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A FIRST YEAR LESSON IN GENDER EQUALITY

MICHAEL SABLJAK AND VIRGINIA HOLDESON

"Where possible the three First Year Representatives must not all identify as the same gender." Thanks to a brave few who were willing to ask some difficult questions, this ambiguous sentence will not be a part of the LSS Constitution.

The process that mercifully concluded on Thursday is the antithesis of reasoned constitutional change. From the beginning, the concerns of students who disagreed with the proposed amendment were never taken seriously. At both meetings the motion was defeated and proponents could not address valid questions. In the wake of a second defeat at the LSS AGM, here are some observations from those who voted 'no.'

This amendment's operation was never understood. Its proponents could not explain basic questions about how the provision would operate. As law students we should shudder at ambiguity and uncertainty in governing documents. The fact remains that no one could ever explain what the term 'where possible' meant or how it would be applied. For example, did 'where possible' mean that if three males were elected, the female with the next most votes would be elevated? Or did it mean if no females ran then one could be installed after the voting process? An accompanying PDF purportedly explained how such situations would be managed. However, the fact remains that any legal challenge (through s 67 of the Associations Incorporation Reform Act 2012) to the provision would be resolved by first going to the text of the provision. The text was thoroughly ambiguous and failed to address a raft of possible complications. Explanatory PDFs with no official standing cannot substitute for well drafted provisions. Shockingly, proponents could not even provide a clear outline of how the delicate question of an individual's 'gender' would be judged. Like most difficulties that accompanied this constitutional change, the question was thrown into the 'too hard' basket.

The most jaw dropping response to concerns at last Thursday's meeting was that the amendment could be repealed if unforeseen problems arose. We had a different view. If proponents could not explain how a provision would operate before adoption, it should not be entrenched in our Constitution. In contrast to the careful drafting required of constitutional change, this process was a knee jerk reaction without consideration of alternatives. The concern that students would change their 'up-ballot' voting preferences to adjust for the provision was also dismissed. Another student rightly observed that if this quota were applied across all LSS positions female representation would decrease. In the end a substantial minority of LSS Members felt that too much uncertainty loomed over the proposed change. The number of unanswered questions were too great.

At Melbourne Law School the majority of the student body identify as females. All women whether feminists or not, value the significant barriers pioneering women overcame. It is of grave concern that three women, elected on merit, would not all be able to serve as First Year Representatives. What a slap in the face to women who received the required number of votes, to be replaced "where possible" by an unelected male.

The argument that female students would not feel comfortable approaching male First Year Representatives is either a straw man, or a cover for serious problems with the operation of the LSS. If female students really feel this way, the issue ought not be that First Year representatives are male. Such a state of affairs brings into question why students are not aware of the various avenues to discuss one's grievances, whether it be with their Pathfinders, the MLS Welfare, Women's or Equality Officers.

Continued on page 4

GABBY VERHAGEN AND JACOB RODRIGO

At last Thursdays' MULSS AGM the resolution to pass a gender equality provision for the First Year Representatives ("FYR") failed. As previous FYRs who were supportive of the motion, we wish to respond to some of the key arguments against that arose in the AGM.

It would undermine the role: A lot of arguments were posed under this umbrella: if only one person identifying as a certain gender runs then they won't put effort in their campaign, people will stack voting towards the gender where more people are running, it is not democratic to impose the policy on gender etcetera. We have three responses:

Firstly: FYRs exist to represent the first-year cohort. First years don't know the wider LSS: to them the FYR are their committee. Their fundamental, and perhaps only role, is representation—and this change reinforces that role.

Secondly: very rarely do people running for FYR have any substantive policies. As noted in discussions at the AGM, campaigning for the role is mainly about having the confidence to win over acquaintances and to stand up and lecture bash. At its heart, FYR is a popularity contest, not a policy debate: the changes won't negatively impact the quality of campaigns.

Thirdly: The proposed system is not any more open to abuse than the existing one. It is no more 'stackable' than the Women's Officer and 2nd and 3rd Year Representatives honour-based voting system.

