



# DE MINIMIS

A newspaper for the students of Melbourne Law School. Established 1948. Revived 2012. Made officially unofficial 2015.  
Volume 6, Issue 22  
Tuesday, 20 October 2015

## CORRUPTION RIFE IN *DE MINIMIS*

### Equity Uncle writes on behalf of *De Minimis*

Shocking revelations of corruption, bias and incompetence within *De Minimis* (DM) have been released less than a week after the group's Annual General Meeting.

Isolated allegations of wrongdoing throughout 2015 have formed a pattern of insidious self-service.

These allegations include the infiltration of filthy talk of social justice issues into the wider MLS community. The examples speak for themselves: sanitary bins, corporate sponsorship, menimism, casual racism—it's political correctness gone mad.

DM's executive committee, 75% of whom are co-founders of Law Students for Refugees, used the publication to push their far-left agenda. Managing editor, Duncan 'Refugee Rights' Wallace, is rumoured to have drafted LSFR's open letter to the LSS, whilst hiding his own foreign origins.

The hypocrisy, too, is both astounding and widespread.

For the 24 academic weeks of 2015, the MLS student body has suffered endless lectures on racism,



*The shamed editors of De Minimis upon hearing of the allegations*

classism and sexism by four bourgeois white men.

Accompanying the endemic corruption is evidence of systematic ineptitude.

With late issues and poor proofreading, perhaps DM's biggest achievement for the year was losing their status as the 'official' MLS newsheet in less than a semester.

One might ask how such 'journalism' continued unabated for so long. Part of the answer may be found in the dwindling and apathetic readership.

With DM's switch to low-quality paper, MLS students can no longer use it as toilet paper and, subsequently, the number of 'readers' has plummeted.

More significantly, continued external funding and a sharp increase in anonymous articles created such a low level of transparency

that not even the editors knew what was being released each week.

It's a grand exit for the shamed quartet, and MLS can rest assured that this paper has no tolerance for corruption.

Three of the four current editors are proud to be rejoining the 2016 team in similar, or more senior roles.

# Clerkships

**‘Failure is the opportunity to begin again, only this time more intelligently’ – Henry Ford**

For people who are naturally good at talking, and who are so incredibly intelligent, we law students (and the profession more broadly) are just woeful at talking about things that really matter - the elephants in the room.

Well guys, I don't have a great poker face, and I want to reach out. Like many of you, I too have been through a rough patch lately. I want to talk about the herd of elephants in the room – the clerkship process.

I applied for clerkships this year – 8 in total. I applied to mid-tier firms whose values aligned with my own, whose staff were diverse and interesting, and whose practice areas interested me. Firms which had interesting international opportunities and supported and mentored young grads.

I did my research, had coffees, and didn't make silly mistakes in letters, which I tweaked for hours on end. I have some solid legal experience and my grades are fine.

But I did not receive an interview, or a telephone call. I'm still waiting on a rejection email from one (obviously playing hard to get).

Let me preface this by saying that I am genuinely delighted for those who have had interviews, been invited to networking nights and received offers – it is an immense joy to see friends and peers succeed, especially given how tough this process is!

I have debriefed with my dearest friend, a Monash student, after every interview and networking night, and when her offers came out, she asked for my help in deciding which to accept. I felt like a proud aunty.

I have worked hard to separate the success of others from personal failure. And I am grateful to my friends, and the majority of the cohort at MLS, for the tactful, humble

and dignified way in which they have gone about their clerkship experience.

It's been tough for everyone: those who applied and got nothing, those who got interviews but not offers, and those who have stood by, unsure how best to support their friends.

