

TOMASZ WIDŁAK¹

Trust and Trustworthiness as Judicial Virtues²

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Abstract

This article considers the meaning of trust for judicial communication. The central tenet of this analysis is that trust is best conceptualized as a judicial virtue and that it can be most fully explained with aretaic language. This claim is elaborated through, first, making distinctions between trust and reliance, as well as between trust and trustworthiness. Second, exploring the determinants of trustworthiness leads the author to argue for a virtue account of judicial trustworthiness. Third, the article discusses whether and how trust as a particular attitude or propensity may be perceived as a judicial virtue. The argument concludes by considering the relation between trust in judges and trust in justice institutions, such as courts of law.

Keywords: trust, trustworthiness, virtue, judicial virtue, judge.

¹ Prof. UG, dr hab. Tomasz Widlak – Wydział Prawa i Administracji Uniwersytetu Gdańskiego, Uniwersytet Gdański (Polska); e-mail: tomasz.widlak@prawo.ug.edu.pl; ORCID: 0000-0001-8525-4242.

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TOMASZ WIDŁAK

Zaufanie i bycie godnym zaufania jako cnoty sędziowskie³

Streszczenie

Przedmiotem rozważań autora artykułu jest znaczenie zaufania dla komunikacji sędziów ze społeczeństwem. Główna teza tej analizy sprowadza się do twierdzenia, że zaufanie powinno być traktowane jako cnota sędziowskiego charakteru i może być najlepiej wyjaśnione przy pomocy pojęć języka aretycznego. Teza ta jest poddana dyskusji poprzez, po pierwsze, przeprowadzenie rozróżnień pomiędzy zaufaniem a poleganiem na kimś lub na czymś, a także pomiędzy zaufaniem (ufnością) a byciem godnym zaufania. Po drugie, analiza wyznaczników bycia godnym zaufania prowadzi autora do sformułowania argumentu na rzecz pojmowania właściwości bycia godnym zaufania jako opartej na koncepcji cnoty. Po trzecie, artykuł rozważa, czy i w jaki sposób ufność jako konkretna postawa bądź skłonność może być pojmowana jako sędziowska cnota. W konkluzji autor rozważa relację pomiędzy zaufaniem do sędziów a zaufaniem do instytucji wymiaru sprawiedliwości, takich jak sądy.

Słowa kluczowe: zaufanie, bycie godnym zaufania, cnota, cnota sędziowska, sędzia.

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Introduction

Trust is a risky business. At any given point in our life, we may be in need to trust someone for their help and support. Trusting means being willing to make oneself dependent on the person we trusted and risk losing something valuable if trust is mislocated. Yet, we entrust our lives, property, interests, and rights to others. Trust is often seen as a kind of a “glue” or “lubricant” of a social system.⁴ The higher the level of trust among the community members, the stronger it becomes. In particular, the legal system and the courts are advanced social institutions we have created to shape our expectations towards each other reasonably. Trust in justice and law on the part of citizens has been long recognized as essential for the proper functioning of the legal system in a democratic state. This truth is outwardly appreciated and protected under the constitutional principle of the rule of law, as it includes the fundamental idea of protection of citizens’ trust in the state or the law.⁵ Trust is, of course, also essential at the supranational level, for instance, as a precondition for judicial cooperation between the EU courts.⁶

However, what is trust, and how to best conceive of it in the context of the legal system? To tackle the problem, I will analyze the case of the trust relations between individual citizens and judges as the most prominent representatives of the institutionalized legal system. In what follows, I argue for a virtue-oriented perception of the judicial role by conceptualizing trust and trustworthiness as judicial virtues. First, I will explore trust by briefly discussing its link to communication in a social context and then make several distinctions in subsequent steps: between trust and reliance, as well as between trust and trustworthiness. Exploring the determinants of trustworthiness will lead me to argue for a virtue account of judicial trustworthiness. This, in turn, links to the discussion of whether trust as a particular attitude or propensity may be a judicial virtue. Before concluding my argument, I will briefly mark the relation between trust in judges and trust in courts.

