**Democratic Trust and Injustice**

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**Abstract**: Trust is a crucial condition for the legitimacy and effectiveness of democratic institutions in conditions of deep diversity and enduring injustices. Liberal democratic societies require forms of engagement and deliberation that require trustful relations between citizens: trust is a necessary condition for securing and sustaining just institutions and practices. Establishing trust is hard when there is a lingering suspicion that the institutions citizens are subject to are illegitimate or undermine their ability to participate and deliberate on equal terms. The promise of participation, the appeal to deliberation and inclusion, in other words, is experienced as a form of bad faith. In this paper, I offer four conditions required for democratic trust and discuss them in relation to a series of examples of both democratic mistrust and attempts at rebuilding trust.

**Keywords**: Trust, distrust, democracy, nationalism, injustice

I

How do we build and sustain trust in liberal democratic institutions in conditions of deep diversity? By ‘deep diversity’ I mean not only a plurality of cultures, ways of life, and practical identities, but also the complex, overlapping interdependencies between them. Deep diversity, understood in this sense, is a challenge for all human communities. But liberal democratic societies call for particular kinds of engagement and deliberation that require trustful relations between citizens: trust is a necessary condition for securing and sustaining just institutions and practices. It is made even more challenging when there is a lingering suspicion by some citizens that the institutions they are subject to are illegitimate or undermine their ability to participate and deliberate on equal terms. The promise of participation, the appeal to deliberation and inclusion, in other words, is experienced as a form of bad faith.

In this paper, I want to explore the nature of trust in relation to a particular challenge liberal institutions face: how can citizens trust not only each other, but also liberal democratic institutions, in contexts where the legacy of historical injustice continues to shape that society? What are the dynamics of trust in conditions where there is not only deep diversity, but also enduring injustices? (Spinner Halev 2012; Ivison 2002; 2020)

Let me provide an example of how this can manifest itself in contemporary politics. Unfortunately, there are too many we could draw from. However, I want to focus on one from Australia.

In June 2007, the Australian government announced the creation of the *Northern Territory Emergency Response* (NTER), otherwise known as the ‘Intervention’. The legislation passed with bipartisan support from the major political parties and was developed after a devastating report on the social conditions of Aboriginal communities in the Northern Territory, and especially the situation facing young children and women.[[1]](#endnote-1) This wasn’t news. There had been previous reports and similar howls of outrage. But the timing of its release (close to a federal election), and the disturbing accounts of child abuse and social dysfunction, struck a powerful chord in the broader community. The legislation included policies aimed at improving community healthcare and taking steps to improve housing, sanitation, and school facilities in the worst affected communities. But it also included a range of other measures: mandatory income management for welfare recipients, the banning of alcohol and pornography, the suspension of a permit system that controlled access to Aboriginal territories, and the compulsory acquisition of Aboriginal lands on five-year leases. As part of the legislative process, the government suspended the application of the 1975 *Racial Discrimination Act* (RDA) to the bill – which came into effect when Australia became a signatory to the *International Convention on the Elimination of all forms of Racial Discrimination (1965)* – as well as the Northern Territory’s own anti-discrimination legislation. They justified the suspension of the RDA on the grounds of there being a national emergency based on the ‘Little Children are Sacred’ report.

This bears all the hallmarks of the ‘state of exception’ that Carl Schmitt claimed lay at the heart of modern conceptions of sovereignty (Schmitt 2005). Schmitt saw the ability of the sovereign to suspend the rule of law on the grounds of necessity as an unavoidable (and uncomfortable - at least for liberals) fact of functioning legal orders. It is tempting to see the ‘intervention’ as confirmation of this Schmittian critique of the bad faith of liberal constitutional orders. However, such an analysis is not my purpose here. What the example points to, for my purposes, is a profound sense of distrust[[2]](#endnote-2) – and the break-down of trustworthiness - between the state and its Aboriginal and Torres Strait Islander citizens. There was a lack of trust on the part of Aboriginal people that the state was acting in their best interests (as well as a deep distrust of the state in general, given the history of relations between them).[[3]](#endnote-3) There was a lack of trust on the part of the state in local communities being able to address the challenges outlined in the report themselves. And in suspending the RDA, the government demonstrated a lack of trust in liberal democratic institutions and practices.

So how should we understand the relationship between trust and citizenship? If one of the ways we can promote trust and trustworthiness in liberal democracies is through practices of citizenship, then what conception of citizenship should we embrace? One interesting possibility is a conception of agonistic or contestatory citizenship.[[4]](#endnote-4) At the heart of this ideal is a claim about the equiprimordiality of cooperation and contestation. (Gagnon and Tully eds. 2001). That is, we need to presuppose both the possibility (and reality) of cooperation between diverse citizens and yet also – at the same time - ongoing contestation and disagreement, as necessary features of modern citizenship. How can citizens develop trust and trustworthiness in conditions of not only deep diversity then, but also persistent and often profound disagreement?

II

It is a striking feature of many aspects of liberal political thought (and its pre-history) that it is premised, to a certain extent, on *distrust* (Hardin 2004; Warren 2017). Social contract theory, for example, presupposes an inherent suspicion of the concentration of power, as well as a form of ‘unsocial sociability’ (in Kant’s phrase), driving individual and collective behavior. Thomas Hobbes, famously, premised his justification of the state on the lack of effective trust between individuals in the state of nature. The image of the powerful Leviathan is a desperate attempt to offset what remains the unavoidable fragility of civil society: ‘nothing is more easily broken’, laments Hobbes, ‘than a man’s word’ (Hobbes 1991: 93). And yet it is our words, ultimately, that ground the commonwealth. Trust between citizens, according to social contract theory, can only come about if it overlaps, to some extent, with self-interest - properly understood - and there are strong institutional mechanisms (delivering credible threats to punish) to deter defectors.

