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EDITOR'S NOTE

Stability and Transformation in the Public Interest

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New Zealand approaches another general election in November 2026. With that in mind, the themes explored in this issue become particularly relevant. Elections are a fundamental mechanism of democracy,[1] allowing New Zealanders to choose leaders who are expected to act in the public interest. It provides a peaceful means of transferring power, enabling political change without disruption to society.[2] A fair and free election creates a legitimate government and promotes stability.[3] It also protects society against the abuse of power, holding leaders accountable.[4]

Democracy is at its strongest when people's voices are heard. By ensuring accountability and participation, elections help align government decisions with the needs and priorities of the wider community. However, the integrity of elections depends not only on the public's participation, but also on the fairness of the conditions under which the electoral process operates.

But what counts as "fair" electoral conditions? Liberal legalism answers this by portraying a neutral and objective system,[5] which secures legitimacy through formal rules,[6] procedural justice and institutional safeguards that prevent abuse of power.[7]

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* BCom/LLB, University of Auckland. All opinions expressed in this Editor's Note are my own. This was written on behalf of all members of the editorial team.

1 James S Robbins "Introduction: Democracy and Elections" (1997) 21(1) Fletcher F World Aff 1.

2 At 5.

3 Tyler Biscontini "Legitimacy (political)" (2025) EBSCO <www.ebsco.com>.

4 Robbins, above n 1, at 4–5.

5 See John M Breen "Neutrality in Liberal Legal Theory and Catholic Social Thought" (2009) 32 Harv J L & Pub Pol'y 515. Breen uses liberal theory to further elaborate the concept of "neutrality in law". He outlines Andrew Altman's four varieties of liberal neutrality: "rights neutrality" (protecting individual autonomy), "epistemological neutrality" (understanding the thinking behind recommendations for neutrality), "political neutrality" (ensuring fair procedures so that no one group dominates) and "legal neutrality" (strict separation of law and politics).

6 See Michael P Foran "The Rule of Good Law: Form, Substance and Fundamental Rights" (2019) 78 CLJ 570. Like liberal legalism, Foran argues that formal rules (such as procedures and structures) constrain arbitrariness, which creates fairness and in turn generate legitimacy.

7 See Tom R Tyler "Procedural Justice, Legitimacy, and the Effective Rule of Law" (2003) 30 Crime and Justice 283. Tyler argues, using the police and the courts as example, that the perceived fairness of a process leads to voluntary compliance regardless of the outcome.

It is a theory of law that emphasises the rule of law, protection of individual rights and the role of courts in constraining political power, particularly by safeguarding minorities against majority decision-making.[8] In practice, this means that while elections determine who governs, it does not give the majority unlimited power. In this way, "fairness" in elections is not simply about counting votes, but about ensuring that democratic outcomes remain consistent with basic rights and legal limits.

However, liberal legalism has faced its fair share of criticism. Scholars of critical legal studies argue that liberal legalism masks structural inequalities (for example, in class, race and gender) as though it may present itself as "neutral", it often reinforces existing power structures.[9] Equal treatment under the law may still produce unequal outcomes if underlying conditions are unequal.[10] The concept of "neutrality" could also be shaped by privileged and dominant social perspectives, that as a result, it may be biased.[11] Another critique is that liberal legalism may restrict meaningful transformation by creating a system perceived to be "fair" and "legitimate". This reduces the pressure for radical change, thus stabilising existing systems rather than transforming them.[12]

The articles in this issue cover a range of legal topics intersecting on a common theme: legal frameworks that appear neutral can, in practice, reinforce or maintain existing inequalities if they are not carefully reconsidered. For example, some articles highlight how legal systems reflect dominant cultural or institutional perspectives, particularly in the Māori rangatiratanga discourse. Others show how legal rules assume markets work efficiently, even when they ignore factors like environmental harm. The articles also emphasise that law is shaped by broader social and historical contexts, such as the ongoing effects of colonialism on Indigenous rights, or the power imbalances present in situations of intimate partner violence. Similarly, an article on intelligence-sharing shows how security frameworks, though presented as neutral, can risk complicity in human rights abuses. Another article shows how donation rules can result in undue influence, undermining political equality. Overall, these articles highlight how so-called "neutral" frameworks can preserve the status quo and make meaningful change more difficult.