⁴ K.S. Cook, J.J. Santana, *Trust: Perspectives in Sociology*, [in:] J. Simon (ed.), *The Routledge Handbook of Trust and Philosophy*, New York 2020, p. 197.

⁵ See: M. Wojciechowski, *Zaufanie instytucjonalne w kontekście ustawowej zasady zaufania jednostki do państwa*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2012, 74(2), pp. 5–17.

⁶ See: A. Grzelak, *Wzajemne zaufanie jako podstawa współpracy sądów państw członkowskich UE w sprawach karnych (uwagi na marginesie odesłania prejudycjalnego w sprawie C-216/18 PPU Celmer)*, „Państwo i Prawo” 2018, 10, pp. 50–66.

Trust and Communication

The concept of trust has a close relationship with the process of communication.⁷ It is a widely shared intuition that, on the one hand, trust between people or institutions stems from proper communication between them, and on the other, that dialogue is possible only with at least a certain minimum amount of trust existing between the communicating parties. In other words, trust may be both a determinant and a result of communicating.⁸ This point is well illustrated by Niklas Luhmann's study of trust when he argues that trust is generated in the process of communication between the systems and serves to reduce complexity in an increasingly organized social structure.⁹ In other words, trust makes cooperation between people, including professionals and institutions, less complicated because it removes the incentive to check up on other people.¹⁰ Although it may be believed that trust should therefore precede high-quality communication, it has been shown by research within organizations that communication and trust have a mutual influence on each other. For instance, in Polish courts, the more frequent and satisfactory was quality communication between the employees, the higher was the level of their trust in the organization.¹¹

The critical point of intersection between the process of communication, and the concept of trust seems to be credibility or reliability, which for some is tantamount to trust or at least is affinitive to it. Credibility is, of course, also a key factor for effective communication, which is crucially important in the case of public institutions.¹² On the legal and political level, institutions of a democratic state need the trust of their citizens for proper communication and functioning. For instance, police, prosecutors, and courts need people to provide information, report crimes or stand as witnesses.¹³ If the citizens do not deem the institutions of the state credible, they are not willing to communicate the truth to them. This may lead to the obstruction of meaningful interaction and social cooperation and sub-

⁷ See: B. Blöbaum, *Some Thoughts on the Nature of Trust: Concept, Models and Theory*, [in:] idem (ed.), *Trust and Communication. Findings and Implications of Trust Research*, Cham 2021, pp. 3–27.

⁸ A. Austen, A. Adamus-Matuszyńska, *Internal Communication in Courts: Towards Establishing Trust Based Relationships*, "Edukacja Ekonomistów i Menedżerów. Problemy. Innowacje. Projekty" 2017, 7, 4(46), p. 122.

⁹ N. Luhmann, *Trust and Power. Two Works by Niklas Luhmann*, T. Burns, G. Poggi (eds.), Chichester–New York–Brisbane–Toronto 1979, pp. 24–31.

¹⁰ C. McLeod, *Trust*, [in:] Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition), <https://plato.stanford.edu/archives/fall2021/entries/trust/> (access: June 12, 2022).

¹¹ A. Austen, A. Adamus-Matuszyńska, op. cit., pp. 117–131.

¹² G. Bentele, R. Seidenglanz, *Trust and Credibility – Prerequisites for Communication Management*, "Public Relations Research" 2008, pp. 49–62.

¹³ B. Bradford, J. Jackson, M. Hough, *Trust in Justice*, [in:] E.M. Uslaner (ed.), *The Oxford Handbook of Social and Political Trust*, New York 2018, p. 633.

sequently to a collapse or self-paralysis of the state (or the judicial system), as it becomes overstrained under the pressure of too extensive control over the citizens. However, this argument seems to use the concept of credibility (reliability) and trust interchangeably, which makes it unclear who should be trusted or relied upon. In the following point, I make a distinction between these notions.