Similarly, the Federalist papers put distrust at the heart of the founding of the American republic. To counter the risk of both the tyranny of the majority and minority through ‘factionalism’, the federalists argued for a strict separation of powers, and the anti-federalists for a bill of rights, to minimize the damage citizens and institutions could do to each other. As a result, the American constitution reflects strong counter-majoritarian impulses. But distrust also runs deep amongst those trying to change society and overcome injustice. Many social movements seeking to reform liberal democratic institutions have used their distrust of the state (and sometimes of their fellow citizens) – to drive social and political change. Martin Luther King, for example, in his famous ‘Letter from a Birmingham Jail’, argued that Blacks could no longer tolerate White moderates’ unwillingness to act justly, and thus required more direct action to realize their civil rights (Krishnamurthy 2015). Similar forms of distrust continue to fuel Black political activism today, including the Black Lives Matter movement – and as was the case with King, in creative and dynamic ways (Woodly 2021).

But liberalism is a diverse tradition, and there are alternative genealogies of human sociability and thus of social and political order that flow from them. Although Locke, for example, shares some of the features of the social contract tradition that Hobbes does, his account of the justification of the state relies on a more enlarged conception of self-interest and ‘right reason’, and thus a greater capacity for intersubjective and institutional trust to flourish. John Dunn famously put trust at the heart of Locke’s political theory, insofar as he sees Locke’s account of legitimate political authority being grounded on entrusting (as opposed to alienating) the protection of our individual and collective rights to each other (Dunn 1984). David Hume – though slightly outside of the social contract tradition - offers a different account of the interplay between self-love and benevolence in which our ‘natural virtues’ are gradually enlarged, and the benefits of cooperation made more manifest (Hume 1978).

Still, having accounted for these differences, the conflictual model of human sociability lies deep in the DNA of liberal political thought. What consequences does this have for how we conceive of trust more generally?

Let me start by clarifying what I mean by trust. Trust is an attitude that we have towards those who we hope are trustworthy (Baier 1986; Jones 1996; Mcleod 2011). Trustworthiness is a property of someone (or something, like an institution) such that they are worthy of our trust – that our belief in their behaving in the manner we expect is well-founded. To trust someone also means being vulnerable to being betrayed, and not merely disappointed. And yet at the same time, it requires us to be optimistic that the trustee is coment in various respects (Jones 1996).

An important aspect of trustworthiness is the commitment perceived by the trustor of the trustee doing what she has been led to believe they will do. Commitment is a condition for trustworthiness, but what kind of commitment? Return for a moment to our example of the social contract. One way a trustee can be held to their commitment is through self-interest. A trustee can be held to her commitment through a contract with the trustor. Fear of the consequences of breaking the contract thus becomes a motivation for being trustworthy. But is this sufficient? One worry is that it is too shallow for the kind of trust that matters in politics to flourish. If the balance of calculations concerning self-interest changed, then so too would any incentive to carry through on the commitment. Imagine if the reasons a government had for upholding Aboriginal treaty rights, for example, was mainly to do with fear of international sanctions if they did not. But what if those fears dissipated as it become clear that those sanctions were weak, or unlikely to eventuate? If trust is aligned too closely to self-interest, so this argument goes, it renders the conditions for trustworthiness more fragile then they ought to be. A narrow focus on self-interest may capture someone’s reliability, but not their trustworthiness (McLeod 2011; Williams 2002: 90-1). If the only reason you act the way I expect you to is because it serves your self-interest, then things could too easily change when your interests change. Trustworthiness requires something more than a mere alignment of self-interest between trustor and trustee.

At this stage we are also confronted with questions about the epistemology of trust. When is trust rationally justified? According to one view, trust is justified if and only if it is based on reliable processes that produce accurate evidence about or representations of the world. Trust is rationally justified, therefore, when it is based on justified beliefs about the world, including the circumstances of our relationship with the trustee. According to another view, I evaluate the reasons I have for trusting you based on my knowledge of the social constraints that shape my judgment about your trustworthiness, or the knowledge I have from experience of your behavior (Hardin 1996).

It is important that we have good reasons to trust others, and thus we should pay attention to how we come to grasp those reasons and the beliefs we form considering them. However, it’s also true that trust can work in complex ways that defeat the idea of it ever being fully rational or justified. I can never *really* know if someone is relying on the wrong reasons in the way they interact with me. And more interestingly, the reasons for having justified trust may ultimately never be fully graspable or accessible to rational reflection.[[5]](#endnote-5) There are tacit and non-reflective forms of embodied behaviors that contribute to my trusting (or distrusting) someone, which we unavoidably rely on given the ubiquity and complexity of the interdependencies that shape our daily lives. There is simply no way every aspect of these relationships can ever be fully justified according to either ‘internalist’ or ‘externalist’ approaches to the epistemology of trust. Put in another way, trustworthiness emerges as a particular disposition in conditions where patterns of cooperation and interdependency are established, and people are trusted to do their part when others have done theirs. A purely self-interest or good will account isn’t sufficient for capturing the complexity of the underlying mechanisms that generate trustworthiness. We need reasonable grounds to trust, but not necessarily rational ones, narrowly construed.

