

# Engaging Communities in the State Courts: The Role of Trust<sup>1</sup>

Joseph A. Hamm, Ph.D., M.L.S.

*School of Criminal Justice, Michigan State University*

## Introduction

Courts have an important place in American life. While many would think first of the police as the institution most directly responsible for maintaining the law, the courts are an integral part of effecting social order. Indeed, as is illustrated by practices regarding warrants and cases challenging police action, much of the authority typically attributed to the police is, in fact, controlled by the courts. Importantly however, as is often the case with institutions of government in the US, this considerable authority comes with relatively limited power. Indeed, the US courts control “neither the purse nor the sword” (Hamilton, 1788) leaving them heavily reliant upon other institutions and the public in general for their efficacy. Thus, an extreme argument can be made that the courts need the positive perceptions of the majority of the public in order to function at all (e.g., Dougherty et al., 2006; Olson & Huth, 1998) but others have pointed to these perceptions as important simply because effective courts *should* be perceived well by the public they serve (e.g., O’Connor, 1999). In either case, there is little question that public perceptions matter for the courts.

In recognition of this, considerable effort has been expended by the courts to improve public perceptions of them (see Leben 1999; National Center for State Courts, 2000). Problematically however, this effort has been largely unable to improve the comparatively more negative perceptions of the courts held by many minority group members (Rottman & Tomkins, 1999). Black respondents in particular tend to report more negative perceptions of the state courts and, to date, efforts to improve these perception have been largely unsuccessful. Past efforts have focused on increasing knowledge and addressing service gaps but little work has been done to integrate these communities as truly engaged partners. This brief addresses this issue by discussing the nature of one specific perception that has considerable potential to facilitate engagement, namely trust.<sup>2</sup> To this end, I begin by briefly outlining the process of perceptions as a basis for my argument that trust is a willingness to accept vulnerability to the agency of the courts. I will then present a data example from research on the police (Hamm et al., in prep.) before turning to the implications of this conceptualization of trust for efforts to engage communities in the state courts.

## The Process of Perceptions

Considerable effort has been expended in studying how individuals form perceptions of others (e.g., Asch, 1946; Fiske & Neuberg, 1990). Essentially, this *impression formation* literature generally argues that perceptions are formed from information about the target. Applied to the courts, this work suggests that the process of perceptions is such that individual perceptions of the courts are a function of the

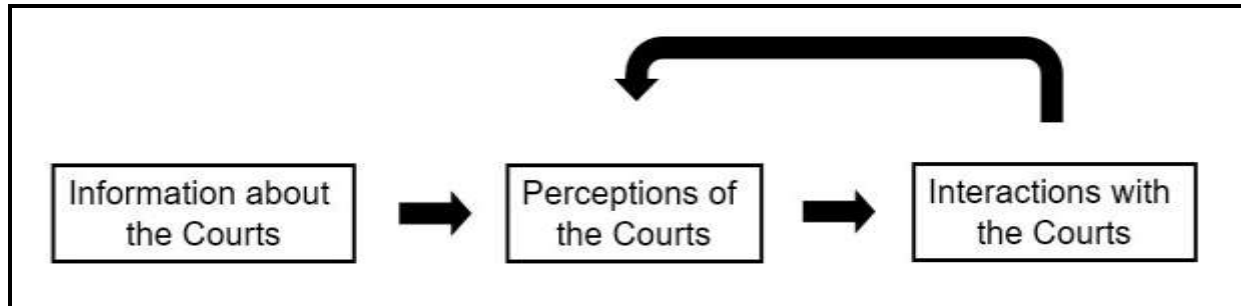
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<sup>2</sup> Note that many scholars refer generally to public “trust and confidence.” In this brief, however, I intentionally focus on trust as I argue that it has the greatest potential to improve efforts to engage communities in the courts. It is important to note, however, that I do not suggest that there is no role for confidence.

information they have about it (see Figure 1). A primary source of this information is the personal experience of the individual with the courts, but information can also come from others' experiences and a wide variety of media that spans from news reports to courtroom dramas (Rottman, 2015) and this vicarious information is no less, and potentially even more relevant for forming perceptions than information gleaned from personal interactions (Brunson, 2007). This information then provides the basis for evaluations of the courts that are held in the mind of the individual and have a robust effect on later interactions with the courts (Tyler & Huo, 2002). Finally, these interactions feed back into the process as information sources for updated perceptions.

