

On the Three Levels of Public Trust in the Formation of Judicial Credibility in China

Zhaoying Luo^{1, 2, a}

¹Law School, Beijing Normal University, Beijing 100875, China;

²Beijing Fengtai District People's Court, Beijing, China.

^alzy.winnie@163.com

Abstract

The transformation of modern society, breaking the acquaintance society. Interpersonal social operation needs people's trust. It is needed to establish the judicial credibility, which is the fundamental of the judicial. Trust can be divided into three levels: the first is the low level of trust, which refers to the trust of the public to the judge individual; The second is the middle level of trust, which refers to the trust of the public to the court. The third is the high level of trust, the public trust in the judicial system. Now we stay in the traditional concept of trust in our country, mainly is to the judge, which is not conform to the concept of trust in modern society. Therefore, our country should establish trust in the system way, not only to judge, but also to the court and the judicial system.

Keywords

Judicial credibility; Trust; Level.

1. Introduction

The research on judicial credibility in China in recent ten years is closely related to the crisis of court credibility. In the process of social transformation, the public handed over disputes to judicial organs because the purpose of setting up judicial organs by the country was to resolve disputes in society. Under the framework of institutional arrangements, the public can only choose the judiciary as the ultimate way to resolve their disputes. If the judicial system run by the judicial organs can not achieve the purpose of the system arrangement and can not respond to the public's expectations of the judiciary, it will naturally lead to the question of whether the public trust in the judiciary, that is, the issue of judicial credibility. The earlier research on judicial credibility is mainly based on the influence of judicial corruption on public trust in justice. The later research extends to the concept, connotation, construction and evaluation of judicial credibility. It is self-evident that the research on judicial credibility involves the life of modern justice, the construction of judicial system, and the top-level reform of the relevant national system. Therefore. This article attempts to discuss the core connotation of the formation of judicial credibility, namely the three levels of public trust in justice, in order to consult the predecessors and colleagues in the academic and practical circles.

2. The Connotation of Judicial Credibility

Public trust is the ability and strength to be convinced. Public trust refers to the public's trust in public power and its degree as well as the basis of trust. [1] Therefore, it can also be said that public trust is based on the trust of public, so it is necessary to recognize that public trust begins with trust.

Zimmer, the pioneer of trust research, believes that "trust, that is, the assumption about the certainty of future action, is the intermediary between knowledge and ignorance of the person

concerned" .[2] Mr. Yefu Zheng believes that "to have confidence in expectation and to foresee the future with past experience is the basis and form of trust". [3] From the above two definitions of trust, we can see that trust means trust and entrustment to the other party. Generally speaking, trust means that one party can predict the behavior of the other party and make its own behavior on the basis of prediction. Trust has a certain degree of subjective meaning. Trust arises from the development of society and the complexity of society, which makes contact between people separate from the relationship of acquaintance society. Social activities can only be carried out on the basis of trust. "Highly differentiated societies need more trust than simple societies to simplify their complexity, and they must always be prepared to establish and stabilize trust in a variety of ways." [4] As for the trust of public power, trust refers to the expectation of public power behavior based on previous experience, which is essentially the public's expectation of social order. Only with order can public trust be created.

In fact, public trust is the public's trust in public power. Public trust is formed in the social system. Only when there is a system can order be created. Only when there is an order can the public predict the behavior of public power and expect the social order, and then generate public trust. Mr. Yuqian Bi holds that "public trust reflects the confidence or trust of social groups in the motivation and behavior of a particular institution or individual on the basis of specific material production conditions and ideological concepts". [5] Public trust is a kind of trust with cognitive characteristics. The key of trust as cognitive characteristics refers to the trust in public power ability, that is, public trust is the public's affirmation of public power behavior or the ability to maintain a certain order. The expectation of order means whether the capacity of public power itself meets the expectation of human beings. The first condition includes qualification, that is, ability; the second condition is to meet a series of policies and measures; the third condition is to satisfy the behavior; and the fourth condition is to satisfy the effect. Only by satisfying these four conditions can we show our ability to produce credibility and public power be able to accomplish the corresponding affairs. Therefore, as an important cognitive factor, public trust is the ability of public power to maintain a certain order.

