

Stephanie Worboys

# Eroding Trust

## how democratic deficits have undermined the public's confidence

### Abstract

While political trust has declined in democracies the world over for several decades, New Zealand historically defied this trend. However, since 2021, New Zealand's political trust has also been on the decline. According to the Acumen Edelman Trust Barometer 2024, it now sits below the global average. This article explores the decline in political trust in New Zealand and argues that placing limits on the use of parliamentary urgency is one action we can take to rebuild it. Constraining the use of urgency will not fix our trust problem outright, but it constitutes a good place to start.

**Keywords** political trust, democracy, parliamentary urgency, unicameral, Bill of Rights Act 1990

Political trust has been on the decline across Western democracies for many decades (Kroeger, 2019; Vallier, 2022). New Zealand appeared to be immune to this trend, regularly ranking as one of the highest-trust nations in the world (Public

Service Commission, 2024). Recent evidence, however, suggests that trust is falling among New Zealanders (Acumen, 2022, 2023, 2024; OECD, 2024; NZ Parliament, 2023).

In New Zealand, waning trust has been attributed to a variety of causes: notably,

the state of the economy, the Three Waters proposal, the Covid-19 responses and the anti-vaccine mandate protests (Gluckman et al., 2023). Our falling trust has also been connected to other changes, such as rising polarisation (Chapple and Prickett, 2022), growing suspicion of the media (Acumen, 2023; Myllylahti and Treadwell, 2022) and low voter participation (Review into the Future for Local Government, 2023).

The data suggests that New Zealand is becoming a more distrustful and divided place. This article explores the decline in political trust in New Zealand. It argues that political trust has been negatively affected by many factors, including government governing undemocratically, and the failure of our institutions to prevent this. The article suggests ways in which political trust can be recovered. Although there are several changes that would increase trust, the article suggests that placing limits on the use of parliamentary urgency would be an appropriate first step.<sup>1</sup>

### Trust and democracy<sup>2</sup>

It will be helpful for what follows to briefly consider the nature of trust and democracy. The term trust refers to 'a

Stephanie Worboys is the internship manager at the Maxim Institute in Auckland and has a PhD in public policy from Te Herenga Waka Victoria University of Wellington.

person's belief that another person ... will act consistently with their expectation of positive behaviour' (OECD, 2024). Among other things, trust is beneficial because it facilitates cooperation (Lahno, 2017). Cooperation entails relying on the freely chosen actions of another person or group (Simpson, 2012). When we cooperate, we put ourselves in a position to be affected by the actions of the other person. This is a risk because we cannot know in advance what they will choose to do.<sup>3</sup> They may choose to do right by us, or take advantage of us instead. Trust responds to this uncertainty. When we trust a person, we willingly take this risk with the expectation that they are not going to act to our detriment (Kroeger, 2019; Lahno, 2017; Simpson, 2012).<sup>4</sup>

Generally, we enter into trust relations based on our assessment of the other party's competence and character (Lahno, 2017; Simpson, 2019).<sup>5</sup> In terms of competence, we trust people to do things we think they are capable of doing (Simpson, 2019). For instance, a person may trust her GP with her health, but not with her life savings. Additionally, we trust people when we believe that they have the right character or motivation. Ordinarily, to trust someone, the trustor needs to believe that the trustee is the sort of person who is going to do the right thing by her (Hawley, 2017; Lahno, 2017).

There are many types of trust. The most common is personal (or interpersonal) trust. Personal trust is the trust we place in those known to us (Patterson, 1999). Here, trust is typically based on our own experience of that person's competence and character. Social trust is the trust we extend to people we don't know (Freitag and Buhlmann, 2009; Patterson, 1999). Since we do not know them, we have little upon which to gauge their competence or character. Instead, trust is extended on the presumption that they will act cooperatively (Offe, 1999). This presumption typically relies on shared norms or binding laws (Freitag and Buhlmann, 2009; Patterson, 1999). For instance, we might extend trust to a stranger because we share a tribal affiliation or a religion (Lane and Bachmann, 1996). Law is the principal institutional structure that facilitates trust between strangers. Law does this by giving the trustee an incentive to act trustworthily

and the trustor recourse if they do not (Freitag and Buhlmann, 2009).