So far, we have been focusing on trust as a relation between individuals. However, I am more interested in the social and political conditions required for trust. A totalitarian society, or at least highly oppressive society, is one in which trusting relationships are difficult to foster and sustain. A political community in which trusting relationships are impossible is hardly a community at all and held together only through coercion. A liberal democratic society, on the other hand, should not only be one in which it is reasonable for people to trust and to be seen as trustworthy, but also one in which trust is required for it to remain genuinely liberal democratic. So, the social and political climate in which we live has a major influence on our ability to trust others and be seen as trustworthy. Trust needs to be well-founded, but there is no way to guarantee through institutional design that people will always act for the best reasons. Moreover, distrust is a permanent and some would argue necessary feature of democratic societies. And yet, over time, citizens need to learn to trust each other nonetheless.

III

What are the key elements of liberal democratic trust? In part, this is an empirical question (Fukuyama 1995; Putnam 2007). Trust is a form of ‘social capital’ that enables human beings to work well together in groups to achieve common purposes. Thus, we can ask about the historical and sociological factors that contribute to ‘high-trust’ versus ‘low trust’ societies and the social conditions that are generated as a result. However, I am interested in trust from a normative perspective, and focusing on the challenge that enduring and structural injustices present for the promotion and sustainability of liberal democratic trust. The promise of liberal democratic government is that collective power can be exercised not only legitimately, but fairly, and that the exercise of both social and political power is subject to a recursive demand for mutual justification to those subject to it (Forst 2014). What are the conditions for ensuring power can be exercised in these trustworthy ways?

One approach is to argue that trustful societies are ones in which citizens share a common purpose and relate to each other as equals. Identifying the nature of a ‘shared purpose’ in a multicultural and multinational society is a significant challenge. This is sometimes taken to be a reason for questioning the value and coherence of liberal multiculturalism altogether (Barry 2000). Although the rejection of liberal multiculturalism is neither warranted nor sensible, deepening cultural and social diversity can be challenging for developing trustful relationships between citizens at a time of increasing social and economic fragmentation and alienation. However, I think we must start from the premise that diversity is unavoidable, rather than assuming it is a problem to be theorized away.

Before considering directly what some of the elements of trustful liberal democratic power might be, I want to explore a set of alternative responses. Here the suggestion is that trustful relationships are only possible when the common purpose that binds liberal citizens takes the form of a particular kind of mutual commitment; namely, liberal nationalism or patriotism. The key claim here is that trustful relationships are required to deliver strong egalitarian outcomes, and trust is enhanced when citizens share a broad - but still palpable - sense of a common national purpose and identity. National identity provides citizens with a sense of belonging together and thus reasons for behaving in the right way towards each other.

If sharing a common purpose and feeling is required for the strong egalitarianism favored by many liberals, then how can this form of attachment be promoted whilst staying true to the liberal premises of the equal standing and freedom of all?

Several political theorists have recently attempted to defend a form of ‘ethical patriotism’ that reconciles national belonging with liberal freedom. The fundamental move here is to link patriotic commitment and concern for one’s political community to its moral flourishing as well. Marcia Baron, for example, points out that morality admits of both partial and impartial considerations, depending on the objects of concern (Baron 1989). In some cases, it is justified to put the needs and interests of those closest to us first, rather than being required to ignore our special relationships entirely. But equally, there will be times when the urgent interests of others will take priority over the less urgent needs of our friends and compatriots. The same can be said of our commitment to our fellow citizens and the political community we share. Tim Southpommasane calls this a form of patriotism expressed within the ‘limits of reason and morality’ (Southpommasane 2012: 41). Although a patriotic citizen ‘may justify their actions and views with reference to their country, this cannot always be the sole or final justification’ (Ibid.). Thus, the ethical patriot is one who is motivated to support her country on the grounds of both the good it does for its citizens and the world, but who also takes responsibility for trying to improve its moral shortcomings. An ethical patriot is one who, although grateful for the goods of citizenship they receive from their country, is also aware of the consequences for those excluded from those goods and the harms that might have arisen in generating the benefits that flow from them.

There are two challenges for this account. The first is that it seems naïve in the face of the historical and sociological realities of nation-building. A patriot is, by definition, an insider, someone who both benefits from and owes her standing to not questioning at least some aspects of the ‘common project’ that defines that community as such. This will inevitably license morally problematic behavior on the part of the members of that community. In short, the concern is that the demands of loyalty will inevitably outweigh those of ‘reason and morality’ when it matters. It is open to the ethical or liberal patriot to retort that loyalty is not a precondition for patriotism, but its effect: I am loyal to my country when it provides the goods I value in ways that are morally praiseworthy, and I take responsibility for criticizing it when it acts in ways that are not (Soutphommasane 2012, 139-155; cf MacIntyre 2002). However, even for ethical patriots, love of country is not reducible to a rationalized loyalty. All forms of patriotism will entail a commitment to my community that is immune to certain kinds of rational deliberation, just as my commitment to my family or partner is, in many cases, immune to all-things-considered moral reflection. This points to the critical limits of any account of patriotism ‘within the limits of reason and morality’. It either vitiates what is distinctive about patriotic commitment in the first place (thus rendering it indistinguishable from a general moral cosmopolitanism), or it ignores the extent to which it must necessarily involve thicker elements that will inevitably require either some element of potentially unreasonable coercion or exclusion of those who don’t conform to them (see Ivison 2015).

The second concern is the one I want to focus on for the remainder of this section. If ethical patriotism is motivated by the claim that the realization of liberal values (and outcomes) depends on a reasoned patriotic commitment to a well-integrated civic community, then how can this be reconciled with the deep diversity of many political communities, and especially those shaped by historic and structural injustices?