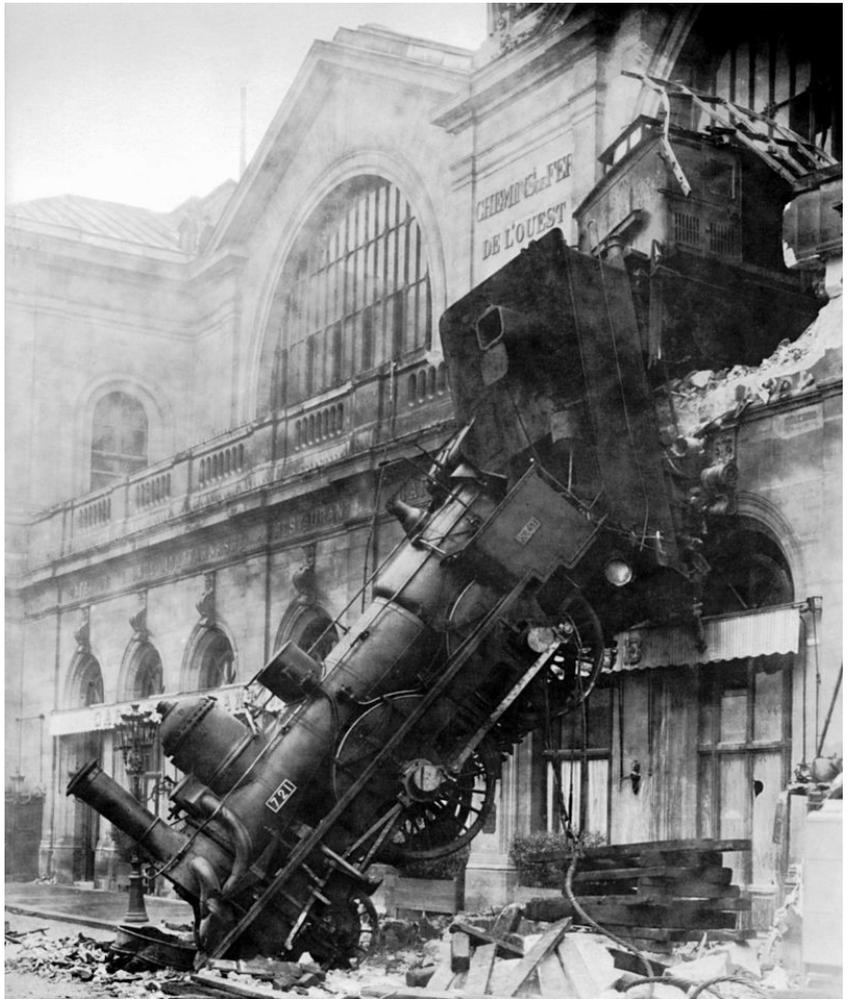
Although my path in the law so far has had an overwhelmingly public interest and government bent, I, like many people with similar experience, made an active decision to apply for clerkships for a few reasons.

Partly because it's the 'done' thing, and it's something MLS encourages.

I'm in my penultimate year, it would be valuable experience, I would have the chance to learn about a diverse range of practice areas in a short space of time, it was a side of the law I had never seen and was eager to learn about, and the firms would have free coffee/snacks.

But I also applied for clerkships because they would likely lead to a graduate job in a firm, which would provide an opportunity to build a network in the legal sector, to be mentored, to learn from a wealth of resources, to work on a diversity of interesting matters and to have my practicing certificate supported – to have some stability.

*Continued overleaf...*



Pictured: A metaphor for the clerkship process. *Public domain.*

## DE MINIMIS IS...

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Let's get this straight. I do not believe for one second that I was entitled to a clerkship.

But I'd be lying if I said that not even getting a phone call inviting me to an interview didn't absolutely shatter me.

Spring break came at a really great time, and I thought I'd put all my clerkship rejection angst to bed, but then October 13 rolled around.

Thankfully I was in a majority first year torts class - I can't imagine how I would've coped if I had been attending a class full of second years.

It was as though I was the kid without presents on Christmas Day, watching everyone else open theirs.

But my lack of presents weren't because I'd done anything really naughty, it was just because.

I sat on the tram counting my blessings: my loving, stable and supportive family, my incredible boyfriend (who deserves an honorary degree from MLS for everything he's put up with) a solid circle of friends, my education, my health and the travel experiences I have had.

I told myself to put on the same face I encourage the kids I babysit to put on when they stub a toe or stand on Lego (you do not understand how much that fucking hurts).