**Figure 1** – *The Process of Perceptions of the Courts*



## Trust

A wide variety of public perceptions of the courts have been investigated and include constructs like confidence, legitimacy, cynicism, support, and so on (e.g., Benesh, 2006; Benesh & Howell, 2001; Dougherty et al., 2006; Hamm et al., 2013; Olson & Huth, 1998; Rottman, 1998; Wenzel et al., 2003) but one especially important construct is trust. From the National Conference on Public Trust and Confidence in the Justice System in 1999 to the recent National Initiative for Building Community Trust and Justice, trust is widely recognized as a critical aspect of the court/community relationship. Despite the strong emphasis on the construct however, a consistent conceptualization of it has been elusive. In fact, the courts literature contains at least three importantly different understandings of the construct.

The first of these “versions of trust” arises primarily from the scholarship addressing the Process Model of Legitimacy which suggests that procedural concerns are especially important for evaluations of legal authorities and has been supported by an impressive body of literature (e.g., Haas & Fleitas, 2014; Murphy, 2004; Van Craen & Skogan, 2015; Jackson et al., 2014; Jackson et al., 2013). Trust has an important role in this literature but, notably, its specific nature is not well-defined (Gau, 2011; Tyler & Jackson, 2013). Instead, trust is variously understood as an outcome or driver of procedural justice, as a subcomponent or operationalization of legitimacy, or as an umbrella term for all perceptions of legal authorities (e.g., Tyler, 1989; Sunshine & Tyler, 2003; Tyler & Huo, 2002). It suffices, however, to say that this account of trust is strongly tied to legitimacy such that both center on a perception that the courts should have authority.

The second version of trust arises from political science scholarship. Although much of this work focuses on the US Supreme Court, a noteworthy portion has addressed perceptions of the state courts specifically (e.g., Benesh & Howell, 2001; Kelleher & Wolak, 2007; Wenzel et al., 2003). Trust within this literature is often not defined but is usually associated with constructs like confidence and support (e.g., Cann & Yates, 2008; Peterson et al., 2012). In one of the only explicit definitions presented in this literature,

Dougherty and colleagues (2006) argue that trust is a fiduciary concept that concerns whether the courts fulfill expectations. Thus, within this literature, trust is strongly connected to perceptions of satisfaction with the courts as service providers.

The final version of trust in the courts is an argument that comes from the broader literature on trust more generally (Mayer et al, 1995). In this work, scholars across contexts are increasingly settling on an understanding of trust as a willingness to accept vulnerability to the agency of the target of that trust (McEvily & Tortoriello, 2011). This account differs from the previous two by suggesting that trust resides, not in an evaluation of the courts themselves but is instead a psychological state or feeling within the trustor that orients them towards engaging in cooperative behavior that accepts their vulnerability to the agency of the courts (Hamm et al., in press).

### **Vulnerability and the Courts**

This account of trust rests on two fundamental arguments regarding the relationship between the courts and the communities they serve: (1) that there is potential for harm in the courts/community relationship and (2) that the courts are perceived to have some level of control over this potential for harm. Regarding the first argument, the most obvious harms are to defendants. For these individuals, appearing in court necessarily opens them up to potential harm in both the outcome (e.g., a harsh verdict) and process (e.g., an inability to tell their side of the story) but this also applies to other participants in court proceedings. Victims risk that their attacker could go free and witnesses risk public embarrassment in an inconsiderate examination. For all of these individuals, cooperation with the courts requires an acceptance of the fact that they could experience these and other harms as a result of the actions of the courts.