Trust and Reliance

According to Jon Elster's behavioral explanation, "to trust someone is to lower one's guard, to *refrain from taking precautions against an interaction partner* [J. Elster's emphasis – T.W.], even when the other, because of opportunism or incompetence, could act in a way that might seem to justify precautions."¹⁴ This understanding of trust points to the essential element of vulnerability and risk that the trusting person is *willing* to accept when relying on others to be competent, decent, and wanting to do what they have been entrusted with. This willingness is crucial because to trust someone essentially means "to take an optimistic view of that person and their motivations."¹⁵ Therefore, trust is a certain attitude toward others or a propensity to hope or believe that they will act or behave in ways beneficial for the one who takes confidence in them. Trust has a triple structure consisting of the subject of trust (trustor) or the one who trusts, the object or the person that is trusted (the trustee),¹⁶ and, if trust is specific, the item with which the trustee is entrusted (A trusts B with / to do X). Such relations may also involve intermediaries between the trustor and trustee and thus create chains or networks of mutual trust, constituting a vast system of trust relations.¹⁷

It follows that trust involves the idea of relying on others.¹⁸ However, there are reasons for trust and reliance to be distinguished. Trust involves a leap of faith – a step into the unknown, which is represented by the intrinsic vulnerability that it entails. By refraining from taking certain precautions or control measures, the trustor considers possible betrayal. In the case of reliance, we are not that much willing to open ourselves to this degree of vulnerability; instead, we rely on people, institutions

¹⁴ J. Elster, *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences*, Cambridge 2015, p. 335.

¹⁵ P. Faulkner, *The Problem of Trust*, [in:] P. Faulkner, T. Simpson (eds.), *The Philosophy of Trust*, Oxford 2017, p. 109.

¹⁶ L.M. Pytlik Zillig, C.D. Kimbrough, *Consensus on Conceptualizations and Definitions of Trust: Are We There Yet?*, [in:] E. Shockley, T.M.S. Neal, L.M. Pytlik Zillig, B. Bornstein (eds.), *Interdisciplinary Perspectives on Trust: Towards Theoretical and Methodological Integration*, New York 2016, pp. 17–47.

¹⁷ See: J.S. Coleman, *Grundlagen der Sozialtheorie. Band 1: Handlungen und Handlungssysteme*, München 1995.

¹⁸ See: C. McLeod, *op. cit.*

or things being (almost) certain that they will do their job or function properly. For instance, when we speak or think of trusting the judicial system in coming up with a fair judgment or we trust the state in protecting social order, in fact, we mean that we rely on these institutions or the law itself.¹⁹ Something may be reliable as it performs its function well, and someone is reliable if they can be expected to carry out specific tasks according to their role. I may rely on my alarm clock or my car every single morning or my internet provider for their service, but this does not amount to the conclusion that these objects or persons are worthy of my trust. On the contrary, I should take certain precautions like servicing the car, changing batteries in the clock, or consulting a lawyer before taking my case to court. When I trust someone, I believe they will act upon my trust properly and do the right thing. If they do not and they fail my trust, I can hold them responsible, even if only by not trusting them again. In other words, I hope they have the motivation not to fail my trust and are trustworthy for this reason. The trustee has whatever the trustor entrusts them with (for instance, my interests or objects of value) in her heart. The trustor does not expect the trustee does something precisely as imagined by the trustor, but that they will do the right thing. No such condition pertains to reliance. In the case of reliance, I am interested in risk assessment. I simply assume that things or people I rely on perform their functions to the degree of certainty and predictability that allows me to plan my future.²⁰