But like them, my 'brave face' slowly gave way, my eyes welled, and tears tumbled.

By some miracle I was on an empty train carriage on my way home - be-

cause these were real tears - wet, fat, juicy, ugly.

Ironically, *The Age* informed me that October 13 also happened to be the International Day of Failure! So I did what I do whenever there is the slightest reason to celebrate something - I did.

And I rationalised.

When I wear one of those 'Man Repeller' outfits the majority of people absolutely detest (usually featuring patterns involving small birds) - I own it.

So it was time to do exactly the same thing in this instance (transferable skills - yay!) - I decided to break this 'failure' thing down - to own it, to wear it, to talk about it and to make sense of it.

I had been cynical about how much firms remember about you from networking events - but I resolved to attend each and every single one of them in 2016.

I submitted my application for careers co opt on the LSS, in the hope that I can help others manage their expectations and mental health during the clerkship process, be given the opportunity to better inform myself of the process, and to provide some insights about alternative pathways.

And I made the decision to extend my degree, to plan the most ridiculously awesome post degree travel adventure, to look after myself a bit more (physically and mentally) and to spend more time doing what I love with those I love.

I never thought I'd say this, but, thank you clerkship application process, for the valuable lessons you have taught me.

Thank you for teaching me what it is to fail after I have only really ever experienced success, good fortune and privilege. Thank you for teaching me to embrace failure for what it is - a learning experience and not a dirty word.

Thank you for teaching me to separate the success of others from my own disappointment - I'll probably need to do that again someday if a friend gets a promotion and I don't, or if a friend falls pregnant while I struggle to.

Thank you for shattering my ten-year plan, for teaching me that it's foolish to plan so far ahead and for teaching me the flexibility and resilience to roll with life's punches.

Thank you for teaching me to run my own race.

**Claire Poyser** is a second-year JD student

## Don't like the content? Write your own!

*De Minimis* is written by, and for, the students of Melbourne Law School.

We welcome any and all quality writing that might interest our readers.

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# Opinion

## An editor's note on the LSS social media policy

The LSS social media policy has proved contentious. There are those who see it as an appropriate response to hurtful speech, and those who see it as problematic since it is overly prescriptive.

I am hesitant about restrictions on free speech. Restrictions on speech tend to protect the rich and powerful.

Richard Ackland, for example, has noted in *The Guardian* in his discussion of speech-laws in Australia that, "it is the legal bills that force public interest defendants to roll over and shut up. The outcome is a frightful timidity in public discussion of issues that ought to be publicly critiqued."

Similarly, Deane J wrote in his minority judgment in *Theophanous* that the cost of defending defamation suits have the result that

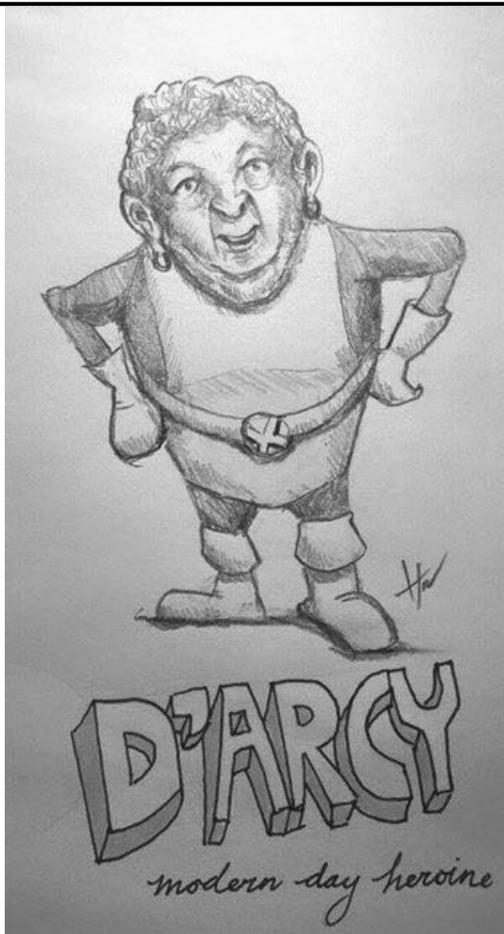
*"the informed citizen who is not foolish or impecunious will inevitably be deterred from making, repeating, or maintaining a statement which causes injury to the reputation of another if there be a perceived risk or actual threat that the publication or further publication of the statement or a refusal to retract it will give rise to defamation proceedings.*