One interesting attempt at answering this question is to seek reconciliation through public reasoning, and thus to link our commitment to the ‘common project’ of one’s political community to a shared practice of public reasoning. But how should one conceptualize this project? What would the appropriate object of our commitment to a political community conceived in these terms be? How would the practices of public reasoning generate any greater sense of being part of a common project than would appeal to liberal principles more generally? And how do shared practices of public reasoning address systematic and structural inequalities, which inevitably shape the content and outcomes of these practices?

I want to explore two versions of this answer, both of which reject using *national* belonging as the appropriate form of commitment. The concern with national identity as a basis for common belonging in diverse political communities is that they are often also multinational communities. If common citizenship needs to be grounded in a shared language, culture, history, or tradition — common traits of national belonging — then this makes it difficult to reconcile with multinational diversity. One response is to stretch our understanding of nationalism to incorporate multinational and multicultural identities — as Will Kymlicka does (1995). But then the question remains: what form of national belonging would be suitably accommodating and inclusive, and yet also reflect the kind of commitment liberal nationalists see as a necessary condition for engendering the trust required for strong liberal outcomes? Starting with non-national accounts of patriotic commitment and belonging helps focus our attention on how such a challenge might (or might not) be met.

One of the most prominent versions of a non-nationalistic account of citizenly belonging is provided by Jurgen Habermas. Habermas argues that we should conceive of political membership defined not in terms of the norms and values associated with a particular nation, but with those of an embedded liberal constitution. He calls this a form of ‘constitutional patriotism’ (Habermas 1998). The idea is that citizens’ attachment to their community is an attachment to a local iteration of the universal values embedded in its constitution, as opposed to any particular cultural, national, or ethnic identity. This distinction between constitutional and national patriotism relies on a deeper distinction within Habermas’s discourse ethics. For Habermas, the identity of a political community is anchored in its political culture (that constituted by its political institutions and constitution) as opposed to any particular ‘ethical-cultural’ form of life (based on a specific conception of the good). To be a constitutional patriot means being committed to those political institutions and practices embodied in the constitution, as opposed to any thicker, more particularistic form of life. This enables minorities, argues Habermas, to participate in public debate without requiring them to assimilate into a particular form of ethical life, or ‘thick’ national identity. Habermas’s claim is that any collective identity that is claimed for the political community is a product of an inclusive public dialogue, grounded in common citizenship rights and responsibilities, as opposed to being a preconditionfor entry into it. Patriotic commitment to this kind of political community means having special regard for and commitment to the manifestation of the universal values associated with the goods of citizenship. We identify with our polity first, not with any pre-established culture or historical identity, because it provides us with the means to achieve equal standing with our fellow citizens.

The main challenge for defenders of constitutional patriotism is to maintain the sharp distinction they must draw between a shared political culture and a specific ‘ethical-cultural’ form of life – as Habermas himself recognizes (Habermas 1994; see also Soutphommasane 2012; Markell 2000). There is no such thing as a purely political form of constitutionalism. Each community’s political institutions have been shaped by particular histories and are overlaid with cultural practices and understandings. Even the way basic rights are interpreted and implemented by a community’s social and legal institutions will often vary dramatically because of these cultural and historical overlays and legacies. In short, the worry is that constitutional patriotism is not an alternative to liberal nationalism, but another variant of it. In other words, the reason we can identify with the universal values instantiated in the political culture of our community is because we are already predisposed to do so through a shared pre-political cultural inheritance. Thus, it’s not clear how constitutional patriotism solves the problem to which it is proposed as a solution.

However, there is another way of conceiving of non-nationalistic belonging that might be compatible with deep diversity and address some of these concerns. In a series of recent essays, James Tully has been developing an interesting approach to rethinking modes of citizenly belonging (see especially Tully 2008, 16-184; and more recently 2022). The shift in language is important to note - from patriotism and nationality to belonging (see also Bellamy 2000: 162-186). Tully explains the basic idea this way:

I believe that a sense of belonging is engendered more by engagement in struggles over recognition rather than by the actual end state of gaining this or that form or recognition. A necessary feature of belonging is that the society is open to these kinds of struggles over recognition: that is, that citizens and representatives are free to make demands to amend the rules of recognition and other citizens and representatives acknowledge these demands and respond to them (Tully 2008: 180).

The norms that emerge from these confrontations and negotiations are not best thought of as structured by an *a priori* set of determinative principles grounded in a theory of justice, or a transcendental claim about the nature of reason. What emerges instead are ‘norms that come into being and come to be accepted as authoritative in the course of constitutional practice, including criticism and contestation of that practice’ (Tully 1995: 116, 181; Tully 2005: 206-8). These norms or conventions can be grasped in a variety of ways, and thus being guided by a convention is conditioned not only by the context in which it is applied, but also by it having emerged from and being continually subject to, criticism and modification by others. Drawing on various Canadian examples, but especially the claims of Aboriginal peoples, Tully identifies at least four particularly salient conventions; mutual recognition, continuity, contestation and consent (Tully 1995: 116ff; 2008). These emerge out of a ‘living practice’ of negotiation and accommodation, and are immanent to these practices, rather than derived from intuitions or beliefs about fairness or impartiality extracted from an ‘original position’ or ‘ideal speech situation’. Different conventions will emerge in different contexts. And yet, Tully argues, they can still act as norms of justification, and crucially, provide critical leverage against existing practices and norms (Tully 1995: 138-9). The idea is not one of participants at an imaginary constitutional convention forging consensus on general terms which are then applied to specifics, but of starting with the particulars and working up from there**.** Thus, a greater emphasis is placed on the processes and practices of deliberation and dialogue, as opposed to establishing independent criteria for evaluating the practices. We don’t need to approach dialogue across gaps of belief and experience by way of agreement on principles. Instead, we look for points of agreement in practical judgment and work from there.