Political trust involves trust in people (such as political officials or parties) and trust in institutions (such as Parliament). Like all trust in people, trust in political officials largely depends on character and competence. Officials who are thought to be incompetent or corrupt will not be trusted; those who are believed to be competent and honest will be. Institutional trust is trust that an institution can be depended upon to function in the way it should. Trust of this kind is supported when an institution acts consistently and

their rule on others. In personal matters, each rules over him or herself, and in collective matters, each individual has a rightful say in those decisions (Warren, 2006b).

Since democracy is a system of collective self-rule of political equals, it is a form of government in which distrust of people, such as other voters and public officials, is always present. We have conflicting interests and different goals, and democracy threatens that we will be overruled by others. This is a situation of conflict, and conflict warrants distrust. Democracies address the distrust collective

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predictably, treats citizens impartially, and functions according to (and within the bounds of) its purpose (Gluckman et al., 2023; Listhaug and Jakobsen, 2017). Unsurprisingly, trust in public officials may rise and fall quickly. Institutional trust is the more fundamental aspect of political trust because citizens need to trust that the system of government is functioning as it ought and is able to deal effectively with untrustworthy actors within it (Kroeger, 2019; Listhaug and Jakobsen, 2017; Warren, 2006a).

A democracy is a form of government where the members of a society are engaged in a system of 'collective self-rule' (Warren, 2006a). Here, a community of equals rules themselves by making decisions together (Patterson, 1999). In its modern liberal form, democracy rests on two fundamental commitments: equality and freedom. The commitment to equality is the commitment to the idea that each person is the moral equal of all others. As moral equals, we are political equals; that is, since we are equal, no one has an inherent right to impose

self-rule warrants by tempering the risks of being overruled, which they do through their institutional design. This design includes a constitution and the separation of powers into the legislative, the executive and the judicial branches. Here, the separate powers check and balance each other. Checks and balances promote institutional trust *and* trust in public officials. If the institution is robust and functioning as it ought, the citizen can presume (barring evidence to the contrary) that public officials are acting within their prescribed limits and discharging their duties in a trustworthy manner. This is so because the institution limits what officials can do and, therefore, how the public can be harmed by trusting them (Listhaug and Jakobsen, 2017; Warren, 1999a, 2017b).

Democracies also promote trust by placing limits on how conflict is conducted between their members. Conflict is conducted democratically when conflict is conducted through speaking and voting rather than through violence or suppression (Patterson, 1999; Warren, 1999b, 2004,

2006b, 2017a). When conflict is conducted democratically, a genuine argument between political equals can be had. Here, each side has the opportunity to make their case to the other, attempting to persuade them or secure a compromise (Freitag and Buhlmann, 2009). Ideally, this leads to consensus; but if it does not, at least the losing side has had a fair hearing. However, when conflict is not conducted in this way – when people are denied the opportunity to have a say in the political decisions that affect them – conflict festers, and distrust grows.

#### The New Zealand context

Recent data suggests that New Zealanders no longer trust political leaders and government as they once did. For example,

Zealanders are genuinely represented in Parliament. Furthermore, only 36% said that Parliament dealt with issues of importance to them, down from 55% in the previous year (2021). And, perhaps most concerningly, only 60% (down from 68%) believed that ‘Parliament and democratic processes are accessible to them’ (New Zealand Parliament, 2023).