*And that will be so even if the defamatory statement is known or believed to be true."*

The LSS social media policy may do the same here. It was put in place following comments made on a Facebook post on one of the JD pages regarding the suggestion that a woman's room be created in the law school.

It was the alleged vilification of men, and not women, however, which led the Law School to have De Minimis take down an article on the issue.

On the other hand, many women defended the open and frank discus-



Cartoon by Harley Ng

sion which occurred. After the decision by the LSS to remove the post, Teresa Gray, for example, made the following insightful comment:

*"I realise this is a decision that you would have considered seriously. But I disagree that the perceived benefit of removing that particular thread outweighs the negative impact of doing so.*

*Every single person who commented was aware that they had the option of providing anonymous feedback via the form, and chose to comment instead, in the knowledge that their words would be read by around 400 people.*

*The conversation as it unfolded was circular and reductive in some ways, but I think ultimately productive.*

*Interesting and impassioned discussions came out of it and it seems a lot of minds were changed.*

*These kinds of divisive conversations provide the potential to educate each other about our differing*

*experiences of the world.*

*I have no doubt that there was some harm done by the thread and it's possible that that harm actually outweighed the good that was done.*

*But removing the thread is not going to remedy that harm.*

*It's going to undo any progress that was made in listening to each other and it increases the likelihood that we will continue to have the same conversations over and over without progressing (because these issues of inequality, sexism and harassment are not going to go away just because there is now no record that we talked about them)..."*

As Leo Bailey wrote last week, the LSS social media policy stipulates a "high threshold for acceptable communication".

I am wary about such policies, particularly since the LSS relies heavily on corporate funding. Last year, this amounted to close to \$150,000, and such heavy reliance may play into decisions about what comments contravene the social media policy.

For example, article or opinions posted about corporate sponsors may be removed out of fear that the sponsor will take offence and withdraw funding. As Leo notes, "trolling" is open to wide interpretation.

I happen to agree with him that "an attempt by the LSS via the Social Media Policy to sanitise online discourse comes across as authoritarian, and raises the suggestion of a conformist project."

I recognise that this is a difficult area but I think it is appropriate to take a conservative approach to this issue.

I would guard against introducing new and untried social media policies, the effects of which are unclear.

The burden of proof should be on those who argue that it is necessary to introduce censorship.

**Duncan Wallace** is the Managing Editor of De Minimis

# Opinion

## In defence of inclusive language

Over the past three years at law school I have had very strong views on a number of issues that those close to me (and some not so close) have been subjected to on a frequent basis.

I think it would come as no surprise to anyone that I am a vocally opinionated person.

But in my experience, that has not been the case for many people of colour.

In fact, I have met very few people of colour who are willing to broadcast their externally-racist experiences, let alone their internally-felt racism.

I was very fortunate to have a sister, 12 years my elder, who at age 16 stuck a poster of the devil on a classmate's locker after having overheard him shouting racist taunts at a Chinese girl in her class.

When she was 18 she confronted friends who were making racist comments about another friend, also an Indian girl but who had darker skin.

My sister was dealt the “No, you're not like her, you're different” response, as if that was what was at issue.

At 21 years, when she was angry and frustrated by White Australia's refusal to apologise — or accept responsibility — for the devastation caused to the Stolen Generation, she painted “SORRY” in enormous font on the side of a mountain in Kinglake so that passers-by could not escape history.

I have been very lucky to have such a strong role model to show me that my voice is important.

A few friends suggested that I respond to the feature article that recently appeared in *De Minimis*. It was scornful of the new LSS Social Media Policy.