Fourthly, this change is not novel. As reiterated by the LSS' representatives at the meeting numerous times, gender quotas are commonplace in the real world: boards on companies, Parliament, UMSU, employment recruiting, etcetera. All of which have been improved by them.

It is not necessary: People at the AGM brought up that in 2015 there were 3 female representatives, and that the 2 years all males were elected was based on that year level. Recency bias is the phenomenon of a person most easily remembering something that has happened recently, impacting their current perspective. All male representatives were elected in 2014 and 2016, and the motion was put forward this year. But, the provision is about gender equality generally, and would have the same effect if three males were elected.

Furthermore, the policy is drafted in gender neutral terms: when the patriarchy falls it'll even ensure that (we) men get a spot!

Diversity is more than gender: We completely agree. More should be done to address this. We believe that this provision is the first step in recognising that. One person raised the issue of disability, working towards having a representative for such students in the future would be a great initiative.

What about the alternatives? Someone suggested the alternative of appointing a Women's FYR. As noted above the changes addresses balance for all genders—including non-binary gender identities.

The 'M-Word'- Merit: The strongest against voice that was raised was that if we guarantee certain genders get in then the process is not based on merit. We believe this argument fails to recognise structural discrimination—within the law school and our broader society. In a year level where around 60% of students are women it is ridiculous to suggest that there is not a woman with equal or more merit who would have run and won—had they had the encouragement necessary to do so.

Gender can be a barrier to those considering running. I (Gabby) was very hesitant to run and the only reason I did was someone on the LSS

Continued on page 4

Melbourne Law School Fees Rising at Double the Rate of Inflation

"Student debt is expected to balloon to $63 billion by 2019 ... with a fifth of all loans not expected to be repaid. It is the government which will foot the bill. Universities are **privatising profits** and **socialising costs.** "

DUNCAN WALLACE

A student contacted me last week to express the horror they felt when they looked at their statement of liability. Since 2014, the year they started the JD, fees for each subject (or 'unit') had gone up by $368. This meant that, compared to 2014, they were paying an extra $2944 per year if they did 8 subjects per year. Next year, fees for each subject will go up an extra $96. If they extend their degree by an extra semester, then, assuming they do three subjects, this would hit them with an extra $288 compared to if they'd finished 'on time'.

The student alleged that this was an unfair contract term under sections 23-28 of the Australian Consumer Law (ACL) – a term in a standard contract which can be varied unilaterally. This is unlikely, since, so far as I can tell, a contract is made for each subject and not for the course as a whole. Why each subject became individualised in this way is an interesting story with certain consequences, which will be gone into in a moment.

And in fact, MLS is quite clear on this issue in its statement on fees on the MLS website:

"The indicative cost of the standard three year program for students commencing in 2016 is $119,442. This is an estimate only that is provided to assist you in making your decisions and is based on a 5% rise in fees per year, which is higher than the average rise in recent years. The University guarantees that fees will not increase by more than 10% for subjects in any year."

Nevertheless, the concerns raised by my colleague are important.

The Dean of the law school has at least a couple of times called the JD an "investment" (see here and here). But there is a problem with thinking of the JD as an investment. "Investments" are normally highly regulated. Chapter 6D of the Corporations Act, for instance, carefully regulates the manner in which corporations can fundraise. Prospective investors (unless they're "sophisticated investors" (really rich people)), must be provided with disclosure statements. This is generally in the form of a "prospectus" (a full-disclosure document), though in some circumstances an offer of an "information statement" is enough.

"Investments" in education, on the other hand, are hardly regulated at all. Despite the fact that students may be spending in the hundreds of thousands of dollars, no information is provided regarding the risk of this so-called investment. The key piece of information which prospective students would need when considering whether to "invest" or not is the grad-jobs statistics. These are not available, however, though the Dean has stated that "there is an argument for law schools collecting and sharing information about job outcomes with students who are entering degrees."