Now, how do all these concepts relate to public interest? Liberal legalism promotes stability by relying on formal rules that constrain power, resolve disputes peacefully, minimise arbitrary decision-making and foster legitimacy. From a traditional perspective, maintaining this stability benefits society by protecting economic activity, preserving trust in public institutions, and avoiding the risks associated with sudden or disruptive change. However, it remains debatable whether stability alone serves the public interest,

8 Robin West "Law, Rights, and Other Totemic Illusions: Legal Liberalism and Freud's Theory of the Rule of Law" (1986) 134 U Pa L Rev 817.

9 Judith Wagner DeCew "Critical Legal Studies and Liberalism: Understanding the Similarities and Differences" (1990) 18 Philosophical Topics 41.

10 That is, focusing on procedural justice (fair processes) could neglect substantive justice (fair outcomes). See, for example, Mark V Tushnet "Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles" (1983) 96 Harvard Law Review 781.

11 For example, feminist legal theorists challenge the concept of "neutrality" by its failures to account for gendered social realities or that it embeds the dominant male perspective. See, for example, Nicola Lacey "Feminist Legal Theory Beyond Neutrality" (1995) 48(2) Current Legal Problems 1; and Martha Minow "Feminist Reason: Getting It and Losing It" (1988) 38 Journal of Legal Education 47.

12 Duncan Kennedy "The Critique of Rights in Critical Legal Studies" in Janet Halley and Wendy Brown (eds) *Left Legalism / Left Critique* (Duke University Press, Durham (North Carolina), 2002) 178; and Nick O'Brien *Politics and Administrative Justice: Postliberalism, Street-Level Bureaucracy and the Reawakening of Democratic Citizenship* (Bristol University Press, Bristol, 2025) at 25–39.

particularly when it can also reinforce existing inequalities, as discussed above. This raises a further question: what should count as *the* public interest? While stability is important, a broader view recognises that the public interest also involves addressing inequality and adapting when existing systems operate unfairly. From this perspective, achieving genuine fairness may require reforming laws and institutions to better balance power, rather than simply preserving the status quo. As you will read, most of the articles propose some changes in the law. Ultimately, the public interest is a contested concept, navigating the tensions between preserving stability and pursuing transformation, and it is best understood as requiring a careful balance between the two.

This issue features eight articles. **Mia Rutledge** supports prohibiting political donations from companies and trusts, arguing that entity donors access influence despite being ineligible voters. Drawing on Michael Johnston's influence market syndrome, Rutledge contends such exchanges undermine political equality and enable systemic corruption. Entities' greater wealth and ability to exploit the Electoral Act 1993's disclosure loopholes generate unequal democratic influence. Rutledge questions treating donations as protected "expression", concluding entity donations must be prohibited to preserve political equality.

Nathan Pinder examines how the World Trade Organization (WTO) interpretations of arts I and III of the General Agreement on Tariffs and Trade 1994 treat green steel and traditional steel as "like products", preventing WTO Members from imposing measures to encourage low-emissions steel. Pinder explains that the current reliance on "revealed preference" ignores market failures such as mispriced climate externalities and low consumer literacy. The article highlights how this assumption persists despite advances in climate science and Paris Agreement obligations. It concludes that reevaluating "revealed preference" could allow panels to find low-emissions products not "like" high-emissions alternatives.

Elizabeth Muir argues for the widespread adoption of trauma-informed practice within the New Zealand legal profession to protect lawyers' emotional well-being and reduce vicarious trauma. Muir explains that trauma is present throughout the law, that international research shows lawyers face heightened risk, and that employer liability is implicated. The article outlines how trauma-informed organisations educate staff, recognise trauma's effects, and implement supportive policies. It also highlights Māori scholars' concerns and the need to integrate tikanga. The article concludes that trauma-informed practice is essential for a compassionate and effective legal system.