In addition to the potential for harm to participants, the court/community relationship also involves the potential for harm to the wider public. A 2009 survey by the National Center for State Courts suggests that approximately half of the population will not have direct contact with the courts (National Center for State Courts, 2009). Nonetheless, because of their place in American life, the operation of the courts is not inconsequential to these individuals, especially because of the strong popular focus on them (Rottman & Tomkins, 1999). One important harm to this *second public* (Rottman, 2007) arises from violations of more abstract notions of what the courts should be. When the courts are perceived, for example, as systemically disparate impacts on minority communities, there is often a perceived harm, even for individuals who are unlikely to experience those disparate outcomes personally. As a result, the potential for harm to these individuals, although potentially somewhat attenuated as compared to the courts' *first public*, is no less present and influential.

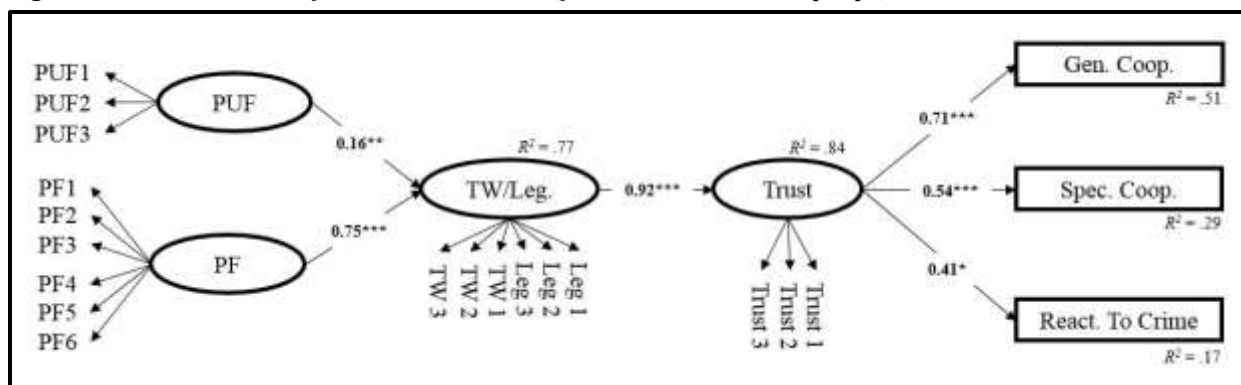
The second argument upon which this conceptualization of trust rests regards the courts' role in the addressing the probability and intensity of these harms. As noted in the definition posed above, trust is a willingness to accept vulnerability, specifically, to the *agency* of the courts. This agency is defined as a *perceived* ability to make decisions that affect the potential harm to the trustor. Thus, even though courts are somewhat bound to specific processes or decisions (e.g., sentencing guidelines), the public often still perceives the court themselves as chiefly responsible for the decision. Thus, this account of trust suggests that when an individual trusts the courts, they feel that even though there is a possibility for the courts to cause (or at least allow) some level of harm to them, they are willing to take a *leap of faith* and cooperate (Möllering, 2005).

## Integrating Trust into the Process

While the first two accounts have been notably influential on how scholars and practitioners understand trust in the state courts context, this third account of trust pushes this area of literature by suggesting that trust is actually something slightly different and this distinction can best be explained by integrating these accounts into the process outlined in Figure 1. As the figure suggests, individuals use information about the courts as a basis for their perceptions of them which then drive subsequent interactions with the courts. The process model and political science accounts of trust both overlap well with this argument such that, for the process model, trust is an evaluation of the courts that arises from assessments of the perceived fairness of the courts and, for political science, trust is an evaluation of the courts that arises from assessments of its outputs. Thus, in both accounts, trust is a part of the individuals' perception of the courts itself. This account of trust as a willingness to accept vulnerability, however, suggests that the construct lies, not in the evaluation, but is instead an intervening psychological state within the trustor that serves as a bridge between these evaluations and cooperation.