This touches on a deep and familiar debate about the relation between foundationalism and forms of ethical and political dialogue. Tully locates legitimation in the collective activity and practice of ongoing deliberation, rather than in moral principles or constitutional rules established pre-politically. He thinks we can find normativity immanent in ‘the reciprocal conditions of dialogue’ itself, wherein lies at least one basic rule—‘perhaps the only universalizable principle of democratic deliberation’, as he puts it—which is: ‘always listen to the other side’ (Tully 2005: 208. 252).[[6]](#endnote-6) So the practice of democratic dialogue is rule-governed after all, but the rules are to emerge from the practice itself and are subject to contestation and reformulation. One challenge this argument faces, however, is that the primacy of practice means that we shouldn’t be looking for any other grounding for our beliefs or attitudes other than what the practice commits us to: our way of going on just is the way we should go on. We can’t appeal to a description of the practice to ground our beliefs, since if practice is primary this would mean that we would need to refer to another practice upon which *those* descriptions and beliefs rested, *ad infinitum*. But then how do we get the critical leverage on our concepts and practices that Tully (and others) so desire?

One thing Tully appeals to at this point is a normative interest in freedom that human beings share, albeit one grounded in history, so to speak, rather than reason. Insofar as our ethical and political practices are oriented towards critical freedom (ie. that critique is part of ‘our’ practice), and insofar as they have a history about which we are particularly self-conscious, then, he argues, we have the resources for the kind of critical engagement required. Different aspects of the practice can be brought to bear on each other and re-interpreted in different ways.

Does this vision of an historically informed, dialogical, political practice provide the grounds for the emergence of a viable mode of political belonging and citizenship? Could it find support in different historical and cultural contexts? It is certainly a demanding ideal, despite its contextualism. The kind of ‘vigorous public discussion’ Tully favors (Tully 2005: 254-5), and upon which the ideal of democratic legitimation depends, suggests an active and engaged citizenry, something modern political life often makes difficult to sustain. Moreover, the practices of contestation Tully champions, if they are also to generate new critical forms of democratic solidarity and belonging, will require participants who possess (or develop) a particular set of skills and virtues. They will have to be capable of explaining their views to others, listening deeply, empathizing with them, and accommodating alternative views to their own. And they will have to learn to live with ongoing disagreement and demands for revisiting previously settled disputes, as well as with the fact of political loss and the social and political passions this generates. The gap between citizens’ support for the institutions and procedures that govern the processes of political legitimation, and their desire for specific outcomes, will have to be kept within a certain range. All of this presents a deep challenge for modern liberal democrats, given the conditions of contemporary public spheres – riven with inequality and asymmetrical relations of power as they are. Finally, there will need to be the right institutional arrangements in place as well, to ensure that it is not left up to citizens alone to stand up for their interests, but that there are actual institutional counter-powers that enable collective power to be exercised fairly and avoid capture by elites. [[7]](#endnote-7)

V

Can we identify, then, what the key elements of exercising collective power in a trustful way would be in a liberal democratic society, given the challenges outlined above? Establishing the conditions for liberal democratic trust mirrors, to some extent, the question of ‘when to trust?’ more generally. Wholly justified trust, as I suggested above, is improbable: we must, on some level, have good reasons to trust, but it is never something that can fully justified. Moreover, distrust, handled properly, is a powerful lubricant for liberal democratic politics.

I have suggested that ethical and constitutional patriotism are not the best ways of articulating the conditions for liberal democratic trust. I think this is especially true in cases where the histories to which such patriotisms inevitably appeal, and in which political and ethical emotions are often anchored, are seen and experienced as highly problematic by minorities. Tully’s conception of multinational and multicultural ‘belonging’ presents an attractive alternative. But it also restates some of the original challenges with which we began: how can trustful relationships develop and flourish in deeply diverse contexts given the demandingness of a conception of contestatory citizenship? What lessons can we draw for liberal democratic trust more broadly?

I believe there are at least four key elements to liberal democratic trust; elements that, when present, are characteristic of social and political relationships that are trustful, and that in turn help promote the trustworthiness of liberal democratic institutions.[[8]](#endnote-8) These elements can also help us understand how trust can be *reconstituted* when undermined by the enduring legacies of past injustices and the severe breaches of trust these often embody.

The first element is that social and political relationships in liberal democratic societies are (or ought to be) distinctively *democratic*; that is, they involve the collective exercise of power over and with others in ways that are not only legitimate, but fair. The promise is not merely that citizens have a say about the power that is exercised over them, but that they share in its exercise in some meaningful sense. This in turn implies something like the ‘all affected’ principle in terms of the way we understand the necessary scope of our democratic deliberations and institutions. All those whose interests are significantly affected by the exercise of political power ought to have the opportunity—insofar as it is possible—to respond to, contest and shape those actions acting on them. These elements are perhaps the most challenging for liberals to redeem. As we saw above, the danger is that liberal institutions remain overly proceduralist and elitist in orientation, leaving too many forms of domination intact and unchallenged. [[9]](#endnote-9) As a result, liberal institutional trust cannot rely on individual virtue alone.