Similarly, the most recent OECD trust survey found that trust in the democratic functioning of the New Zealand political system had declined since its 2021 survey. Among those New Zealanders surveyed, fewer than half believed that Parliament fairly balanced the interests of all New Zealanders in its policy decisions. Likewise, only 40% believed that the government would abandon a policy if more than 50%

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in 2023, the Acumen Edelman Trust Barometer reported that our trust in political leaders declined five percentage points, and trust in government in general declined by six points, between their 2022 and 2023 reports (Acumen, 2022, 2023). Between their 2023 and 2024 reports, trust in political leaders fell again by five points, and trust in government fell a further three points. As of the 2024 data, New Zealand’s combined political trust score sits at 48 points, which is lower than the global average of 51 (Acumen, 2024).

As political trust has declined, so has political participation. According to a parliamentary survey published in 2023 by the Office of Clerk, the proportion of New Zealanders engaged with Parliament had ‘hit a new low’ of 13%. It reported that less than half of those surveyed (43%) believed that the views and interests of all New

of the population said they were against it, and roughly 30% thought it likely ‘that government would adopt opinions gathered in public consultation’. Additionally, fewer than half believed that the political system, as it currently operates, ‘allows people to have a say in what government does’ (OECD, 2024).<sup>6</sup>

During the period in question (2021–23), significant events unfolded in New Zealand that have had an impact on political trust. Deteriorating political trust has followed a sub-par performance by the previous Labour government in areas like healthcare, the economy (Edwards, 2022, 2023) and affordable housing,<sup>7</sup> among other things. Performance is a sign of competence, and competence is a component of trust.

Loss of trust may also stem from perceived breaches of democratic norms

that occurred during this time. One standout example of this was the Three Waters proposal. The proposal not only lacked a clear mandate from the people; it was also deeply unpopular with them. Despite this, the government pursued it anyway. Furthermore, the government’s attempt to entrench the legislation was a ‘misuse’ of its power (Edwards, 2021, 2023). Entrenched legislation is legislation that is more difficult to change because it can only be amended or removed by a supermajority and is typically reserved for constitutional fundamentals (Geddis, 2022). Had Three Waters been entrenched, not only would the legislation have been made in defiance of the will of the majority of New Zealanders, but future majorities would have had trouble repealing it.

The Covid responses were likewise riddled with democratic deficits. For example, the Covid-19 Response (Vaccinations) Legislation Bill was controversial, but it was pushed through under urgency, making its way through Parliament in a single day (Penk, 2022). The public and the opposition had little opportunity to scrutinise the bill or influence its content before it was enacted into law. Given the legislation’s conflict with the New Zealand Bill of Rights Act 1990, these parts of the law-making process should not have been curtailed (Edwards, 2021; Penk, 2022). The use of urgency in this case was a concern voiced by many, including the chief human rights commissioner, Paul Hunt (Neilson, 2021).

These examples show that the decline of the public’s trust in political leaders has not been without cause. However, the loss of trust has not been limited to our leaders. Trust has also declined in government as a whole, indicating that institutional trust, the more fundamental component of political trust, has also been damaged.

The Three Waters proposal and aspects of the Covid responses revealed concerning weaknesses in the institutional design of our democracy. The regular use of urgency to pass legislation, the lack of a written constitutional document, the status of the New Zealand Bill of Rights Act, and the unicameral form of our parliamentary system mean that there are fewer checks and balances in New Zealand than in other democracies.

Checks and balances function as safeguards on the use of power. Other democracies have multiple safeguards, but New Zealand is lacking in this regard. New Zealand is a unicameral system, which means it lacks the check of an upper house through which legislation must also pass (Ludbrook, 1990). Bicameral systems, by contrast, require legislation to ‘get by two different sets of representatives, sampling the spirit of the country in two different ways’ (ibid.; Waldron, 2008). Our system also gives the executive much more power than other democracies. In the United States, for example, the House and the Senate operate separately from the executive. Here, instead, Parliament is ‘dominated by the executive’. The committee a bill goes to, for example, is chosen by the executive, which means the executive chooses the kind of pushback the bill will be exposed to. Since the executive chooses the pushback that will be received, ‘the outcome of virtually all legislative process is predetermined and little negotiation takes place’ (Gluckman, 2022).

