.⁸ First, the institution has "moral rationality" and has the function of value shaping, thereby changing people's expectations and promoting the formation of trust. Second, the institution has coercive power and ability. The institution can provide protective legal rights and reduce the risk of trusting strangers. However, not all institutions have the ability to promote trust. Only those institutions that are well-designed and effectively implemented can encourage and promote cooperation and play a role in promoting the formation of trust. In short, the institution is the basis for the formation of trust. A good and effective implementation system helps to promote

⁵ See Coleman, J.S. *Foundations of Social Theory*. Cambridge, MA: Harvard University Press, 1990, pp.91-116.

⁶ See North, D. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press, 1990, p.3.

⁷ See Zucker, L.G. "production of Trust: Institutional Sources of Economic Structure, 1840-1920" In Staw, B.M. & Cummings, L.L. (Eds.), *Research in Organizational Behavior*. Greenwich, CN: JAI Press, 1986, (8), pp.53-111.

⁸ See Offe, C. "How Can We Trust our Fellow Citizens?" In Warren, M.E. (ed.), *Democracy and Trust*. New York: Cambridge University Press, 1999, pp.42-87.

universal trust in the whole society, and the lack of institutional supply, and the institution that cannot be effectively implemented hinder the establishment of universal trust.

The theory of institutional shaping has a strong explanatory power for the formation of judicial trust. In modern society, the legal system, especially the judicial system, is one of the core parts of the system. The impersonal legal system is of great significance to the formation of trust. The legal system including the judicial system has the characteristics of mandatory implementation, uniformity of content, and universality of effectiveness, which can provide stable expectations for the behavior of the public and reduce the risk of trust. Whether trust can be effectively formed depends on the legitimacy and effectiveness of institutional supply and the coercive power and efficiency of institutional implementation. To improve the public's trust in the judiciary, we must expand the supply of the judicial system, improve the quality of the judicial system, enhance the efficiency of the judicial system, and effectively exert the judicial system in safeguarding citizens' rights, stabilizing people's psychological expectations, and reducing the risk of trust.

1.4 Cultural Cultivation Mechanism

The theory of cultural cultivation believes that trust is a social and cultural phenomenon and an important part of culture. Culture plays a decisive 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.

Putnam believes that trust is a kind of social capital and has always been an important part of moral ethics. Trust mainly comes from two aspects: one is reciprocity, and the other is citizen participation network.⁹In a reciprocal society, people believe that trust can be taken seriously, and the risk of trust is low, so they are very willing to trust others. The citizen participation network can enhance the communication and mutual connection of actors and thus promotes trust. Reciprocity and citizen participation network belong to the category of social culture and are the cultural heritage formed by the long-term development and evolution of a society. This shows that trust is mainly a cultural concept.

Sztompka believes that trust comes from a culture of trust. 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. Therefore, in a society with a culture of trust, the level of trust is generally higher. ¹⁰Uslaner divides trust into special trust and universal trust. He believes that pessimists often have no confidence in the future, lack trust in strangers, and therefore belong to special trust. Optimists tend to have confidence in the future and tend to trust most people in society, and belong to universal trust. ¹¹The formation of the optimistic attitude is not entirely determined by the individual's childhood experience, but is also closely related to the overall moral level of society. In a society with a generally high moral level, people are more confident about the future and more likely to be optimists, so they are more willing to trust others. In a society with a low moral level, people have no confidence in the future and are more likely to become pessimists, so they are not willing to trust others. In this way, trust is closely linked to the moral level of a society, further expanding our understanding of trust. From this perspective, trust is undoubtedly a cultural category.

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. In Western society, Protestant ethics broke through the clan's constraints, advocated economic rationalism, and formed a universal view of trust. Fukuyama believes that trust is mainly determined by culture and comes from the ethical

⁹ See Putnam, R.D. *Making Democracy Work*. Princeton: Princeton University Press, 1993, pp258-273.

¹⁰ See Sztompka, P. *Trust: A Sociological Theory*. New York: Cambridge University Press, 1999, pp119-138.