As a person of colour, and a woman of colour at that, I was deeply offended by the position put forth in the article, essentially that freedom of speech is more important than the harm that hurtful speech may cause to others.

Though it was not phrased as such, any attack on ‘political correctness’ is exactly that.

Those two loaded words are the defence of many who claim they *intended* no offence, yet refuse to accept responsibility for it when it is caused.

This position is the culmination of social privilege, a lack of self-awareness, and ignorance of the experiences of minority groups.

It is one for which I, quite frankly, have no time.

This piece is not a response to the author of that article.

Rather, it is a response to, and a show of solidarity for, the author of the second article, which was positioned at the back of the hardcopy.

It occupied only one of the four pages and ironically demonstrated the need for inclusive language to be at the forefront of all of our minds.

I imagine that it was difficult for the author to put those experiences in writing, and I respect that he did so for the education of peers who have led extremely privileged lives and are either unaware or wilfully blind to that fact.

So this is my contribution to that narrative, because this predominantly White and privileged law school could stand to listen to the voices of its minorities more often.

When I was 14 years old, I overheard the boy I liked tell his friends that he would not touch me with a 10ft pole because I was Black. I am Indian.

When I was 18 years old, I stood up for a bus driver being racially abused at two o'clock in the morning on the NightRider home.

The abusers turned their hatred to

me and proceeded to yell, “Go back to where you came from” for 25 minutes while I cried. I was born here.

Two years ago I dismissed unwanted attention from a man on the dance floor at Toff, and he turned to me and said, “Oh no, you don't get it, this is just what we do in Australia.”

So it is no wonder that when there is an angry white person in front of me, my immediate reaction is to want to speak so that they know that I have an Australian accent.

I can only speak from my own experience, but when I do so I expect that the person listening will do exactly that: listen.

My experiences are my own and they are not yours to dismiss, re-interpret or diminish just because they make you uncomfortable.

They make me uncomfortable too, and that is why I have to talk about them, without qualification.

So when somebody chooses to open up and speak to you about their personal experiences as a minority, do not dismiss them based on your own knowledge of the world. Instead, listen and embrace theirs.

Thank you for your article JJ Kim, I hope you keep speaking up.

**Sanaya Khisty** is a final-year JD student

# Response

## An open response to the 'Law Students for Refugees' from the LSS leadership team

*De Minimis* recently published an open letter from the organisation 'Law Students for Refugees', urging the Law Students' Society to take a stance against offshore processing. This is the LSS's response.

Dear Law Students for Refugees,

Thank you for your open letter in Volume 6, Issue 20 of *De Minimis*. We appreciate knowing that students are engaging with and care about what the LSS does and supports.

We first acknowledge that the LSS Leadership Team—composed of the President, Vice Presidents, Secretary, Treasurer and Sponsorship Director—are replying to your letter rather than the entire Elected Committee since, due to timing constraints, we were not able to compose a letter with input from every Committee member.

Your letter refers to the Committee's vote that endorsed marriage equality, and asks for the LSS to take 'a similar public stance' against the offshore processing of asylum seek-



The island of Nauru, three thousand kilometres north-east of Townsville. *Public domain.*

ers by the Australian Government.

As you will know, the motion the Queer Officers proposed at our Committee meeting in support of marriage equality was primarily about endorsing the use of the LSS banner in the marriage equality rally. The rally instigated the statement in favour of marriage equality.

Therefore to maintain consistency with the approach our Committee has to this kind of endorsement, we would need to have a motion submitted to a Committee meeting that is tied to an event supporting your cause.

This would then allow for the entire

Elected Committee, and potentially the wider student cohort, to both deliberate on and participate in the endorsement.

We therefore ask the Law Students for Refugees to email [lss-leadershipteam@unimelb.edu.au](mailto:lss-leadershipteam@unimelb.edu.au) when such an event arises, with as much notice as possible so we are able to submit it as a motion and discuss the matter properly in one of our monthly Committee meetings.

Thank you again for your time and your engagement.

Warmly,

The LSS Leadership Team

# Article

## The law and sexual violence: A troubled relationship

*Warning: Contains references to sexual assault*

Over this year's winter break, I, along with many other JD students, took the intensive subject Evidence and Proof.