There is no unified understanding of the definition of the concept of judicial credibility in academic circles. Many scholars have not discussed its connotation when they study judicial credibility. Some scholars believe that judicial credibility is a public power which can not only arouse universal obedience, but also universal respect. It manifests itself in the ability of judicial power to win public trust and trust in society. [6] The concept holds that judicial credibility arises from the public's trust in the competence of judicial organs. Scholars believe that judicial credibility refers, on the one hand, to whether the judiciary has factors worthy of public trust and its ability to perform its obligations and responsibilities can be objectively trusted by the public, that is, from the public's evaluation; on the other hand, it refers to the sense of responsibility of the judiciary to the public and its response to the expectations and trust of the public in practice. [7] The concept holds that judicial credibility is a dual dimension of public trust based on the capacity of judicial organs and judicial response to trust, namely judicial authority. The author believes that judicial credibility is the public's trust in judicial organs. It can be understood from three aspects: firstly, judicial credibility is a public understanding of the subjective trust of judicial organs; secondly, the basis of judicial credibility is judicial capacity and judicial authority. If the judicial organs do not have the ability to solve disputes, deal with cases, and serve interest litigation, they will not be trusted by the public, nor can they establish judicial authority. Thirdly, judicial credibility is the result of social institutionalization. It is precisely because of the existence of social system that the public can predict and expect the behavior of public power through legal provisions. Only a modern institutionalized society ruled by law can produce judicial credibility. The former society ruled by man can not produce expectations through institutionalization.

However, in traditional Chinese culture, the judiciary credibility is often combined with the personal ability and personality charm of judicial personnel. The phenomenon of Bao Qingtian in Chinese social history is undoubtedly a typical explanation of this culture. However, in the 21st century, if the public's trust in judicial organs is still based on individual judicial personnel when they use judicial resources, it means that the foundation of judicial credibility is rather fragile. Similarly, if the judicial credibility only reaches the level of public trust in the judicial organs mentioned in the current discussion on judicial credibility, it also reveals that the society still lacks a deep understanding of the essence of the rule of law.

The author thinks that the public's trust in justice is hierarchical. According to the different degree, object and scope of trust, trust can be divided into three levels: the first is the low level of judicial trust, referring to the public's trust in the judiciary and the individual judges; the second is the middle level of judicial trust, referring to the public's trust in the judicial organs; the third is the high-level judicial trust refers to the public's trust in the judicial system. The three levels will be discussed gradually in following.

3. Low-level Judicial Trust: Public Trust in the Judiciary

At present, our country's judicial trust mainly relies on the judges' personal ability and personality. Because there are few judges who are trusted by the public. They only play a small role. The traditional Chinese trust in the judges' personal personality is not consistent with the rapid development of modern society. Personal trust in judge is individual trust, which is the lowest level of trust. Individual trust is based on four aspects:

First of all, the personality of judges are the important basis of individual trust. Judge Cardozo, a well-known American scholar, once said, "There is nothing to ensure justice except the personality of judges." [8] The biggest difference between individual trust and universal trust is that individual trust embodies personal contact and judge contact. The evaluation of the individual personality of the judges by the parties can not be obtained through investigation or other means, but only through communication with the judges in the cases. In the process of communication and contacts with the judges, the parties feel that the judges are considerate. The judges can listen to people's demands and convince them. The judge is a good judge, and the parties trust him. On the contrary, although the judges have good personality, the parties will not have judicial trust in him, if they are not satisfied with the parties in a case. There is no reason for this. It relies solely on the intuitive and perceptual feelings of the parties in the communication.

The second basis is the knowledge of judges. According to Phelps, "Judicial equity refers to the ability of judges to seek relief on their trained conscience." [9] Judges' mediation should be based on facts and laws. The legality and fairness of mediation directly reflect the professional knowledge of judges. The interpretation of key issues and the grasp of procedures can also explain the professional knowledge of judges. Judges' knowledge not only refers to professional knowledge, but also refers to other knowledge, such as empirical rule and reasonable reasoning, which need the daily knowledge of judges. That's why American legal professionals are all compound professionals. Because judges are knowledgeable people in their minds, that they don't just know the law.