The second element of liberal democratic trust is the related idea of *democratic contestation*: citizens ought to be committed to engaging in practical deliberation with each other (Laden 2000; 2001) and possess the means to do so. Citizens must be able to engage in practices of mutual reason giving, and in so doing, structure, support, alter, contest, and repair the various relationships they share—which are the object of these practices. As Anthony Laden argues, practices of deliberation ‘focus on reasons which act as claims and considerations we urge on one another in the course of forming, altering and maintaining our relationships’ (Laden 2000: 557) Reasons acquire authority, according to this ideal, when they find support in those relationships and form part of our practical identities. They do so through our adapting them as reasons we recognize as our own (Laden 2001). Trustful relations develop best when citizens are reasonable in this sense; that is, when our common deliberations not only produce desired outcomes, but also manifest a commitment to respecting (and that also means challenging, contesting and questioning) the relationships that obtain between us. Reasoning is thus not only—or primarily—about realizing our interests, but also about the claims we make on others in view of the relationships we share with them. This in turn will shape the ends we adopt and the reasons we take to be authoritative, given the diverse nature of the relationships and interdependencies we share with others. If, on the other hand, we understand collective deliberation to be reducible to essentially strategic interactions, with the parties focused mainly on means-end reasoning to maximize their (pre-given) interests, then the opportunity for trustful relationships to be sustained—especially in conditions of deep diversity—is weakened. The challenge then is whether the relationships and interdependencies we form through our political interactions are sufficiently robust to engender the form of belonging contestatory democrats believe is possible.

Now, this is an ideal, as opposed to describing the reality of every day democratic practice. Recent work on deliberative systems rightly points out that deliberation is a distributed feature of democracies: it doesn’t only happen in one place, but in a multiplicity of domains, in a myriad of ways, which are then connected to collective decision-making mechanism through various means. Moreover, non-deliberative modes of communication can also help shift public debate and attack concentrated power in meaningful ways alongside more deliberative ones (Mansbridge and Parkinson 2012). And deliberative democracy doesn’t, even as an ideal, provide an escape from asymmetric power relations, thus inevitably leaving many of them in place (Kahane et al 2010). Even if we could overcome these institutional challenges, we often get our reasoning wrong. Our cognitive architecture, as psychologists point out, blinds us in ways that are often unintentionally self-serving (Bagg 2018). So, there are limits to deliberative politics. It must also be accompanied by institutional arrangements that provide material counter-powers to manipulation and coercion by the powerful, as opposed to relying entirely on the deliberative virtues of citizens. But institutional constraint is insufficient as well. Trustworthy relations, to be sustainable, require successful modes of democratic practical reasoning.

The third element is even more abstract, but still important. This is the opportunity for citizens to develop the capacity for what I shall call *political empathy*. Empathy refers to the capacity of human beings to attempt to apprehend the emotions and perspectives of others in particular circumstances, if only ever imperfectly.[[10]](#endnote-10) This raises a series of difficult philosophical challenges, but for my purposes here I mean by political empathy the capacity for citizens to be able to at least *imagine* what it would be like to be in another’s shoes. It is the capacity—in Martha Nussbaum’s phrase—of being an ‘intelligent reader’ of another’s story. It is to be attentive to the tone, details and perspective of their story and the person (or people) telling it (Nussbaum 2010: 95-6). In terms of a theory of justice, for Nussbaum and Sen, empathy is thus a crucial ‘capability’ that needs to be developed and supported in modern democracies, starting from childhood but then also throughout life, especially in terms of an ideal of democratic education (Nussbaum 2010; Sen 2009). Without it, they argue, ethical attention to others will be insufficiently developed and genuinely democratic deliberation will suffer as a result. The upshot of this ‘democratic capability’ account of empathy for our argument is this: The extent to which I can trust and be perceived as trustworthy depends in part on my ability to put myself into another’s shoes, at least to some degree. Trust and vulnerability are inseparable. To trust is to leave oneself open to betrayal. To be trustworthy is to be aware of and alert to such vulnerability.

But sensitivity to otherness is not only instilled through a program of democratic education (and there are limits to what education can do). It also comes from the recognition of and engagement with the complex pluralisms and interdependencies that characterize modern political communities today. And this in turn can only occur if there are appropriate political institutions and mechanisms that enable these pluralisms to flourish, as well as channel the inevitable differences and conflicts that arise. Trustful political relations require forms of political empathy that develop when political institutions are themselves receptive to the plurality of associations and cultures present in a political community, and yet also to the ways in which they are always overlapping in complex ways. Democratic trust begins to break down when claims of injustice are misunderstood because of a lack of attentiveness to the narratives in which they are embedded, thus entrenching forms of misrecognition and maldistribution that generated the claims in the first place. This inattentiveness is a crucial feature of liberal democratic failure in political communities with legacies of historical injustice.

This leads to the fourth and final element in our account of liberal democratic trust. Trustful exercises of collective power are more likely to develop and be sustained when there is a high degree of tolerance for and resilience in the face of the regular contestation of the norms and outcomes of the democratic process. This might seem paradoxical. But in many ways, the ability of citizens to test the trustworthiness of each other, and the institutions within which they act, is critical for the sustainability of trust over the long term. It is particularly important in contexts where trust is perceived to have been repeatedly broken. Trustful relations are resilient in the face of insurgent tests of *distrust* – of citizens questioning, challenging, re-interpreting and seeking to renegotiate the outcome and terms of political debate and, at times, even the ‘constitutional essentials’ (Rawls 1993) of the political community itself. This is because any resolution or outcome is always imperfect, incomplete and in need of further justification, refinement, and potential replacement. Well-functioning democratic systems enable these forms of contestation to occur without undermining social cooperation more generally. This is part of a process of societal learning that occurs when communities learn to manage their disagreements effectively and justly. Even if consensus is—as it must be—forever elusive, there grows a sense of a common public world that citizens help construct and come to share in grappling with challenges they cannot avoid.

