



# DE MINIMIS

Official newspaper of the students of Melbourne Law School. Established 1948. Revived 2012.

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## Welcome home! (we're your family now)

### BAPTISM BY FIRE: SURVIVING YOUR FIRST SEMESTER AT LAW SCHOOL

Jacob Debets

So, you got here. Congratulations! All of you have excelled in some way in an undergraduate or higher degree. You have stellar resumes, good grades and big ambitions. You've completed LMR and made a busload of new friends in the process. You've embarked on Law Camp where you drank, danced and fraternised. And you have been introduced to the neighboring pubs where you will spend countless hours (and dollars) refining, reminiscing, or forgetting your academic performance.

And the fun isn't over. Over the next few weeks many of you will participate in the host of competitions that the Law School has to offer: mooting, witness examination, negotiation etc. Others will join the teams at the Melbourne University Law Review or the Melbourne Journal of International Law. The best looking of you will write for *De Minimis*.

Opportunities are in no short supply. But before you start frantically asking around for mooting buddies, or slaving over your *MULR* application, here's some tips on how to make it through your first semester at Melbourne Law School in one piece.

**Tip 1: The learning curve is like a 50 feet vertical motorcycle ramp with protruding spikes and lasers that shoot out fire and self-doubt**

OK, maybe I'm exaggerating (there is no actual ramp) but the point is that the learning curve in law school is brutal. You're essentially expected to learn how to read massive volumes of information, extract the relevant legal principles, and then condense your newfound wisdom into some user-friendly notes. Every. Damn. Week.

Oh, and then you have to apply everything you've learnt to bizarre fact scenarios in a timed exam with 1000 other frantic, sleep-deprived law students and your lecturer picking his nose in the corner. This is time-consuming, stressful, and above all, intellectual challenging.

But the hard part really boils down to getting your head around what is expected of you. That means learning how to write proper notes, getting used to showing up for every class, and not getting demoralised when you don't know the answer to every question. Once you've got that down pat, you'll find the weight on your shoulders gets a little bit lighter.

### Tip 2: Every Topic Counts

One of the biggest shocks in my first year was that, with few exceptions, every case and every principle is examinable at the end of semester. This might sound



Meet the new editorial team. From left to right, top to bottom: Hamish Williamson, Jacob Debets, Duncan Wallace and Tim Matthews Staindl.

basic, but you'd be surprised at how quickly the weeks stack up, and how soon you'll be trying to convince yourself that "Estoppel probably won't be on the exam..."

The advice here is pretty simple: keep up. Ask questions in class, consult your fellow classmates and check out the Facilitated Study Groups and Student Tutorials held after the first week. Because the days where you can concentrate one week, write a killer essay and still top the subject are well and truly over. I'm talking to you, Arts kids.

### Tip 3: Drink Your Sorrows Away

My fond memories of first semester could be written, with room to spare, on the back of a postage stamp. And they all included two things: some kind of drink, and other law students.

*Continued on the back page...*

# Opinion

## MLS AND THE POLITICS OF EDUCATION

Duncan Wallace

The renowned historian and activist Howard Zinn called his memoir *You Can't Be Neutral on a Moving Train*. Explaining the title, he said:

“I don't believe it's possible to be neutral. The world is already moving in certain directions, and to be neutral, to be passive in a situation like that, is to collaborate with whatever is going on.”

I was reminded of this recently, when on the Melbourne JD Facebook page, the idea was put forward that Melbourne Law School (MLS) students engage in civil disobedience in protest against the government's treatment of refugees. One of the responses to this suggestion was that students oughtn't do this under the banner of MLS, since not all MLS students may agree with such actions and wouldn't want to be represented as such. This is a fair point. What struck me, however, was the further argument that

*MLS is “meant to be apolitical”; that it is “not a political institution”, and “nor should there be any perceptions that it is”.*

This is quite wrong. The very institutional structure of MLS reflects a certain politics. What we are taught and how we are taught it is a political decision, with different ways of doing so benefitting particular segments of the community rather than others. It therefore has impressive political implications. In this sense MLS is by no means apolitical—and denying that fact merely hides the underlying politics.