The third basis is the judge's behavior. The understanding of the judge's behavior is broad, including not only the judge himself, but also the assistant judge and the clerk's behavior. The behavior includes not only the speech, tone and wording of the judicial personnel, but also sometimes even the expression in the eyes. The slow and flexible tone of judges and the necessary cadence can also enhance the trust of the parties to the judges. Because the slow and flexible tone can highlight the dignity and profound knowledge of the judges, express confidence in the parties' disputes and deal with them satisfactorily. It can also reveal the focus

of the case and the extent to which the problems lie and the handling of specific acts and procedures. Judges' actions increase the parties' trust in the judges themselves.

The fourth basis is the judge's conscience. "For a judge, his professional ability is important, but his conscience is always the most important. To a great extent, the conscience of judges determines the outcome of the judicial process, and decides whether there is judicial justice or not".[10] The conscience position and ability are not very relevant, but they are an important part of individual trust. A good judge should treat the problem fairly and rationally, and convince people by reason. His judgment can be accepted by both parties, that is, to hear the case according to the legal procedures, and to take care of the feelings of the parties, without rigidity and flexibility. Embodying humor and care in the whole process will give the parties a sense of trust. Of course, the judge's conscience is the judge's professional ethics. The judge not only speaks the law, but also human feelings, treating the parties with professional ethics, and handling every detail.

The parties contact with the judges in various aspects. They examine the judges from the above four aspects. If the judges meet their requirements, they will have individual judicial trust in the judges. Trust in individuals does not represent trust in the judiciary. Trust in a judge by a party does not represent trust in all judges. Individual trust is only a single trust.

4. Judicial Trust at the Middle Level: Public Trust in Judicial Organs

Trust in a judge is not equal to trust in all judges and judicial organs. Trust in judicial organs is a universal trust. The nature and scope of individual trust and universal trust are different. Individual trust is a single trust, while general trust is overall trust. The trust of the judicial organs, as the whole of the judiciary, gains the trust of the public and the parties. The trust of the judicial organs is the trust in relation. Relational trust is the trust placed in litigation or judgment relationship, with a certain power-responsibility relationship trust, not only trust but also obey. Judicial credibility is the trust in relationship. The parties not only trust the judge, but also obey. The judge's judgment has a certain relationship of rights and obligations to the parties. There is also the possibility of the development of the trust of the judicial organs from trust to faith. When this trust develops to a very firm level, it can be transformed into faith. The party's trust in the judicial organ means that the expectation of the fairness is satisfied, and the judge's verdict really convinces the party.

But the reality of our country is the distrust of the judicial organs, which is caused by the judicial unconfidence. Judicial unconfidence refers to the negative evaluation of judicial action and role in society by judicial organs. Judicial unconfidence is manifested in its own level, including the non-final adjudication, the inadequate ability of judicial dispute resolution, and the contradiction between substantive justice and procedural justice. [11] The main reasons for judicial unconfidence are the following three aspects:

4.1. The Contradiction Between the Public's Demand for Justice and the Supply of Justice

In China with social transformation, the public's demand for justice is particularly high, not only for justice, but also for efficiency. It requires judiciary not only to follow substantive justice and procedural justice, but also to make judiciary serve the people and embody the feelings of "being close to the people". But the reality is that the judicial organs of our country have followed the administrative way in a long way and the development of judicial organs can not meet the contradictions caused by the public's expectations of the judiciary, resulting in the lack of public trust in the judiciary. Because the financial power of judicial organs is restricted by administrative organs, they have been under the "leadership" of administrative organs for a long time. It is difficult for judicial organs to achieve real judicial independence. The functions of "maintaining stability and serving regional economic development" affect the independence

of judges. In the era of litigation explosion, the public expects to resolve disputes through justice, but the ability of judicial organs to resolve disputes can not keep up with the pace of litigation, leading to the existence of many cases with less stuffs, seriously affecting efficiency, "Justice delayed is justice denied", further decreasing the credibility of the judiciary.