We were lucky enough to have a guest lecture on the laws of evidence from Justice of the High Court, Kenneth Hayne.

At the end of the lecture, he asked if anyone had any questions. From the

back of the crowded lecture theatre, with perhaps a little shakiness in my voice, I piped up:

"What do you think of the law reforms regarding the questions allowed in cross examination of sexual assault victims, and do they go far enough?"

Asking that question set off a chain of events that affected me profoundly, leaving me uncertain about my future career and study.

After that class, I was contacted by someone else who had been in the lecture.

They told me how they thought it was great that I had asked that, but

they were really embarrassed because they started crying and felt that they had to leave.

I felt so guilty. I knew that feeling, the feeling of isolation, of not being able to participate in a discussion that actually was so relevant and important and personal to you, because of the overwhelming emotion, shame and traumatic memories it brought up.

The previous semester I was taking a class called Cyber Law. One day, I came into the law school early so I could have some lunch and catch up on readings before class.

I opened my readings and there, right on the front page, was the title "Rape in Cyberspace".

I had no warning, no knowledge that this would be the topic of the readings this week. I swallowed and thought to myself, grow up, stop being so sensitive.

I began to read the reading and it was the most horrible and offensive way to go about presenting the topic.

First person, sensationalised, a rape narrative, acting as if this person as an “avatar” being made to do things at all compared to the actual bodily violation rape is.

I started to have flash backs thinking about what had happened to me.

I felt tears forming in the corner of my eyes, while I sat there in the library where everyone could see.

I don't know why it affected me so strongly but I think that the fact there was no warning, no preparation I could take, was the main reason.

I went and found someone to talk to and then found ways to calm down and get back on track.

I tried to attend the lecture but the lecturer insisted on showing a documentary about this topic, without saying when it would end, and I knew I wouldn't want to watch it, so I left and didn't know what time I could have come back to hear the rest of the lecture.

There is a right way and a wrong way to talk about sexual assault. Talking about it as a hypothetical concept, as an abstract, as something that could be divorced from the actual reality that is experienced by people, is something that only people who are lucky enough not to be sexually assaulted can do.

It leaves a lot of people who want to engage with the topic, who are close to it and have a stake in it, outside in the cold.

The conservative figure for the amount of women who have experienced sexual assault is one in six.

The current trend of enrolments in law are that there are just slightly more female students than men.

Depending on class sizes, we could safely say that each class is likely to have at least 2 women who have been sexually assaulted.

Not to mention the small percentage of men that have been. When we shut them out, either purposefully, or accidentally, through carelessness or through not even thinking that they exist, we limit their ability to learn.

Our university has sometimes been, and at times continues to be, an unsafe space for women. The most likely person to sexually assault someone is someone known to the victim.

I know several people, including myself, who had to put up with the person who assaulted them being on campus, taking the same course, even remaining in the same social groups.

Recently there was an outcry on social media by some male law students about the idea of creating a women only space within the law school.

It seems that instead of being concerned with why women weren't feeling safe in the law school, people were concerned that they were somehow being slighted by this.

It can be hard to attend classes if you are in fear of the person who sexually assaulted you popping up around the corner.

It can be hard to attend classes if you are suffering from post-traumatic stress disorder, which it is estimated affects to up fifty percent of sexual assault victims. And the law school does not record classes, and it expects people to attend them all.

Which brings me back to the lecture in which I asked that question of the Former Chief Justice. His response was the changes in the law helpful and a step in the right direction.

But he admitted that we aren't doing enough to make it so that victims can come forward and engage with the legal system. And then, resignedly, that he doesn't have the answers. Which frankly isn't good enough.

Legal theory taught us that critical legal theory is out of fashion, and that lawyers don't think like that anymore. The law is the law is the law. But I don't think I can think like that. I can't watch people go to jail for petty theft knowing my rapist walks the streets.

The hardest part about being a law student who has suffered sexual assault is the law itself.