Trust and Trustworthiness

The distinction between trust and mere reliance prompts us to search for an answer to what exactly qualifies the trustee to become the addressee of that relationship of interdependence on the part of the trustor – or to gain trust. After all, trust is or should be selective, not universal – I trust some people, but not necessarily others, who I deem not worthy of my trust. To phrase it in other terms, what can make the judge (or, for instance, my doctor) trustworthy? Trustworthiness is rather a property of the trustee than an attitude. It makes the trust put in the trustee by the trustor well-grounded, justified or at least plausible.²¹ Ideally, the trustee is trustworthy, and in such a case, the trust put in this person is well-placed. Trust and trustworthiness may and usually should be reciprocal and tied. However, this

¹⁹ The claim that the law as an abstract concept can be trusted is controversial, and it will not be explored here in detail. For a discussion, see: T. Gkouvas, P. Mindus, *Trust in Law*, [in:] J. Simon (ed.), op. cit., pp. 271–282.

²⁰ Cf.: C. McLeod, op. cit.; P. Faulkner, op. cit., pp. 109–110.

²¹ C. McLeod, op. cit.

is not always the case; sometimes, trustworthiness does not amount to being trusted. For instance, people may sometimes distrust a professional lawyer with their case, even though she had done a lot to gain that trust by excelling academically, being well-prepared and often coming out as a winner in her court cases. The disconnection between trust and trustworthiness may also occur when someone is trusted even though they may be not (entirely) trustworthy. This may be the case with the so-called therapeutic trust,²² when a parent trusts a teenager by leaving them the keys to the house for a weekend to encourage them to grow in trustworthiness. Another example could be that of a judge who decides to trust a trainee to prepare an excellent draft of a judgment, even though this person is not fully qualified as a lawyer. The judge believes or hopes that his apprentice is very motivated to carry out the task as professionally as possible.²³ These examples are essential because they show that we treat trustworthiness as a matter of certain maturity and prudence and that trustworthiness may be developed over time – all characteristics of virtue.

The research on trust shows that factors that determine trustworthiness roughly fall in one of the two categories: those that pertain to the abilities or competence of the trustee and those that concentrate on the trustee's motives.²⁴ The competencies of the trustee are well-defined and objectified grounds for the credibility of that person because they indicate the trustee's very capacity to perform the tasks they are entrusted with. They cover knowledge, expertise, and technical skills, which are critical for social trust in professionals such as lawyers or medical doctors. Confidence in the competence of professionals is determined by the history of the quality of their advice and work or past performance.²⁵ However, it is not entirely convincing that the competence factor forejudges trustworthiness in particular cases. We may indeed rely on such competent professionals – their expertise surely weighs on their reliability. I rely on craftsmen and engineers who built my house; however, I will additionally ask an independent advisor to check up on the results of their work. In short, there is something more to being trustworthy in psychological and ethical terms.

Motive-based factors aim to explain the remaining less-tangible group of reasons for trusting someone or becoming trustworthy. When a trustee trusts in the

²² See: V. McGeer, *Trust, Hope and Empowerment*, "Australasian Journal of Philosophy" 2008, 86(2), pp. 237–254.

²³ For a more detailed account of disconnections between trust and trustworthiness, see: N. Scheman, *Trust and Trustworthiness*, [in:] J. Simon (ed.), op. cit., p. 28.

²⁴ M. Twyman, N. Harvey, C. Harries, *Trust in motives, Trust in Competence: Separate Factors Determining the Effectiveness of Risk Communication*, "Judgment and Decision Making" 2008, 3(1), pp. 111–120.