In addition, we do not have a single constitutional document, and our courts provide only a marginal defence against bad laws. These issues have been especially pertinent to the Bill of Rights Act. The Act enshrines in law the fundamental civil and political rights of the person, but the Act is neither supreme law nor entrenched, which means the Act ‘may be amended or repealed in the same way as any other Act’. In other words, the Act and the rights it protects can be overruled by a simple majority vote. Furthermore, since the Bill of Rights Act is no different from any other Act, the courts do not have the ‘power to strike down legislation that is inconsistent with it, which was the case when prisoners’ voting rights were restricted (Cooke, 2020; Ludbrook, 1990).

In the voting case, the court ruled that restricting prisoners’ voting rights violated their rights under the Act, but there was nothing the court could do beyond making this judgment. As Cooke explains, the court has ‘no power’ to enforce its ruling ‘because in New Zealand the courts cannot ever over-rule the clear wish of Parliament’ (Cooke, 2020). Thus, even though the courts can make a declaration of inconsistency, if Parliament wishes to

curtail individual rights, it can. Although we may be dismayed by this, we should not be surprised. In view of parliamentary sovereignty, the Act itself (section 4) allows for a majority vote to curtail the rights protected by the Act. Furthermore, the Bill of Rights Act is not breached by another enactment if any curtailments of the rights contained within it are ‘reasonable’ and ‘appropriate to a free and democratic society’ (Mapp, 1994). Since what counts as ‘reasonable’ and ‘appropriate’ is a matter of interpretation, the Act is weak.

Let us now consider the use of urgency. To become an Act, a bill must pass through multiple stages. After it is introduced, it goes through three readings, with the first

The upside is that urgent business can be dealt with quickly, but a downside is that the ability of the public and the opposition to influence the content of the legislation is curtailed. Unfortunately, the standing orders place few limits on the use of urgency; only three, in fact. As Mueller explains:

general business must be completed; it can only be moved by a government minister; and the minister must inform the House with some particularity why the motion is being moved ... as long as the moving Minister gives any reason, the urgency motion will be put to the question. If the government commands

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two followed by a committee stage. This process allows the public and the opposition time to grow familiar with the bill and consider its implications. The select committee stage follows the first reading and is the only stage in which the average citizen can have a direct say in the proposed legislation, which is done through making submissions to the committee. In the later stages, the public can only indirectly influence the legislation through their representatives (Mueller, 2011).

Parliamentary urgency is used to extend the sitting time of the House and to speed up certain business. As it concerns the latter, urgency allows the government to waive stand-down periods between readings and sometimes even to waive the select committee stage (Geiringer, Higbee and McLeay, 2011). In other words, urgency enables the government to circumvent ‘constitutional processes’, effectively providing a way for it to dispense with its own legislative rules to speed things along.

the majority of the House, the motion will pass. No other safeguards for the use of urgency ... exist. (Mueller, 2011)

Put another way, a majority government can use urgency to circumvent constitutional processes on any matter for any reason it wishes.

Due to the ease with which it can be used, passing laws under urgency has become part of the status quo in New Zealand (Geiringer, Higbee and McLeay, 2011; Mueller, 2011), both with the previous Labour government and with the current National-led coalition government (Rawhiti-Connell, 2023; Ruru and McConnell, 2024). In the 2017–20 parliamentary term, 65 out of 258 bills introduced by the government used urgency in at least some part of their passage (26%). In the 2020–23 parliamentary term, 86 out of 233 bills introduced by the government used urgency in at least some part of their passage (37%). So far in the current

parliamentary term, there have been 78 government bills introduced by the government, and 16 have been under urgency in at least part of their passage (20%).<sup>8</sup> Although these figures are not as high as in some parliamentary terms (Geiringer, Higbee and McLeay, 2011), the use of urgency to pass controversial legislation has damaged the public's trust.