It is important that this be recognised, so that we can make conscious decisions about what kind

of politics we want it to have. Otherwise, somebody else will.

Decisions about what we are taught and how it is taught have, since the late 1980s, been increasingly handed over to “market forces”, with the main beneficiaries being the business class. Research is increasingly being directed by business, at the expense of the community, and students are increasingly being pushed to take on the mentality of consumers—the “right” way of thinking according to the business class.

This dynamic was noted by George Orwell in the dystopian novel *Nineteen Eighty-Four*. He wrote that, for the fictional police-state of Oceania, “Science, in the old sense, has almost ceased to exist... But in matters of vital importance—meaning, in effect, war and police espionage—the empirical approach is still encouraged, or at least tolerated.” In other words, science was allowed, but only where it suited those in power. Oceania is an extreme example, but the underlying dynamic exposed by Orwell exists in all societies. What is occurring in Australian Universities involves the same dynamic.

This process was originated by the Hawke/Keating Labor government. They began a process of privatising public goods (consistently against the will of the Australian population) which included Australia's Universities. It has been an incremental process with the Universities, which has involved the increasing application to them of business practices as if they were for-profit corporations. In other words, they are being “corporatised”.

This did not happen naturally – rather, it has been imposed by government. The idea behind Labor's reforms was that with the introduction of fees, universities would be exposed to competition for students and so to free market principles, with the influence of the government decreasing in tandem. The course in fact taken, however, was the very opposite. An apparent

paradox was noted by Melbourne economist Max Corden in 2005 in his paper “Australian Universities: Moscow on the Molonglo”. The application of market principles to Universities, he found, did not involve less government regulation. Rather, along with Orwellian free-market rhetoric, there occurred increasingly intense bureaucratic control. What's more, despite the rising “contributions” from students, government expenditure on tertiary education only increased.

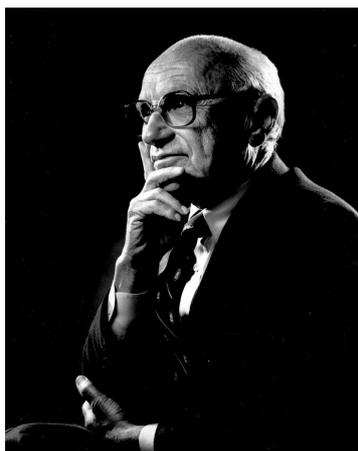
This has continued under the current Liberal government. By deregulating fees entirely, and privatising student debt, it hopes to see the market take full control of the tertiary education sector. This continues to involve the same paradox which Max Corden encountered, however. One of the main cat-calls of the current government is “debt and deficit!”, and having University fees deregulated is supposed to help reduce this debt and deficit. Unfortunately, again, the very opposite would be the case. A recent report by one of the nation's top economic modellers, NATSEM, found that the proposed plan to deregulate would drain billions of dollars from the budget over the long term, with any savings overwhelmed by the cost of bad loans and a jump in inflation.

What this suggests, as noted by Professor Stephen Parker, vice-chancellor of the University of Canberra, is “ideology in search of a problem.” And this ideology is not simply erratic dogma; it exists because it benefits certain segments of the population.

The main function of deregulation is to force researchers and students to be reliant on certain sectors of the community for funding, and so more likely to be complicit with those sectors politically. Government money acts as a safety net for those sectors.

With regard to researchers, a recent Group of Eight discussion paper sets the matter out clearly: “In seeking financial support from a broader

range of sources, universities are coming under pressure to produce short-term practical outcomes, to commercialise, and to chase funding, no matter what the implications of winning it". In the University of Melbourne's recent policy paper, "Growing Esteem 2014", three sources of funding were highlighted: the philanthropy of alumni, partnerships with industry, and teaching revenue. I will highlight the effects of the latter two.