However, this trust/distrust dynamic can turn sour as well. Periodic, insurgent distrust—both epistemic and subjective—can deepen to the point where the possibility for sustaining reasonable deliberation is fatally undermined. This in turn undermines some of the key elements of the sustainability of trustful relations outlined above—they become less democratic, less reasonable, less empathetic, and increasingly fragmented. This constitutes another kind of democratic failure, in addition to the more familiar (and related) senses of citizen alienation and powerlessness that Tocqueville famously pointed out could emerge in democratic cultures. It makes it more difficult to identify the modes of compromise, coalition building across difference that are required for large, pluralistic political communities to exercise power collectively and fairly.

VI

I began with an example of how trustful relations in liberal democratic societies can go badly wrong. The ‘intervention’ epitomizes how both the intersubjective and institutional dimensions of democratic trust can break down. We can turn to the four key conditions of political trust I have outlined to help us understand more clearly what went awry.

In many ways, the origins of the legislation underpinning the intervention lie in a series of betrayals of trust. On one level, you can understand the sense of urgency that gripped many in the government and among Aboriginal leaders when the devastating report on child abuse was published. However, conceived in haste on the eve of an election, and ignoring one of the central recommendations of the report to engage in extensive consultation with those who would be most affected by the legislation, the result was deeply divisive. It was then overlaid with a narrative of policy failure that linked social dysfunction with the pursuit of ‘rights based’ and self-determination focused policies, as opposed to ‘pragmatic’ and ‘outcomes focused’ interventions. The danger was always that those who had most at stake in reducing the harm occurring to families in the affected communities would have further harms heaped upon them given the circumstances in which the legislation was drafted and implemented.

When the original legislation was passed, clause 132 of the bill made clear that the provisions were to be classified as ‘special provisions’ and therefore exempt from part II of the *Racial Discrimination Act* (This aspect of the bill was removed in 2010, after a change in government). In essence, the government was proposing that they needed to breach the RDA to respond to an emergency. Other aspects of the legislation—banning alcohol and pornography, attaching strict conditions to welfare payments, the removal of customary law considerations to bail and sentencing proceedings etc.—were also hotly debated, but received mixed support from both Aboriginal and non-Aboriginal community leaders. However, many also argued that any legislative measures adopted should not violate the basic rights of Aboriginal people or be arbitrarily applied.

Thus, on my reading, both the democratic and deliberative conditions for political trust were undermined by the government’s response to the Report. The terms of the intervention clearly violated the democratic requirements for trust to flourish in conditions of enduring injustices. Aboriginal leaders and communities were not sufficiently empowered to participate in shaping the rules and norms to which they were subject. The suspension of the RDA was also a dramatic example of the undermining of the contestatory conditions for political trust: an entire category of reasons for potentially opposing the legislation, grounded in human rights and political agency, was excised from consideration. Although the intervention was justified on the grounds of a deep concern for the well-being of young girls and women, the selective and cynical use of the report (ignoring its strong call for consultation with the relevant communities) betrayed a deeper disrespect for the political agency of the communities involved.

The history of the implementation of the RDA in Australia and its relation to the protection of Aboriginal peoples’ rights (but not only theirs) is interesting to consider in this context. As mentioned above, the RDA was introduced in 1975 as part of Australia’s implementation of its signing of the *International Convention on the Elimination of all Forms of Racial Discrimination*. One of the earliest and most important test cases for the RDA involved a claim that revolved around Aboriginal land rights. In 1974, John Koowarta, a Wik elder and traditional owner, asked the newly established Aboriginal Land Fund Commission for help in purchasing a pastoral lease in North Queensland on their traditional land.[[11]](#endnote-11) The Commission agreed to the purchase, but any sale or transfer of the lease was subject to veto by the Minister of Lands for the state of Queensland. He vetoed the transfer on the grounds that the Queensland government did not view favorably proposals to acquire ‘large areas of freehold or leasehold land for development’ by ‘Aborigines or Aboriginal groups in isolation’ (cited in *Koowarta v Bjelke-Petersen* [1982] CLR 208). John Koowarta challenged this decision on the basis that it violated the RDA. The Queensland government, in turn, challenged the constitutional validity of the RDA. In *Koowarta v Bjelke-Petersen* (1982), the High Court (by a narrow margin) upheld the validity of the RDA. The majority decision held that the RDA was the result of a legitimate exercise of the ‘external affairs’ power in the Australian constitution (s51, xxix) and the ability of the federal government to implement treaties dealing with matters of clear ‘international concern’—such as preventing racial discrimination. In short, without *Koowarta*, there would be no effective RDA. Without an effective RDA (among other things), there would have been no recognition of native title in the *Mabo* decision ten years later, where it played a significant role in that landmark judgment.[[12]](#endnote-12) Without *Mabo*, there would have been no native title legislation, and although the gains since then have been mixed, Aboriginal land rights would be in an even worse state.[[13]](#endnote-13)

Once again, recall the four conditions for democratic trust. The Queensland’s government blatant attempt to block John Koowarta and his community’s attempt to gain access to their traditional lands undermined their cultural and political agency, and hence their ability to participate equally in Australian democratic life. The government’s challenge to the constitutional validity of the RDA sought to undercut the ability of vulnerable communities and individuals in Australia to contest the exercise of power over them on the grounds of violations of their basic human rights. But the *Koowarta* case also demonstrates what happens when political empathy is lacking. Sadly, although Koowarta and his family succeeded at the High Court, they were stymied further when the Queensland government then declared the land they were claiming as a national park—in what can only be described as an act of political spite. That declaration was only revoked in 2011, before title was finally handed back to the community in the following year. John Koowarta died in 1991. As Judith Shklar pointed out, injustice is often rooted in the psychological forces of resentment and anger on the part of *both* the oppressed and the oppressors (Shklar 1990).