4.2. The Contradiction Between the Public's Judicial Participation and the Parties' Dependence on Judges

The theory of procedural justice requires the parties to be responsible for their own actions and to participate in the judicial process. In civil litigation, the principle is embodied in "who advocates, who gives evidence" and "The parties bear adverse legal consequences when they can't prove evidence". With the enhancement of citizens' legal consciousness, the parties also require to participate in the litigation. However, in judicial practice, due to the low litigation capacity of the parties and the low rate of lawyer representation in China, especially in traditional civil cases, the parties hope that the judge can play the role of "parent officer", arranging all litigation affairs, providing legal advice, obtaining evidence and so on. The contradiction between the parties' participation in the judicial process and their own litigation ability leads to some parties losing the lawsuit because they can't prove the evidence, which damages the judicial credibility.

4.3. The Contradiction Between the Finality of Judgement and the Particularity of the Case

The judgment should be final. Now, after losing the lawsuit, the litigant requests to revoke the original judgment by various channels, which makes the final judgment not final, reflecting the court's lack of confidence in the final judgment. In 2014, 33 493 cases were retried, and the retrial rate was 0.365%. 126 390 cases were applied retrial and the application rate was 1.379%. [12]The high retrial index reflects the judicial unconfidence, and then shakes the judicial credibility.

According to the degree of trust, the parties' trust in the judicial organs can be divided into active trust and passive trust. The conditions of active trust and passive trust are different. Active trust is the trust from the heart of the parties. Passive trust is the trust that comes into being gradually in the process of getting along with each other. Combined with judicial practice and judicial trust, mediation and reconciliation are often closely related to passive trust in judicial decisions. In the process of contacting the parties and judges, on the premise of sorting out facts and laws, the parties gradually run into each other, constantly adjust their expectations of litigation and finally reach mediation or reconciliation. Active trust is reflected in the choice of court litigation and other dispute resolution methods. Active choice of court is to believe that the court can solve disputes better. If the judicial organs have high judicial trust, the active trust will be relatively high. The parties have a sincere trust in the judgment of the judicial organs and take the initiative to perform the effective judgment. If the judicial trust is not high, the proportion of passive trust is high.

5. High-level Judicial Trust: Public Trust in Judicial System

The current judicial system in our country is mainly at a low level and is striding towards a middle level of trust, but far from reaching a high level. Judicial organs have not acquired their due status and authority. It is manifested in the obvious interference of the Party and administrative organs in the judicial organs, despising justice, and lacking of due trust in judicial rights. Throughout the world, the status of judicial organs should be equal to that of legislative organs and administrative organs, so that judicial organs can exclude the interference of legislative organs and administrative organs and truly achieve judicial independence. At the

same time, they can form judicial supervision and restriction on administrative organs and realize the ultimate principle of justice. There are deep-seated reasons for this situation:

5.1. Reasons at the Social Level - Social Transformation

The change of trust comes from the change of society. As long as social uncertainty exists, trust will change, which is why in the period of social change and transformation, the trust between the public will change dramatically, which is embodied in the change of people's thinking. But social uncertainty and trust are inversely proportional. When social uncertainty increases, trust among the public will decrease. In the final analysis, the decline of judicial credibility in China is due to the rapid transformation of society, which leads to the increase of uncertainty and the decrease of trust. [13] With the rapid development of society, the public's thoughts have not kept up with the speed of social development, and things are updated faster than the general public's acceptance. When people can not accept this change, the trust between the public will decline. Lower social trust makes it difficult for government policies to be implemented effectively. Specifically, in the judiciary, the judicial system is difficult to operate effectively. The public does not trust the judges' judgments. They does not believe in judicial authority, and judicial credibility cannot be trusted by the public. The uncertainty of social system and judicial system in the transitional society further worsens social trust, which is a vicious circle of social trust.