*Milton Friedman, an early advocate of a free market for education. Photo courtesy of the Friedman Foundation for Educational Choice and Wikimedia.*

Partnerships with industry, according to "Growing Esteem 2014", will "require some difficult choices for the academy — surrendering some control to be part of something wider". It recognises that the idea of "goal-directed research" will be "challenging to many". The implication is that academics will need to learn to put free inquiry aside in order to attract funding.

Teaching revenue will increase with deregulation; and indeed the University of Melbourne is already taking advantage of possibilities for deregulation. Five years ago, 72% of students were undergraduates; by 2015 the ratio will be 50:50 (largely due to the transition of MLS to a postgraduate institution). Since graduate fees are deregulated, the University can get more revenue per student. Further, international students are strongly encouraged: by 2004 the proportion of full fee-paying international students had increased from four per cent (pre the Hawke-Keating reforms) to 24 per cent of all university students in Australia.

And as Universities have come to rely more heavily on teaching revenue, so marketing departments have become more powerful. I'm sure everyone at MLS has been made aware that the University is, quoting a marketing slogan, "Australia's no. 1 university now ranked in the world's top 50"; and that, quoting the Law School Dean, MLS has "been ranked in the top ten Law Schools in the world and the best law school in Australia." Whilst rankings are good for marketing, reliance on rankings is unwise for prospective students.

"University rankings would have to be the worst consumer ratings in the retail market", says Warren Bebbington of Adelaide University. Indeed, Simon Marginson, a former Melbourne professor, now a *Times Higher Education* (THE) board member, has said the world would be a better place if rankings didn't exist.

Rankings generally measure research output, and not student satisfaction. The University will increase research output, according to "Growing Esteem 2014", by "identifying a number of disciplines within each Faculty with the potential to be ranked in the THE World University Rankings top 20 and/or the ARWU top 40." Ominously, "faculties unable to attain a top 20 or top 40 ranking" will have to be prepared to "make decisions around focus", with academics given "clear guidelines on acceptable performance".

This attack on free inquiry arising out of a focus on rankings goes alongside the cutting of student services. Last year, as part of the "Business Improvement Plan" (BIP), the University cut welfare services for law students by making services more "efficient", thereby freeing up funds which are redirected to research. Kate Van Hooft, the wellbeing support officer for MLS, was only saved due to the last-minute outcry of law students and an intervention by the Dean of the law school, Carolyn Evans.

It is in this way that researchers and students are disciplined by business. Researchers must rely on funding from business, and so must research according to the goals they set. Otherwise, they are disciplined by research requirements to publish frequently in particular journals, the space for free inquiry thereby curtailed. Further, students, disciplined by increasing fees, must increasingly pursue a course which will satisfy employers, thus circumscribing possibilities for students to engage in social critique and radicalism.

Indeed, even the LSS welcome back barbecue this year is sponsored by a "global business consulting firm", Bain & Company. Like in George Orwell's *Oceania*, to quote the former Supreme Court judge Richard McGarvie,

"We are at peril of producing as potential leaders within the legal system highly efficient technocrats who have learnt nothing from the past and have little notion of the risks to be averted in the future."

This would be the political outcome of a political decision, which we need to be conscious of and engage with. MLS is a political institution whether we like it or not; the question is only what politics it will have.

#### **DON'T LIKE THE CONTENT? WRITE YOUR OWN!**

*De Minimis* is written by, and for, the students of Melbourne Law School. Please send articles, ideas, or obscene drawings via email, Facebook message or carrier pigeon.

With love from your Editor,

Hamish Williamson, O.M.\*

\*Order of Matehood (thanks, Tony!)

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## LMR: A LOVE STORY

Mitchell Holman

“Introduction to Legal Method and Reasoning” sounds like such a benign subject, but the name belies what one would usually take to be introductory. One can hardly blame it, though, for there is nothing about the law that is simple, despite what some people may say. How else to bring the fresh meat up to speed on the oncoming academic storm that will rock the boats of 350 new JD students’ lives, get them addicted to the adrenaline of studying by the seat of your pants, and leave them coming back for more?