¹¹ See Uslaner, E. M. *The Moral Foundations of Trust*. Cambridge: Cambridge University Press, 2002, pp217-248.

norm shared by society. Fukuyama examined the culture of trust around the world and believed that there are two different cultures of trust. ¹²One is the culture of high trust, typically represented by the United States, Germany, and Japan. The other is the culture of low trust, typically represented by China, South Korea and France. In a country with high trust culture, people trust not only members of the family, but also strangers. Because of the universal trust, people have stronger ability to communicate with each other and cooperation is easier to carry out. Therefore, it is easier to establish a large enterprise composed of non-blood relationships and the economy is more prosperous. It can be seen that trust, as an important social capital, plays an important role in promoting economic development and social prosperity.

Culture is not only important for interpersonal trust and universal trust, but also has an important influence on judicial trust. In a society with high trust culture, the object of trust 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.

2. The Influencing Factors of Judicial Trust

In order to better analyze the influence factors of judicial trust, this paper analyzes the interaction between expectations, interests, risks and other factors and judicial trust based on the general law of trust psychology and the personality characteristics of judicial trust.

2.1 Expectations and Judicial Trust

Judicial trust is a kind of subdivision in trust psychology. Therefore, we can explore the formation of judicial trust by studying the general law of trust psychology. Trust psychology can usually be summarized as “A trust B to do something”, but in daily expression, people generally only refer to the subject of trust, or the object of trust, such as “lawyers trust judges”. However, an important part of trust psychology, namely the content of trust and the specific psychological motive, has not been thoroughly explored. So it can be said that trust seems to omit important content. ¹³ Judicial trust is also a subtype of trust psychology, with the general law of the occurrence, evolution and operation of trust psychology. The judicial trust mentioned in daily discourse and academic research is also general and abstract, and people do not subdivide the specific content of trust. Therefore, it is difficult to conduct specific exploration of different types of judicial trust.

The current research on judicial trust usually pays attention to the diversity of judicial trust objects, could analyze the hierarchical differences of judicial trust objects (the difference between the central judicial organs and local judicial organs), and could also analyze the specific fields of judicial trust objects (the differences between different areas of judicial procedure). However, the objectives and contents of judicial trust are not defined in detail. Therefore, it is necessary to carry out more detailed research on the types of judicial trust in combination with the specific types of public expectations.

Expectation is the premise of the formation of trust psychology. Luhmann believes that the trust in the broadest sense refers to the confidence in someone's expectations. The trust subject has various expectations for the trust object, and thus the type of trust is also different. Sztompka divides the specific expectations of trust subjects into three categories and corresponds to three different trust types. The first is the expectation of instrumental quality, such as the rationality of the behavior, the regularity, and high efficiency. The second is the expectation of moral quality, such as fairness, legality and integrity of behavior. The third is the expectation of credit quality, such as the altruism of behavior, selflessness and tolerance, benevolence. Moreover, the above three types of expectations present an order of expected values from small to large. If trust is based on expectations of

¹² See Fukuyama, F., *Trust: The Social Virtues and the Creation of Prosperity*. New York: Free Press, 1995.

¹³ Hardin R. *The Street—Level Epistemology of Trust*. *Politics and Society*, 1993, 21 (4) : 505—529.

instrumental quality, such trust is instrumental trust; if trust is based on expectations of moral quality, then such trust is value trust; if trust is based on expectations of credit quality, then such trust is credit trust.

Expectation is one of the most closely related factors in the formation of judicial trust. According to the type of expectations discussed by Sztompka, combined with the unique attributes of judicial trust, the public's expectations of justice could be divided into the expectation of moral quality and the expectation of instrumental quality. The former includes tolerance, respect, legality, and integrity, the latter includes high efficiency, convenience, and compliance with processes. Thus, judicial trust can be divided into value-based trust and instrument-based trust. Because the expectation of instrumental quality is mainly reflected in the expectation of judicial ability, judicial trust can be divided into moral trust and ability trust.