Tosca Pasquale examines the regulation of overseas investment in Aotearoa New Zealand under the Overseas Investment Act 2005, including recent reforms and their implications for Māori land interests. Pasquale outlines the shift toward a more liberal, economically driven regime, assesses how Māori land interests are addressed in practice, and highlights how streamlined investment pathways may weaken existing protections. The article concludes that the effectiveness of the new statutory approach will determine whether customary land protection remains meaningful.

Raphael Zerda examines New Zealand's foreign intelligence-sharing under the Intelligence and Security Act 2017, highlighting both its benefits and the risk of complicity in human rights abuses. Zerda describes the Act's human rights protective provisions and assesses the bodies tasked with monitoring these relationships. The article concludes that while the framework is generally effective, only the Inspector-General of Intelligence and Security provides truly robust oversight.

Jasmine Huang considers whether restorative justice can effectively address intimate partner violence in Aotearoa New Zealand. The article conceptualises intimate partner violence as coercive and controlling harm embedded in gendered and structural power relations. Huang argues that restorative justice relies on idealised constructions of survivors, harm doers, encounters, and communities, and makes flawed assumptions about safety, equality, and restoration. Highlighting risks for Indigenous women, the article concludes that restorative justice must be reimagined to centre survivors' interests.

Arela Jiang discusses how New Zealand's monist constitutional arrangements sustain Crown sovereignty while denying the possibility of an equally legitimate Māori sovereignty. The article identifies the Crown's misrecognition of rangatiratanga as a key barrier, outlines how colonial states have historically reframed Indigenous sovereignty as Indigenous difference, and applies this framework to the establishment and disestablishment of Te Aka Whai Ora | The Māori Health Authority. Jiang critiques incremental reform proposals, arguing they fail to address ongoing misrecognition. The article concludes that "agonistic reconciliation", grounded in Māori assertion of "recognition from below", is necessary for genuine constitutional transformation.

Shivali Ben examines whether New Zealand should adopt the Australian Taxation Office's broad characterisation of software distribution payments as royalties for withholding tax purposes. The article outlines the Australian approach, contrasts it with New Zealand's approach, and situates it within Australia's wider focus on recognising intangible-asset arrangements. Ben compares international practice, noting divergence from New Zealand, the United States, and India, but support from jurisdictions such as Malaysia and the United Nations' tax policy. The article concludes that Australia's approach merits deeper examination and potential adoption.

The articles published in this issue hope to contribute meaningfully to ongoing conversations and offer valuable perspectives on the issues they explore. I trust that our readers will find this issue both engaging and thought-provoking.

In other news, starting from the next issue, I am pleased to announce that Ana Kathrin (Kyra) Maquiso will join me as Editorial Director. In 2020, Kyra was Editor-in-Chief of the Public Interest Law Journal of New Zealand and Managing Editor of the Auckland University Law Review. As an LLB/BA(Hons) graduate of the University of Auckland, Kyra is a lawyer specialised in administrative law, Māori land law and Tiriti o Waitangi jurisprudence. Kyra has also published several pieces on history and law, including for this Journal.[13] Given our shared experience with the Journal, it is a privilege to now work alongside Kyra on a publication to which we have both been deeply committed.

Lastly, I would like to acknowledge the excellent work of this issue's Editors-in-Chief, Charlie Matthews and Harshitha Murthy. Both are to be commended for their leadership in overseeing article selection, peer review, editorial development, and final publication, ensuring the integrity of the Journal and a timely turnaround. I also extend my thanks to the editorial team, whose careful and meticulous work was essential in preparing the articles for publication. I conclude by thanking Jayden Houghton and Kyra Maquiso for their ongoing guidance and support, and the Academic Review Board for their feedback and recommendations in the article selection process.

13 Ana Kathrin Maquiso "Aotearoa, the Land of the 'Long Tail': Exploring How Pasifika Students are Underserved by the Education System through School Disciplinary Removals" (2019) 6 PILJNZ 5.