The law is our advocate. The law is our adversary. The law is indifferent to us. The law is a system that is fundamentally flawed. The law is clueless.

Some days it feels like I'm studying just to know thy enemy. But mostly I want to be inside the law changing it, rather than waiting on the outside. And Universities need to support us all in doing this.

*Katy Hampson is a second-year JD student*

## Class

### **Time is Money: Fear of the Word “Class”**

As expected, students at the law school are extremely savvy, politically astute and socially aware.

The discussions in the floors at 185 Pelham St, the thoughtful pieces in the student magazines, and the deconstruction of intricate political issues I see on the JD Facebook pages, are a just a few instances where this is demonstrated.

And I am proud to be amongst, and to engage with, such a community.

One that that talks about the issue of race, and gender equality. One that has publicly, through our LSS, representatives, recognised and advocated for the need for marriage equality.

One that has Women's Officers, and Equality Officers. One that takes discrimination of any kind seriously.

But one thing we don't talk about is class issues or material inequality.

Or when we do, it's often a strained or uncomfortable discussion. One that is quickly and unceremoniously dismissed.

2020 Presidential hopeful and husband to Kim Kardashian, Mr. Kanye West, has repeatedly stated "classism is the new racism".

Whatever you feel about this man, or whether a millionaire celebrity is entitled to lecture the public about class issues, there is something to this quote.

It's not that racism is disappearing or that classism is new – what has changed is that we are able to call out racism, but we can't talk about class marginalisation. We don't have the vocabulary and the discourse.

Here at the law school, the problem is significantly more concentrated than it is in mainstream society.

In addition to the abovementioned political backdrop, the personal experiences of students impede on meaningful discussion.

A majority of the students here—myself included—experience or have experienced a certain amount of class privilege.

Many of us were educated in private schools, live on campus at prestigious colleges or have parents who are happy to fund our studious lifestyles.

But all of us take pride in the achievement of having got into the prestigious Melbourne Law School.

Is it possible then that our hesitance to acknowledge class differentials—even in broad, apersonal terms—stems from a fear of acknowledging our own privilege and thus recognising that we didn't achieve entrance to this course entirely on our own? That certain advantages helped us?

Class difference doesn't just help us get in. It makes a huge difference in the experience of the course itself.

There's a big difference in the experience of students are financially supported and/or well-off versus students who live independently, funded by Centrelink or the regular weekend shifts at the cafe.

The main difference is the time that

comes with financial support.

Students who don't need to work to support themselves can afford to take unpaid legal experience and strengthen their CV – which is reflected in applicant outcomes for paid experience like internships or clerkships.

The student who needs to work two to three days a week at Coles doesn't have that luxury, and has less time to spend on readings, assessment and exam preparation – which is reflected in the bell curve

For me, it's often the difference between being able to study at night or feeling too exhausted from working a demanding hospitality job all day.

It's the difference college students get with private tutoring, or the ease of getting into university for classes.

The point here isn't to suggest resentment or "woe-is-me" cynicism, but only to say that the difference in class is real and marginalising, which is reinforced when we refuse to engage with it.

I leave with a few suggestions that would make a start in addressing the

abovementioned problems ; (1) making lecture recordings compulsory so the students with limited time or geographically disadvantaged have easier options,; (2) more subsidised options like textbooks for less affluent students (beyond the Book Fairy); and a greater emphasis on helping students experiencing financial hardship acquire paid legal employment.

But perhaps before these or other improvements will can implemented we first need to acknowledge that the difference exists.

To recognise the advantages we have had in achieving success does not invalidate those achievements or ignore the hard work and talent involved in seeking them.

But to not recognise them is to delude ourselves and marginalise others. When we're comfortable in discussing so many other social issues, it is hypocritical to ignore this one.

Let's reflect on ourselves and broaden the discourse.

**Tim Sarder** is a JD student



Thank you to all our contributors, readers and editors for 2015, for making this year one of the best in *De Minimis*' long history. Here's wishing you a restful holiday and a productive 2016.

From *De Minimis* 2015 (Hamish, Duncan, Tim and Charlie)