What this history reminds us of is the subtle interplay between institutional and intersubjective trust. In conditions where the legacies of historical injustices endure, liberal democratic institutions require trust-making (and sustaining) mechanisms that provide reassurance and protection against arbitrary power. The lesson is not that deliberative publics, the rule of law, international treaties, federal agencies, Aboriginal land Councils, trade unions, and social movements are in themselves necessarily trust building, but that they help create the conditions in which trustful relations have a chance to develop. There is no guarantee that trust will be secured in the long run. The painstakingly slow advancement of Aboriginal peoples’ political, economic, and social well-being since *Koowarta* and *Mabo,* and now in a proposal for an Aboriginal Voice to Parliament, makes that all too clear (Davis and Williams 2021; Ivison 2020). The Voice is a proposal to create a constitutionally entrenched, national deliberative body, made up of Indigenous members selected from local and regional deliberative bodies (‘voices’), to advise government on all legislation and proposals that affect Indigenous peoples’ interests. The national Voice wouldn’t possess a veto, but the government would be required to consult with it. The current government is proposing to hold the referendum required to amend Australia’s constitution in 2023. If the ‘Intervention’ and Koowarta are examples of political trust being undermined, then the Voice is an example of an attempt to rebuild it. The proposal emerged from a long history of First Nations attempts at constitutional and political reform — dating back to Australia’s founding. But more specifically, it emerged out of an Indigenous-led, innovative, consultation process that led to the *Uluru Statement From The Heart* in 2017 (Davis 2018). Thus, the Voice embodies a deeply democratic approach to the question of how Australia might address its colonial past (see Ivison 2020). If we reject the racist grounds upon which First Nations people were excluded from Australia at its founding, and thus acknowledge that Indigenous sovereignty and law now sit alongside that of Australian sovereignty, then how do we reconcile this now unsettled constitutional order? The only way is through democratic dialogue and negotiation, which itself must be grounded in relations of mutual trust and reciprocity. The Voice is therefore seeking to build on the first, second and fourth conditions for democratic trust—relationships that are democratic, deliberative, and contestatory.

It’s the complex interplay between the intersubjective and institutional conditions for social and political trust between citizens that we need to better understand and capture for our democratic practices. John Koowarta, Eddie Mabo, and the proposal for a constitutional Voice provide three remarkable exemplars of why this is so, and from whom we can continue to learn.

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Endnotes

1. ‘Ampe Akelyernemane Meke Mekarle – “Little Children are Sacred’’: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse’, Northern Territory Government, April 2007. [↑](#endnote-ref-1)
2. I take mistrust and distrust to be closely related, albeit analytically slightly different. Mistrust expresses doubt or scepticism about someone’s (or some institution’s) trustworthiness. Distrust is a more settled or active belief. The latter is more salient for my purposes here, hence I used it more often in the discussion below. [↑](#endnote-ref-2)
3. Distrust is not merely the negation of trust. I might have reasons for not trusting you that are not the same as actively distrusting you. See Ulmann-Margalit (2002). [↑](#endnote-ref-3)
4. There are several variations on this idea but see especially Tully et al 2022; Pettit 2012; Bellamy 2000; Connolly 1995. [↑](#endnote-ref-4)
5. See especially Baier 1986 for this argument. I am indebted to her penetrating discussion of trust more generally in this section, along with Jones 1999. [↑](#endnote-ref-5)
6. A principle that will require further elaboration, clarification, and testing in light of other possible principles or norms. [↑](#endnote-ref-6)
7. For a non-liberal account of such mechanisms see Vergera 2021, who gives the plebians final authority to judge the actions of their representative bodies as a failsafe against inevitable elite manipulation. [↑](#endnote-ref-7)
8. I am indebted to the discussion in Warren 2017 and his taxonomy of three general kinds of democratic trust, which overlap with mine to a certain extent, although he isn’t focused on the same context as I am in this article. [↑](#endnote-ref-8)
9. This raises a host of issues about which interests matter and who is to be included in decision making processes and on what grounds. Contrast Goodin 2007; Bagg 2018; Vergera 2021. [↑](#endnote-ref-9)
10. Nussbaum (2010; 2013) argues that literature and a broad-based training in the humanities more generally is important for not only judges and politicians, but citizens more generally. [↑](#endnote-ref-10)
11. For further background on the Koowarta case see Reilly 2014. [↑](#endnote-ref-11)
12. In 1988, the High Court ruled that the Queensland government had violated the RDA when it passed legislation in 1985 that took away property rights from Eddie Mabo based in Meriam law, while leaving intact the property rights of others grounded in Queensland law. This then led them to consider the broader question of pre-existing land rights in Australia before colonisation in the 1992 *Mabo* case, which again relied heavily on Australia’s obligations to prevent racial discrimination under international law. [↑](#endnote-ref-12)
13. And none of the cases might have come about as they did without the 1967 referendum that voted overwhelmingly to remove two discriminatory provisions against Aboriginal people from the Australian Constitution, which itself emerged from decades of Aboriginal political activism. It should also be noted that the importance of the Koowarta decision extends well beyond the benefits for Aboriginal people. The decision made clear that principles of non-discrimination and basic human rights applied to the laws and executive decisions of state governments, as much as to the federal government. [↑](#endnote-ref-13)