Okay, so perhaps that last part isn’t entirely true. But what is true is that in the two weeks during which LMR was held, twelve seasoned legal veterans dispensed a righteous fury of knowledge covering case law, precedent, statute, burdens of proof, constitutionalism, statutory interpretation, the nature of the state, Kirby J dissenting (as always); and Heydon J complaining about judicial activism, from their brains to ours.

All of the essential basics of the legal world were covered, as were many particular questions relating to the materials covered. Foetuses, drink-driving on motorcycles, steroid-munchers, alcoholic loose cannon Perry getting on her scooter,

alcoholic gambling naturopath Dahlia doin’ her thing, and too many Lynches. What unites these things? All of them are covered by law! All of them are, in some way, tiny little singularities that touch us all in minute, yet remarkably significant ways. Law is not just the study of right and wrong, it is also the study of the human experience in motion.

Much thanks must be given to these twelve apostles, as without their care we would not have been transformed from clean slates into the leather-bound volumes we are now, ready to have pens put to our delicate and supple- ok, this is getting a bit 50 shades if you know what I mean. But seriously, major thanks go from every class to their respective steward. Special thanks to Julian Sempill, because I’m writing this article and he was my seminar leader. Ask him about his views on the unwashed masses, or men’s fashion sometime. He’s in the know, trust me.

In addition, special sessions were run accommodating astute methods of note taking and studying, as well as plumbing the boundless depths of legal research. As a cohort, the entire 2015 entry JD class extend their thanks to our legal librarians for sharing eldritch secrets of the law school library intranet. We also cannot thank Ian Malkin, Chantal Morton, Alison Duxbury and the

rest of the first-year JD pastoral team enough for all their efforts.

Perhaps the most important lesson every new student has learned regards the pace of life at law school. For most readers, this will already be an apparent fact, but I’m running out of things to write about. There’s going to be reading or reflection to do every day of each semester for the next three to four years. It’s funny to think of that clichéd saying that people in the Middle Ages read, in their lifetimes, the equivalent of what is contained in a newspaper today. How far we have come. How far we still have to go!

As a final reflection, the most valuable part of LMR was the chance to make new friends. I’ve heard it said already by a number of students I know in second year at MLS, but the friendships formed in the first year of law are ones that will likely continue well into our adult lives, as we finish our studies, start our careers, and charge forthrightly into everything life (and law) has to offer. Many of those friendships will have started with feeling slightly awkward in a classroom surrounded by a dozen or more similarly perturbed adolescents – and yet, thanks to LMR, here we are.

So, from me to everyone in the 2015 cohort and beyond: let’s do this, Leeroy Jenkins.

## BAPTISM BY FIRE

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Whether it’s coffee, beer or an aged Scotch, make sure you take regular breaks. Carlton is littered with cafe’s and bars, and even though you might feel suffocated with your workload, an hour down at the Corkman with a group of friends is sometimes all you need to feel reinvigorated, or at the very least find solace in the fact that everyone’s feeling the same.

### Tip 4: It Gets Easier

The most resounding memory I have of first semester is how often I

was unhappy and stressed, never sure if I was doing enough and perpetually comparing myself to the class standouts. This isn’t uncommon and perhaps inevitable when you put a few hundred high achievers together under one roof, tell them its impossible to get a job as a lawyer and then constantly remind them that they’re competing with one another.

You know that old quote ‘the finest steel has to go through the hottest fire’? It very comfortably fits the mood in those first couple of months.

But after awhile you get used to the fire, and realise you’re actually pretty capable of reading long cases,

writing legible notes and following your PPL professor’s highly intellectual and intimidating train of thought. Come Semester 2 you’ll be handing out unsolicited legal advice like a champion. Trust me.

**DE MINIMIS IS...**

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