### The way forward

Political trust would be improved if we placed more limits on governmental power. Over the years, many suggestions for this have been raised and discarded, such as returning to a bicameral system, increasing the number of MPs, or entrenching the Bill of Rights Act (to name a few). Such changes would be significant and would require a more thorough examination than this article allows. However, the fact remains that we need more checks and balances. It is time that we had an open and honest discussion about how this might best be achieved.

However, in the meantime, one immediate action that could significantly improve trust is to reform the use of urgency – an issue that has been raised many times over the years, sadly without much coming of it (ibid.; Standing Orders Committee, 2023).<sup>9</sup> Urgency is a convenient device that allows the government to get more done by extending the House's sitting

hours and expediting the passage of certain bills. Uncontroversial legislation may benefit from being passed quickly, allowing the House to use its scant time on bills that require thorough scrutiny and debate. Likewise, a device that allows Parliament to close loopholes in existing legislation as soon as they are recognised is a boon (Geiringer, Higbee and McLeay, 2011). From a trust perspective, however, urgency undermines the integrity of Parliament by enabling it to waive its own rules and dispense with public participation in the law-making process, often with little more than the executive's eagerness to advance its own agenda as justification.

Although urgency is not altogether bad, it is objectionable that one procedural device performs two disparate functions, one to extend the House's limited sitting time and the other to waive procedural rules to accelerate legislation. In view of this, these powers should be separated into two distinct provisions in the standing orders. In the first of these, the standing orders should be amended to include an 'extended sitting' power (ibid.). In the second provision, the standing orders should require a supermajority, perhaps a two-thirds majority, in order to pass legislation under urgency (Coughlan, 2018). This would require a degree of bipartisanship, which would make it more likely that the procedural rules would only

be waived in situations such as a national crisis or to close glaring loopholes in existing legislation, and not whenever it is convenient for the government of the day. Admittedly, this will not solve our trust problem completely, but it constitutes a good place to start.

<sup>1</sup> The trust data used in this article provides insights into our recent past. Surveys were conducted between 2021 and 2023, with publication typically in the following year. Keep in mind that the current national confidence in government and its leaders may differ from what these figures indicate. Also, note that during this time, the Ardern Labour government was in power in New Zealand. This limitation is inherent to the dataset.

<sup>2</sup> For a more thorough discussion of the concept of trust, democracy and the relationship between them, see Worboys, 2024.

<sup>3</sup> We do not know if a stranger will betray us. Nor do we know what a close associate will choose when the time comes. In both cases, what they do is up to them. However, a betrayal by someone we have known and trusted for a long time, such as a friend or family member, may be more damaging than a betrayal by a stranger.

<sup>4</sup> This is a common way to conceptualise trust, but there are others. For an overview of the various ways to conceptualise trust and their shortcomings, see Simpson, 2012.

<sup>5</sup> Not all trust is extended for these reasons. Sometimes we extend trust spontaneously, as a gesture of goodwill or based on a gut feeling.

<sup>6</sup> As of 2024, the OECD has conducted two trust surveys. The first was conducted in 2021 and published in 2023; the second was conducted in 2023 and published in 2024.

<sup>7</sup> I owe this point to an anonymous reviewer.

<sup>8</sup> Numbers are accurate as of 1 May 2024; see parliament.nz.

<sup>9</sup> According to Geiringer, Higbee and McLeay (2011), the use of urgency has been an issue almost as long as the urgency motion itself. Most recently, the Standing Orders Committee received a recommendation to make changes to the standing orders regarding urgency. However, the recommendations were not taken up because the committee could not come to an agreement (see Standing Orders Committee, 2023).

### Acknowledgements

I am grateful to Thomas Simpson and Alex Penk and for the suggestions and comments of two anonymous reviewers on an earlier draft of this article.

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