In summary, the diversity of expectations leads to the diversity of types of judicial trust. Therefore, the court should not be active to publicize the court's enforcement rate and other data on trial performance. It is inappropriate to over-emphasize the propaganda of the moral qualities of judges, thus creating unrealistic expectations for the public. Once such expectations are formed, and the judges' skills, efficiency, and moral quality fail to meet the expectations of the public, the public will not trust the judicial system.

2.2 Interests and Judicial Trust

Trust is a social interaction based on the expectation of interest and its realization. In order to maximize their interests, people choose to cooperate, and cooperation needs to be based on trust, so that interests become the basis of trust. The existence of common interests does not necessarily lead to trust, but trust means implied interests and the possibility and expectation of realizing such interests. The trust subject pays trust to the trust object, not only to show a psychological attitude, but also to obtain interests from it.

Russell Hardin is more directly aware of the relationship between interests and trust. He treats the concept of trust as "implicit interests." He believes that the contribution of trust generally depends on various expectations, and the various expectations are based on the judgment of the trust subject on various interests. If the trust subject makes a trust decision, the implication is that there is reason to expect that the trust object will act for the interests of the trust subject, because it is also in his own interest for the trust object to do so. In other words, the trust subject trusts the trust object because there is reason to believe that the trust object operates in accordance with the instructions of the trust subject for his own interest. The decision of trust means that the trust subject and the trust object have common interests. The reason for the initiation of trust is to expect the interests to be met.

The above logic is also true for judicial trust. The fact that the public trusts in the judiciary means the public hopes to gain interests from such trust. The contribution of such trust is a process of long-term game. If the procedure participants trust the judicial system during the initial contact with the judiciary, but the performance of the judicial personnel fails to meet the expectations of the participants, resulting in serious damage to their interests, then they will choose distrust in the next game. So interest is of great significance to the establishment and maintenance of judicial trust. In the process of long-term game, if the interests of the trust subject are not been damaged, it is possible to establish a stable trust relationship. Therefore, the trust subject makes trust decisions based on his interests, and the trust object needs to have the ability to fulfill the interests, thus establishing a continuous trust relationship. In summary, the pursuit of interests is the basis for the establishment of judicial trust.

2.3 Risk and Judicial Trust

Risk is another key factor affecting the formation of trust psychology. In general, trust is based on the prevailing uncertainties and risk factors in social practice, and the contribution of trust means risk. Trust is an important part of social capital and a simplification mechanism to deal with social complexity. Trust is also the psychological basis for all kinds of cooperative activities. This kind of simplification is the basis for making decisions. Comparing the interests and risks, actors can simplify

the action into "trust" and "distrust". The so-called trust is that the actor will entrust uncertainties to others based on his own judgment, and thus cannot completely avoid the risk.¹⁴ Before making a trust decision, the trust subject will conduct the risk assessment. If the risk of making the decision is too large, the trust subject will not pay trust. So, if you need to measure the stability of trust, you should make a comprehensive assessment of the risks of making trust decisions.

When assessing the risk of trust, people generally evaluate the trustee's past performance and current behavior to determine the risk. It can be seen that the level of trust risk after evaluation determines the level of the stability of trust. For judicial trust, the above conclusions are also established. The level of the judicial trust risk determines the stability of judicial trust.

The reasons of making trust decisions include: reputation, past performance, intimacy and visibility, supervision and disciplinary mechanism for untrustworthy behavior. If the reason is the social evaluation of the trust object, the stability of trust is low. If the reason is the supervision and disciplinary mechanism of the untrustworthy behavior, the stability of trust is high. It can be seen that the supervision and disciplinary mechanism of dishonesty is of great significance to the formation of trust psychology. A sound disciplinary mechanism of dishonesty is an important guarantee for forming trust in modern society. Spontaneous trust is born and guaranteed by institutionalized mistrust. The more robust the institutionalized distrust mechanism in society, the stronger the motivation to form spontaneous trust.