²⁵ *Ibidem*, p. 112.

motives of the trustor, they look to assess the reasons or values that the trustor acts upon – whether they are similar or appropriate to those of the trustee. The motives of the trustee may be, obviously, of a different kind, ranging from self-interest in maintaining the relationship with the trustor and therefore being motivated to encapsulate their interest in the trustee’s self-interest (e.g., I trust the lawyer who works on success-fee because by winning the case for me, he maximizes his or her salary),²⁶ up to simply having goodwill in acting on someone’s trust because the trustor cares about the trustee or acts with having the same objectives at their heart.²⁷ However, I argue that the most convincing claim is that a trustworthy person is ideally motivated by the need to stand for their moral values or act out of their proper dispositions. This kind of motivation amounts to the highest possible level of trustworthiness because, in such instance, the person may be trusted to do what is generally appropriate and reasonable in given circumstances and not to do a particular thing (which may, in turn, be reduced to mere reliance). When I go to a hospital, I may trust that by using all their skill and considering relevant determinants, the doctors will come up with the best treatment, not a particular googled and wished-for procedure (in the latter case, I treat the doctors instrumentally).

Virtuous Account of Trustworthiness

The following question arises: What does it specifically mean to be trustworthy as a judge? Perhaps a judge is trustworthy if I may expect that he or she will be lenient on my case, since it may also be in his or her interest to promote a specific line of rulings (I hope that my interest is encapsulated in his or hers). Or maybe, from a politician’s perspective, a trustworthy judge owes his or her appointment only to the ruling party and therefore is held in expectation of being “right-minded” or sympathetic towards particular political views while adjudicating? Indeed, this is not what we would consider judicial trustworthiness. These examples point to merely predictive expectations towards the trustee (judge). The predictive expectation is the expectation *that* the trustee will do something I am trusting him or her for. For instance, I held a predictive expectation that the room service in a hotel would clean my room. In contrast, a normative expectation means the expectation *of* someone to do something.²⁸ This kind of expectation is different in that I have

²⁶ See: R. Hardin, *Trust*, New York 2006.

²⁷ K. Jones, *Second-Hand Moral Knowledge*, “The Journal of Philosophy” 1999, 96(2), pp. 55–78.

²⁸ See: K. Dormandy, *Introduction: An Overview of Trust and Some Key Epistemological Applications*, [in:] eadem (ed.), *Trust in Epistemology*, New York–London 2020, pp. 1–40.

confidence in certain normative elements, such as a rule or a moral norm or a trait of character of the trustee that prompts me to believe that the trustee behaves accordingly. When holding the judge trustworthy, people do not expect her to give judgements of a predetermined content. Still, they hope that the judge provides the society with a fair, just, lawful, and prudent ruling. In other words, high-quality judgements as products of a fair trial are what is expected of judges. This view is illustrated by the well-established research, according to which the perception of proper treatment and fair procedures applied by judges or public officials increase the trust put in them.²⁹ More trust is generated by the fairness of treatment, not the outcome. In other words, what induces and increases our trust in a judge is their virtue or a disposition to act out of the moral integrity of a decent person, which constitutes the most robust possible motivation to behave appropriately for a virtuous person.

The virtuous account offers a thick concept of trustworthiness. This understanding considers both the role of competence and the motives of the trustee. Virtues are acquired and reliable, cognitive, and affective dispositions to act in a morally righteous way,³⁰ which means that the notion of virtue may accommodate the role of both competence and motives as determinants of trustworthiness. Not only do we want judges to know what they are doing (and to be knowledgeable, skilled in law and prudent), but we also care whether they are motivated to perform their service in an excellent way, having at heart the appropriate aims of justice. The judicial system as a social institution exists for a purpose that has to do with the common good or aim, such as a just society where laws are respected. As a society, we share (or at least should in principle) this common-good-oriented goal at least at a certain level of generality. A good judge is one that works toward a just society and respect for the law. Society will consider the judge as trustworthy when they are motivated to attain this goal and not moved by factors that Alasdair MacIntyre would consider as “external” to the practice of judging – for instance, to make money, to limit workload, to attain personal goals (such as fame or political recognition).

In contrast, they need to be motivated to attain goods internal to the practice of judging by aiming at excellence in being a good judge. The affective component of feeling and manifesting proper and sincere emotions stemming from the intrinsic value of virtue and virtuous life is precisely the factor that generates trust. In short, we are likely to consider a virtuous judge (a fair, prudent, composed, courageous, benevolent, honest) trustworthy.