To provide empirical evidence of this distinction, I turn to data that was recently collected in the policing context (Hamm et al., in prep). In this study, 600 participants were asked to complete a cross-sectional survey which included measures of procedural fairness (PF), procedural unfairness (PUF), trustworthiness (TW), legitimacy (Leg.), trust (measured here as a willingness to accept vulnerability), and three different measures of cooperation (general support, specific cooperation with the police's mission of crime control, and a willingness to report and aid in the investigation of a crime witnessed by the participant). Structural Equation Modeling analyses suggested that, as hypothesized, information about the institution (here procedural fairness and unfairness), drove perceptions of the institution (here trustworthiness and legitimacy), which in turn drove cooperation. Interestingly, the measures of trustworthiness and legitimacy were not sufficiently distinct to treat as independent and so were combined into a single construct. This does not suggest that the constructs are not conceptually distinct, but instead that participants did not sufficiently distinguish between them in their responses which is not surprising given that humans tend to hold relatively unified perceptions of institutions (e.g., Hamm et al, in press; see also Quinn et al, 2003). Most importantly however, the results suggested a partial mediation role of trust such that it serves as an intermediary between the perceptions of the institution and cooperation. Thus, the data suggest that this willingness to accept vulnerability is distinct from perceptions of the institution like trustworthiness and legitimacy (and likely, satisfaction) and, instead, serves as direct facilitator of cooperation.

**Figure 2 – SEM Results of Trust in the Police (from Hamm et al., in prep.)**



## Practical Implications

This conceptualization of trust as a willingness to accept vulnerability has two major implications for efforts to increase engagement with the courts. The most important take-away of this argument about the nature of trust lies in the proposed centrality of vulnerability and, as a result, engagement efforts that explicitly address salient vulnerabilities should be most effective. Many previous court engagement efforts have peripherally addressed assumed vulnerabilities but they have not, as yet, allowed these issues to take center stage. Instead of working with communities to identify and then explicitly address the public's perceived vulnerabilities, most court improvement efforts start with engaging community representatives to determine the important knowledge or service gaps or in trying to educate courtroom personnel in using more objectively palatable procedures. Both of these approaches may, in fact, address vulnerabilities the communities feel and indeed, many court officials and community members likely intuitively know that addressing the potential for harm is important but this has not yet been systematically integrated on a national or even regional scale. What is needed then is concrete guidance regarding how best to work with communities to identify the specific potential harms that they are concerned about and then how best to assure them that the courts are not only aware of these specific concerns but are actively working to address them.

The second implication of this account of trust lies in what it suggests about measuring trust. Most successful public engagement efforts include a monitoring and evaluation component which allows them to determine efficacy and identify and adjust aspects of the effort that were less effective than expected. Comprehensive monitoring and evaluation strategies involve measuring information about the courts (e.g., procedural fairness), evaluations of them (e.g., legitimacy and satisfaction), and willingness to cooperate or actual cooperation (e.g., willingness to bring current or future cases to court for resolution). While these factors are important, the notion of trust presented here suggests that they may neglect a critical issue. Because trust as conceptualized here is neither a perception of the courts nor actual cooperation with them, most existing monitoring and evaluation efforts fail to account for it. This is an important oversight because trust is an intervening state that connects these evaluations to cooperation behavior. This, however, should not be understood to suggest that monitoring and evaluation not include measures of perceptions or cooperation. Perceptions of the courts should be measured, especially as performance indicators, but also as drivers of cooperation. According to this conceptualization of trust however, these perceptions only lead to cooperation when the individual is willing to accept their vulnerability. Similarly, cooperation is also important to measure but it can only be directly addressed retroactively and in relation to specifically identified behavior(s). Future behavior however, by definition, cannot be directly measured and, although it is interesting, asking people how likely they feel they *would be* to cooperate is not necessarily reliable. Measuring a willingness to accept vulnerability to the agency of the courts, however, is closer to cooperation than perceptions of the courts and more applicable to a variety of future cooperation than specific measures of past or current cooperation. Thus, I argue that this should be of primary focus in monitoring and evaluating efforts to increase court engagement.

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