This paper divides the reasons of judicial trust into three categories, which correspond to different levels of trust risk and trust stability. Firstly, if the reason of judicial trust is the existence of a stable and effective disciplinary mechanism, such judicial trust has the highest stability. Secondly, if the reason of judicial trust is the social reputation of the judiciary, such judicial trust has the greatest risk and the least stability. Thirdly, if the reason of judicial trust is the performance of the judiciary, the risk and the stability of judicial trust is in the middle.

In summary, the risks of judicial trust are inversely proportional to the stability of judicial trust. According to the previous analysis, judicial trust obtained by judicial propaganda has the lowest stability. Therefore, in order to form judicial trust, we should not overemphasize the role of judicial propaganda, but should establish and improve the judicial power operation mechanism, and construct an effective disciplinary mechanism for dishonesty, thus obtaining the highest judicial trust stability.

2.4 Subjective Procedural Justice and Judicial Trust

Procedural justice can be divided into objective procedural justice and subjective procedural justice. Judicial trust is closely related to the subjective evaluation of the public. Therefore, the study of subjective procedural justice is an indispensable part of judicial trust research. Through empirical research, it can be found that if the specific actions of the judicial personnel can make the participants feel the justice, the participants are willing to accept the results of the judicial judgment, and are willing to trust the judiciary.

Compared with substantive justice or distributive justice, procedural justice has the independent value. Judging whether a procedure is fair or not has two dimensions, objective and subjective. So procedural justice can be divided into objective procedural justice and subjective procedural justice. The study of objective procedural justice usually focuses on the objective criteria that specific procedures should follow to make the decision-making process more fair. The study of subjective procedural justice usually pays attention to the subjective feelings and perceptions of the actor about the fairness of the particular procedure. Researchers of objective procedural justice usually study "how to make a procedure look more fair than other procedures" and "whether or not there is an objective standard to help a procedure get a more fair outcome." The search for the objective criteria of procedural justice is the subject of many scholars' lifelong research. The assumption of "veil of ignorance" put forward by Rawls in "Theory of Justice" is set to explore the criteria of objective procedural justice.

¹⁴ Kollock P. The Emergence of Exchange Structure: An Experimental Study of Uncertainty, Communist and Trust. *American Journal of Society*, 1994, 100 (2): 313-345.

Some scholars conduct research on subjective procedural justice. They investigate the subjective evaluation of the procedure by the public through empirical methods such as questionnaires and simulation experiments, and analyse which procedural factors affected the subjective evaluation of justice. Compared to Rawls's normative study of procedural justice, their research pays more attention to the participants' experience. In their opinions, procedural justice refers to the impact of procedural changes on people's social psychology. They study which procedures are in line with the public's expectations of justice, and think that the criteria for procedural justice are the subjective psychological judgment of the public. People prefer the adversary judicial system because it allows participants to feel procedural justice and conforms to the characteristics of subjective procedural justice.¹⁵ The factors that can actually influence the participants' perception of procedural fairness are not the ability to win, but other factors associated with the procedure. Since then, more scholars have begun to study subjective procedural justice and have produced a large number of research results. According to their research, the public's satisfaction with the judiciary can be improved by improving the procedure running process.

Empirical studies have found that compared with substantive justice and objective procedural justice, the public's subjective evaluation of judicial process can affect whether they are willing to trust the judicial system. Even if objective results are unfavourable, if the public believes that the procedure is fair, the public is willing to accept judicial decisions. In summary, Subjective procedural justice greatly influences the public's sense of judicial trust. What's more, subjective procedural justice also affects the legitimacy of the judiciary. When the public judges the legitimacy of the judiciary, the first consideration is whether the judicial process is fair. Therefore, it is necessary to fully understand the perceptions and subjective expectations of the public on procedural justice, and reform the judicial system to enhance judicial trust. To achieve subjective procedural justice, judicial personnel should be neutral, impartial, treat the parties seriously, and listen patiently.

¹⁵ See Tom R. Tyler, "Procedural Justice Research", (1987) 1 Social Justice Research.