²⁹ E.A. Lind, *Trust and Fairness*, [in:] R.H. Searle, A.-M.I. Nienaber, S.B. Sitkin (eds.), *The Routledge Companion to Trust*, London–New York 2018, pp. 183–196.

³⁰ See: N. Szutta, *Czy istnieje coś, co zwiemy moralnym charakterem i cnotą?*, Lublin 2017, pp. 100–125.

Another reason the virtuous account of trustworthiness is superior to other conceptions is that it enables and explains the concept of being an entirely trustworthy person, which we would ideally expect from our judges. The trust we put in judges is not merely limited to plaintiff A trusting judge B to adjudicate X, which would amount to a specific or thin sense of trustworthiness. Instead, we expect that judges are morally committed to standing by specific values and that they demonstrate moral integrity on many levels and in different contexts – in other words, that they are generally trustworthy to everyone.³¹ Since virtues are stable traits, the virtuous trustor will not turn out whimsical or volatile, even if the context or social role changes. The fully trustworthy judge has sound and valuable motivations to act virtuously in every situation.

Trustworthiness as a Judicial Virtue

The discussion so far was restricted to relating trustworthiness to the virtue-oriented explanation of judicial character, concluding that a judge possessing relevant judicial virtues may be deemed as trustworthy in a two-fold sense: having appropriate competencies and motivations through virtue. However, could trustworthiness itself be considered a virtue? Nancy Nyquist Potter proposes a neo-Aristotelian view that a person having the virtue of trustworthiness is “one who can be counted on, as a matter of the sort of person he or she is, to take care of those things that others entrust to one and (following the Doctrine of the Mean) whose ways of caring are neither excessive nor deficient.”³² This concept pays attention to the ability of the trustworthy to respond to trust put in her in appropriate ways, where “appropriate” means here “given all the other virtues the judge needs to possess” through a balanced care-based relation. It seems, however, that in the case of judges, the reference to caring about what is entrusted to them is not necessarily the only or adequate possible virtuous response. Judges cannot be expected to “take care” of the contradictory and mutually exclusive interests entrusted to them by opposing parties to the proceedings in the sense that generates trustworthiness. The same goes for situations that potentially jeopardize judicial impartiality or when trust is misplaced, as in the defendant’s conviction that he can trust the judge to accept a bribe.

I propose to widen the abovementioned concept by using Christine Swanton’s pluralistic theory of virtue. In Swanton’s view: “A *virtue* is a good quality of character,

³¹ See: N. Nyquist Potter, *How Can I be Trusted? A Virtue Theory of Trustworthiness*, Lanham 2002, p. 25.

³² *Ibidem*, p. 16; cf.: C. McLeod, *op. cit.*

more specifically a disposition to respond to, or acknowledge, items within its field or fields in an excellent or good enough way.³³ The agent may respond to the demands of the world (or the items in virtues' fields) in several forms by making use of different modes of moral responsiveness.³⁴ Swanton names examples such as promoting or honoring value (e.g., promoting justice or honoring someone's trust), respecting (an individual in virtue of her status), appreciating or creating (a work of art), using or handling (appropriate things in appropriate ways).³⁵ Importantly, virtues exhibit many or plural modes of moral responsiveness, which means that items in particular virtue's field may be responded to in several different ways, which are connected.³⁶ This approach is advantageous in the case of judicial virtue of trustworthiness. Accordingly, a judge could be considered trustworthy if she acts on his or her disposition to acknowledge, honor, appreciate or handle the trust that others (the society) put in him or her and responds to it by endorsing what his or her virtues require in dealing with matters that depend on his or her judgement.

