Editors' Note

When reflecting on 2016 it is easy to lapse into clichéd truisms. In our time as Editors-in-Chief we have seen history being made; revolutions by vote; and a popular rejection of the political and academic "establishment". Between this volume's inception and its publication, the world has changed in ways very few predicted. When we selected our articles, "Brexit" seemed unlikely, and any prospect of a "President Trump" seemed fanciful. Yet each of these became reality via democratic processes.

This note is not the place for an analysis of the forces at work or the effects of these events. But nor are we able to ignore them. In rejecting the European Union and Hillary Clinton, voters rejected many of the values that have shaped law and politics in recent decades. Uncontroversial examples include globalism and convergence, but universal human rights also appear to be losing priority. The Auckland University Law Review, in contrast, remains committed to socially liberal values and to a robust conception of human rights. We believe that as law students and New Zealanders we must make the most of our relatively unique position to offer a strong critique of the law and how it impacts people. As the Hon Michael Kirby reminds us in his special feature on marriage equality, judges and politicians are continually required to make choices. We can only hope that our articles might play at least a small part in promoting more progressive thinking and, ultimately, actions.

With this goal in mind, we are proud of the student articles selected for this year's Review. Continuing the Review's commitment to and advocacy for indigenous rights, Savannah Post examines the concept of "equality before the law". She concludes that to achieve true legal equality we must recognise indigenous and minority rights. Post's article is particularly apt in light of the recent formation of "Hobson's Pledge", a group dedicated to removing references to race or ethnicity in New Zealand law.

Laura Bacon also employs a rights-based framework of analysis. She argues the European Union's asylum procedures have been inadequate in responding to the recent refugee crisis, and suggests that urgent change to both law and procedure is needed. We agree. We suggest also that prevailing Western attitudes towards

refugees may require reform, particularly in light of recent political fear mongering in both Europe and the United States.[1]

Indeed, the need for reform is a recurring theme in this year's journal. In some cases, reform is required due to technological developments. Amanda Cheng considers a number of issues with the "right to be forgotten" established by *Google Spain v Agencia Española de Protección de Datos*. She argues that the right to be forgotten should in most circumstances be replaced by a "right to be different". Soyeon Lim also focuses on the interaction between technology and the law. She analyses whether the rise of "new media" — social and online media — requires a departure from traditional principles of media ethics in the context of terrorist propaganda. Lim answers in the negative, concluding that various features of online news ultimately increase the importance of *existing* ethical principles. She therefore proposes editorial guidelines for reporting on terrorist activity intended to apply across media platforms.

Other contributors highlight the need for reform in the commercial context. Adam Holden builds a strong case that New Zealand's private international law as it relates to foreign copyright infringement is inadequate. With equal vigour, Bridget McLay calls for a re-evaluation of our approach to rectification for unilateral mistake and, in particular, a reconsideration of *Tri-Star Customs and Forwarding Ltd v Denning*. Julia Maskill's focus is on directors' duties to consider the environment in Aotearoa New Zealand. She considers that our current approach to corporate governance hinders directors' ability to make environmentally responsible decisions. She considers this particularly unfortunate given the importance of the natural environment to our cultural identity as New Zealanders.

The relationship between law and politics underpins much of what we have tried to do as editors. We think developments in the law can — and in many cases should — influence politics and society more generally. Canvasing this relationship, Shayne Misselbrook argues that litigation is political: it is a means of defining and challenging social norms. In support of his view, Misselbrook discusses prominent historical examples of litigation used for political change. Again, Misselbrook's article seems particularly apt given current events: the impending appointment of a new United States Supreme Court judge is likely to create a conservative majority in the Court, which may cast doubt upon, for example, its protection of reproductive rights.

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1 See, for example, Joseph Tanfani "Donald Trump warns that Syrian refugees represent 'a great Trojan horse' to the U.S." *The Los Angeles Times* (online ed, Los Angeles, 19 October 2016).

Our precedent-based legal system naturally looks to the past as a guide to the present. Daniel Herring discusses the meaning and purpose of the "secular clause" in the Education Act 1877. He suggests that this is of continuing relevance not only because of recent litigation concerning religion in schools, but also because — perhaps more significantly — modern schooling frequently involves the explicit teaching of values. Herring suggests that although such teaching is now considered "secular", this would not have been so in 1877. He concludes that "we must consider whether we can find values that are common to everyone and, if not, whose values we will teach". We agree, but are cautiously optimistic that we can find at least some common ground as New Zealanders.

The Review, too, has a proud history, now spanning almost half a century. Our annual Symposium and Alumni Dinner celebrate our history and our future by bringing together past and present members of the Review to discuss contemporary legal issues. This year we had the great privilege of welcoming former Attorney-General the Rt Hon Paul East QC as our Symposium speaker. Mr East led a lively discussion on the role of the Attorney-General in New Zealand, drawing from his own experience in the role in the 1990s. The Hon Justice Paul Heath chaired the Symposium, providing insights on the Attorney-General's role from a judicial perspective. Fortuitously, Heath J's New Zealand Bill of Rights Act 1990 declaration in *Taylor v Attorney-General*[2] was set to be heard on appeal shortly after the Symposium. It was excellent to hear discussion on the Bill of Rights Act from two influential members of the executive and judiciary respectively, as well as, of course, experts from our own faculty. In particular, the role of the Attorney-General's "section 7 report" was questioned. If s 7 reports had greater impact, would this then avoid any need for judicial declarations of inconsistency? Would this be a more appropriate division of powers between the branches of government?

At the Alumni Dinner we heard from his Honour Judge Mina Wharepouri, New Zealand's first-appointed judge of Tongan descent, who contributed to the Review in 1994.[3] Judge Wharepouri spoke from his experience as a criminal law barrister and judge in the Manukau District Court about sexual violence reform. Our justice system continues to fail victims of sexual violence. Further, it is extremely troubling that the United States President-Elect appears to

2 *Taylor v Attorney-General* [2015] NZHC 1706, [2015] 3 NZLR 791.
3 Mina Wharepouri "The Phenomenon of Agreement: A Maori View" (1994) 7 Auckland U L Rev 603.

trivialise — and allegedly participate in — sexual violence.[4] It is vital that we continue to challenge the "locker-room talk" culture that normalises sexual violence and perpetuates disrespect for bodily autonomy.

The Review would not be possible without the generous assistance of our editors, business and advertising managers, and faculty advisers. We cannot overstate our gratitude to them. We are thankful also to the Faculty of Law (and in particular the Dean, Professor Andrew Stockley) for its continued support, to those who have contributed case and legislation notes, to our advertisers, and to the truly excellent team at Centurion Print.

The challenge for our successors will be to do their best to bridge the growing divide between the academic world and the real world. We think they must strive also to make the Review more inclusive and representative of the diversity at the Auckland Law School. We wish them all the very best and have no doubt they will have every success in their endeavours.

Chloe Fleming and George Dawson November 2016

4 See, for example, Maria L La Ganga and Ben Jacobs "Trump campaign rocked by new wave of sexual harassment allegations" *The Guardian* (online ed, London, 13 October 2016); and David A Fahrenthold "Trump recorded having extremely lewd conversation about women in 2005" *The Washington Post* (online ed, Washington DC, 8 October 2016).