5.2. Reasons at the Cultural Level - Patriarchal Relationship

Fukuyama Francis, an American scholar, analyses the causes of the phenomenon of low trust in China from the perspective of Chinese culture. Compared with Germany, the United States and Japan, he believes that Confucianism, which has long been advocated by the Chinese people, is the root of the problem. Chinese traditional society has created strong family and clan relatives. The strength of family and clan relatives is very strong, which has a great impact on society. The public only trusts family or clan relatives, and has a great distrust of foreigners. This is also the reason why in Chinese society, including Hong Kong and Taiwan, there are so many family businesses and few enterprises employing modern professional managers. Chinese people do not donate personal loyalty contributes to the country, but only to individuals.[14] Therefore, in Chinese society, except for the family and clan, the trust in other relationships is extremely low. The low trust in the whole society naturally affects the credibility of the judiciary. Not trusting others also means not trusting the judiciary, not trusting judges, and not trusting the outcome of the judgment.

5.3. The Reason of Value Level - Pessimistic Value

Eric M. Uslaner believes that trust is based on an optimistic view of the world, and also demonstrates with big data that adult trust is based on the values of childhood and the concept of life growth. [15] On the basis of optimistic values, Chinese values and growth concepts determine the social atmosphere of low trust.

Institutional trust is the trust generated by the sense of satisfaction brought about by long-term institutional stability and fairness. Institutional trust is the highest level of trust. If a system exists stably and plays an effective role, the trust can be formed over a long period of time and space. Public trust in the judicial system is the judicial credibility. When the public encounters disputes and difficulties, they will think of solving disputes by legal means, and trust that the judicial system can solve disputes fairly and reasonably. When a country reaches the highest level of trust, the consciousness of a society ruled by law will be formed.

It can be seen that in order to form a stable and lasting credibility of the judicial system, the public's trust in the judicial system must reach a high level, that is, the trust in the judicial system. Moreover, the three levels of trust should be combined. Only when the public trust not only the judicial personnel, and the judicial organs, but also the judicial system, can they be

called high-level trust. Thus, the credibility of the judiciary follows the process from part to the whole, from individual to the whole, from concrete to abstract, from individual to the judicial organ, and even to the trust of the judicial system gradually, which can ultimately promote the formation of a society ruled by law.

6. Prospects for the Future of China's Judicial Credibility

In China, where the crisis of social trust still exists, there is no stable and lasting judicial credibility because the above three levels of public trust in justice have not been realized or fully realized. Therefore, rebuilding a trust society, we need to establish awareness of the rule of law and strengthen the construction of the rule of law. In particular, we should gradually establish judicial trust from the above three levels. Mr. Weiyang Zhang believes that the legal system can not be accomplished by enacting laws. What is important is a kind of practical behavior and cultural idea. The law needs to be enforced by people. The people have no trust in judges and courts, no one will enforce it. The law is just a waste paper, and it is impossible to realize the rule of law. At present, the most important problem facing the construction of rule of law is to make the public trust in the law, judges and courts, and then trust in the judiciary. [16] In the process of improving judicial credibility, the general principle to be followed is the combination of system construction and public trust. The system should have both scientific charm and public understanding, which is the basis.

In view of the three levels of judicial credibility, we need to change the current situation of insufficient judicial credibility, we must establish judicial trust and gradually improve it from three levels:

Firstly, in the short term, we should strengthen the public's trust in the judge, and focus on improving the judicial credibility of judges in terms of the details. To cultivate good judicial habits of judges, standardize judges' professional ethics, enhance judges' personality and personality, and let the parties feel the fairness and fairness of judges in the process of handling cases. This is the premise. The parties have a good impression of judges' first feelings and can carry out follow-up work smoothly. It is the basis to strengthen the training of legal professional knowledge. The judge's job is to use legal knowledge to deal with disputes between the parties, so the legal knowledge is too important; standardizing the judge's behavior, and reflecting the judge's humanistic care for the parties.

Secondly, to enhance the public's trust in the judicial organs and let the parties' trust in a judge develop into the trust of the judges, which requires the judicial organs not only to establish a model, but also to ensure the fairness and quality of the judgment as a whole, avoiding the occurrence of false and unjust judgments, which can enhance the overall judicial credibility. Only when the cases tried by the judicial organs can withstand the torture of the public and the baptism of history can the trust of the organs be generated. The excellence of a judge can not represent the excellence of the judicial organs, and only the excellence of the whole judicial organs can be regarded as excellence.