Trust as a Judicial Virtue

The possibility of considering trustworthiness a virtue immediately makes this qualification relevant to trust: should it also be considered a virtue, and if yes, is there a judicial virtue of trust? Conceptualizing trust as a virtue may start with the idea that a trusting person possesses a capacity to reasonably act toward others with goodwill and take a stance of optimism about other people's motives.³⁷ Put in other terms, trust is seen as a kind of a relational attitude that the trustor takes towards another person to establish a relationship with them.³⁸ Some classifications even suggest that trust is a virtue belonging to the bundle or species of virtue called respect.³⁹ Indeed, trusting someone means showing them respect. Although the attitudinal (including motivational) aspect seems to be central to trust, it must be remembered that the structure of any virtue may be perceived as including also

³³ C. Swanton, *Virtue Ethics: A Pluralistic View*, New York 2003, p. 19.

³⁴ *Ibidem*, p. 21.

³⁵ *Ibidem*, pp. 21–22.

³⁶ *Ibidem*, pp. 22–23.

³⁷ L. D'Olimpio, *Trust as a Virtue in Education*, "Educational Philosophy and Theory" 2018, 50(2), pp. 193–202.

³⁸ *Ibidem*, p. 195.

³⁹ See: T. Sprod, *Philosophical Discussion in Moral Education: The Community of Ethical Inquiry*, New York 2001, p. 127.

other affective and cognitive elements, as well as consequent behavior.⁴⁰ Therefore, trust may not be interpreted as purely affective but rather as a disposition that makes use of emotional maturity as well as the calculations of prudence.⁴¹ The trustor needs to recognize and discern appropriate and motivational emotions that he or she feels or receives from the attitude of being trusting or open to trusting generally. In a particular case, the trustor must be sober in his or her judgements and deliberative about whether and how putting his or her trust in someone would lead to the realization of moral good. Importantly to observe, on the Aristotelian account, the trust would lie mid-point on the scale between naivety and cynicism.⁴²

Is a virtue of trust relevant for judges? It is desirable that judges are not only trustworthy but also have a reliable disposition to trust the citizens (as defendants, plaintiffs, and witnesses).⁴³ The ability of judges to trust the citizens is crucial because it allows for reducing otherwise disproportionate burdens put on them (e.g., as parties to court proceedings) or protects their rights, for instance, by allowing for excessive infringement of these rights in the form of extensive surveillance or coercion.⁴⁴ These contexts allow us to get a clearer view of why it is vital to conceive trust as a judicial virtue instead of mere goodwill or pure emotion. The trust judges put in the citizens or other individual actors of the court proceedings obviously can be neither naïve nor too restricted. Judges generally deal with untrustworthy individuals or public prosecutors who need to be constantly checked for their respect for the defendants' rights. Therefore, criticism may be anticipated, according to which distrust on the part of judges (i.e., towards recidivists) may be warranted if not prudent, in which case trust cannot be a judicial virtue. However, this view would be unfounded because it conflicts with normative premises of the judicial role, as determined by the basic rules of procedural law, such as a fair trial without prejudice. Second, distrust is not necessarily a vice opposed to trust. The virtue of trust encompasses a propensity to trust, where each case of trusting is deliberated with the use of other virtues such as prudence. The effect of deliberation resulting in a decision not to trust in a particular case does not conclude that the judge is generally distrustful or lacks the capacity to trust. The argument for the existence of judicial trust as a virtue is that in order not to grow an attitude of

⁴⁰ See: N.E. Snow, *What Is a Science of Virtue?*, "Journal of Moral Education" 2020, 51(1), p. 18.

⁴¹ See: N. Szutta, *Edukacja moralna z perspektywy etyki cnót*, "Diametros" 2015, 46, pp. 111–133.

⁴² L. D'Olimpio, op. cit., p. 193.

⁴³ In this article, I focus on the relations of trust and trustworthiness between the judges and lay people (citizens) who use the courts of law. The issue of the disposition of judges to trust each other or the other institutions of the state is an equally important problem in the context of the virtue of judicial trust, however, it remains beyond the scope of the current analysis.