Thirdly, the long-term goal is to establish public trust in the judicial system, which is the highest level of trust and the highest goal of judicial credibility in China. The urgent task of our country is to abolish the power-centered society governed by people, abolish the judicial atmosphere of "one person, one rule", improve the socialist legal system. We need to build a long-term and stable judicial system to meet the expectations and needs of the public in the period of social transformation and gradually enhance the credibility of the judiciary.

In order to achieve the objectives of the above three steps, it is important to have four aspects: the first is to make sure independently according to law. Judicial organs and their individual judicial personnel are not interfered by anyone. Courts decide cases according to law. Judicial organs need their due status and jurisdiction to adjudicate cases. The second is to build judicial

confidence to enhance judicial credibility. In order to build up judicial self-confidence, judicial staff should constantly improve their self-cultivation, including their own quality and legal knowledge. Judicial organs should achieve procedural justice and substantive justice, and achieve fairness and justice. The third is the enforcement of the law. The enforcement of the law includes not only the application of the law by judges in the process of exercising their jurisdiction, but also the compliance and enforcement of the law by the public. Only the enforcement of the law by the whole society can improve the status of the judiciary. Fourthly, we should advocate and vigorously publicize trust in our society, forming an atmosphere of trust in the judiciary. The society believe that the law is fair as the last line of defense in social disputes, that building a system of modern social justice system.

The formation and promotion of judicial credibility in China can not be completed overnight. This process is a long process, which requires a long time of testing and the full cooperation of the whole society. Also it requires hard work of a generation of legal personnel. In a word, only by abiding by the law for the public and judicature for the people can we obtain the high-level trust that build a stable and lasting judicial credibility.

References

- [1] Guan Mei. Structural elements of judicial credibility [J]. Journal of Changchun University, 2004 (5): 52-56.
- [2] Ji Weidong. Rule of Law and Universal Trust: A Sociological Perspective on the Reconstruction of the Principle of Order in China [J]. Philosophy of Law and Sociology of Law Series, 2006 (1): 153-175.
- [3] Zheng Yefu. Trust Theory [M]. Beijing: China Radio and Television Press, 2001:53.
- [4] [De] Nicholas Luman. Trust [M]. Qutiepeng, Translated, Shanghai: Shanghai People's Publishing House, 2005:112.
- [5] Bi Yuqian. Research on Judicial Public Credit [M]. Beijing: China Legal Publishing House, 2009:1.
- [6] Zheng Chengliang, Zhang Yingxia. On Judicial Credibility [J]. Journal of Shanghai Jiaotong University (Philosophy and Social Sciences Edition), 2005 (5): 5-10.
- [7] Guan Mei's Preliminary Discussion on Judicial Public Credibility: Concepts, Types and Characteristics [J]. Legal System and Social Development, 2005 (4): 134-141.
- [8] [US] Benjamin Cardoso. Nature of the Judicial Process [M]. Su Li, Translation, Beijing: Commercial Press, 1998:6.
- [9] Wang Liming. Research on Judicial Reform [M]. Beijing: Law Press, 1999:86.
- [10] Dong Maoyun, Xu Jiping. The Significance of Judge's Conscience to the Judicial Process --- Also on the Relation between Judge's Conscience and Modern Constitutional System and Idea [J]. Fudan Journal, 2003 (6): 71-77.
- [11] Yang Jun. Judicial Confidence and Judicial Public Credit [N]. Guangming Daily Theory Weekly, 2015-5-20 (13).
- [12] Editorial Department of China Legal Yearbook. China Legal Yearbook [M]. Beijing: China Legal Yearbook Society, 2015:1014-1016.
- [13] Ma Deyong: The Origin of Trust, the Origin of Trust and the Change of Trust [J]. Open Age, 2008 (4): 72-86.
- [14] Francis Fukuyama. Trust - Creation of Social Morality and Prosperity [M]. Li Wanrong, Translated, Hohhot City: Distance Press, 1998:100-114.

- [15]Eric M. Uslaner. The Moral Foundations of Trust [M]. Cambridge: Cambridge University Press, 2002:76-159.
- [16]Zhang Weiyong. Information, Trust and Law [M]. Beijing: Life, Reading and Xinzhi Triple Bookstore, 2003:22-23.