⁴⁴ See: N. Raaphorst, S. Van de Walle, *Trust in and by the Public Sector*, [in:] R.H. Searle, A.-M.I. Nienaber, S.B. Sitkin (eds.), op. cit., pp. 472–473.

general distrust and suspicion, which would lead to ineffectiveness and perhaps even unjustness, the judges need to be constantly open to the possibility of trusting and prudently allocate their trust in each context. Therefore, on the account provided earlier, the judicial trust may be summarized as the disposition to discern the trustworthiness or untrustworthiness of other people and respond to it appropriately (i.e., by appreciating, respecting, honoring, or disregarding it) in specific-context situations. The trustworthiness or untrustworthiness of the people that the judge comes across in her service to justice is a demand of life put on him or her, and which he or she needs to deal with excellently so that they trust the citizens in return put in judges (and in the judicial system) is not strained.

Trust and Trustworthiness of Judges and Courts

As a way of concluding the analysis of judicial trust and trustworthiness, one final point should be reflected upon – does the trustworthiness of individual judges relate to the trust the citizens may have in the judiciary or the courts as the institutions of the justice system? This question pertains to a more general problem, which was not the primary focus of this article, whether social institutions⁴⁵ or collective organizations can be trustees. So far, I have suggested that trust relates to persons rather than institutions or other non-personalized state organs. According to Hardin (2013), it is difficult to conceive of institutions as “caring” or “intending” or otherwise having an affective motivation or acting with prudence in responding to trust that may be placed in them. On account of the distinction between trustworthiness and mere reliance, it was explained above that a well-functioning judiciary might be reliable in applying the law, or the police may be reliable in preventing or persecuting traffic violations. There is little point in considering them trustworthy because of the lack of immediate “appropriateness” or a moral element in group actions that would be taken into consideration or directed towards responding to the trust put in them. However, the situation changes when the institution (such as the court or the justice system) is personalized as a particular judge.⁴⁶ In this context, the judge bears a great responsibility because regardless of her trustworthiness, she represents the institution that the people may perceive as reliable or not. That perception is often gained through her behaviour and attitude. This seems to work reciprocally as well – officials of reliable institutions

⁴⁵ Institutions here are understood as “interlocking double-structure(s) of persons-as-role-holders or office-bearers... and of social practices involving both expressive and practical aims and outcomes” (R. Harre, *Social Being*, Oxford 1979, p. 98.); cf.: B. Bradford, J. Jackson, M. Hough, op. cit., p. 634.

⁴⁶ B. Bradford, J. Jackson, M. Hough, op. cit., pp. 634–635.

(e.g., firefighters) tend to be more trusted. As a role-holder or a representative of a reliable institution, the judge does not have to struggle not to fail my trust at all costs (e.g., in my capacity as a defendant); however, he or she should be aware and motivated by reason of not betraying public trust citizens in general put in him or her. If he or she fails that, this will potentially add up to the justice system's unreliability in the people's eyes.

Conclusion

The present analysis supports the view that trust and trustworthiness are essential for judges in their relations with the clients of the justice system. Effective communication between professionals like judges and citizens as laymen is potentially much easier if the complexity of the legal system (including the legal language) is reduced with the use of trust. Trust is a social currency. The value of that currency lies in cooperation, communication, sharing of information, and compliance with social norms that we trust others will equally respect. However, trust is not generated by the laws or institutions alone but stands out as an attitude bestowed on specific individuals. Only trustworthy people may work towards the reliability and credibility of an institution they represent in the context of their professional role. This is especially true for judges, for whom we hold high expectations of the standard of their professional competencies but also motivations, attitudes, and behavior. The virtue-oriented perception of judicial trust and trustworthiness is best justified, as it comprehensively explains the trust put in judges in consideration of other judicial virtues that the trustees are looking for in a judge. Prudence is the necessary element of the two virtues of trust and trustworthiness that links them with other desirable character traits of a judge, such as benevolence, honesty, and respect.

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