Further, risks are not adequately spelled out. Domestic students are often surprised to find out that they must come up with the $16k in cash which FEE-HELP won't cover. A few weeks ago, for example, a student writing in De Minimis described their experience of having to get together $10,000. They did so by splitting it across two credit cards. Their advice to students considering the JD was first to speak to an accountant.

Further, the fact that fees are now paid unit by unit, rather than for the degree as a whole, means that all the risk of failure is put on the shoulders of students and none is put on the university. Let's say a student makes it through 1.5 years of the JD but has a mental breakdown and can't go on. They now owe more than $50,000 and have nothing to show for it. This is particularly harsh on international students who don't have access to FEE-HELP. Such students have to pay their fees up front, mostly without financial help from their government. To do so they have often scrambled together money from their parents and extended family. If they don't make it through the JD, they and their families incur a massive loss.

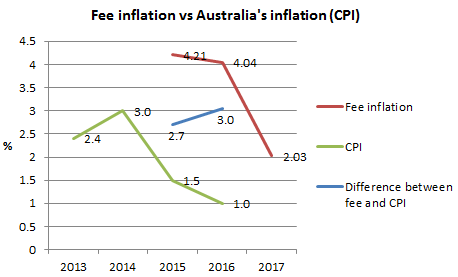
How universities came to charge per unit rather than for the whole degree began with the move towards university privatisation which was instituted by the Labor Government of the late 1980s. The higher education reforms of 1988 (the "Dawkins reforms") allowed universities to charge fees for postgraduate courses. The concomitant decrease in government funding for universities caused Melbourne Law School, notably with some push back from faculty, to introduce a fee-paying program. Dean at the time Michael Crommelin has stated that this was "the only way we could acquire a little bit of space, a little bit of an opportunity to do anything else".

In particular, the increasing size of law firms meant that lawyers were moving from more generalised practitioners to specialists, particularly regarding commercial matters. Specialisation created a demand for specialist courses, which was being provided for by independent conference and seminar organisers. "High fees" were being charged and good profits being made. Cheryl Saunders has stated that "it occurred to us that if they were putting pots of money there, they might be able to put slightly smaller pots in our direction, as long as the product was a high quality one".

Note the commercial language thus introduced into education – it was becoming a "product". Indeed, it was the Law School which pioneered at the University of Melbourne the use of consultants for market research. One of the first consultants engaged said that "the Law School lacks experience in being enterprising, market-responsive and competitive". This soon changed – indeed, Cheryl Saunders helped the Law School win exemptions to the standard definitions of masters' degrees and graduate diplomas from the university administration.

The move to the JD from the LLB marked the culmination of this move – rather than subjects for specialists being taught on the side, the entire course was now one big profit-making enterprise. But the course was now split into 24 units as if each unit was a 'subject-on-the-side', rather than a holistic part of a law degree. This was how financial risk was shifted onto the shoulders of students, and, in fact, onto the shoulders of the general public. Student debt is expected to balloon to $63 billion by 2019, up from $30 billion last year, with a fifth of all loans not expected to be repaid. It is the government which will foot the bill. Universities are privatising profits and socialising costs.

The risks to students are only going to increase. The gap between the proportion of fees which can be covered by FEE-HELP and the total cost of the course is growing. Rather than increasing fees at the inflation rate and so in line with the increase in FEE-HELP made available, the university is increasing fees at double the inflation rate. This will only serve to punish those who don't have access to easy cash-flow from their parents. I show this in the following graph, though unfortunately I did not have access to enough data to compare more than two years directly:



The Law School Dean invokes the "brand" of the University of Melbourne as what will mark MLS graduates out from other graduates in the job market. This brand she ties closely to how MLS is ranked in university rankings systems. Indeed, Melbourne's ranking is often the piece of information students are advised to use to make their decision regarding their "investment". As stated, however, by University of Adelaide Vice-Chancellor, Professor Warren Bebbington, "University rankings would have to be the worst consumer ratings in the retail market. In no other area are customers so badly served by consumer ratings as in the global student market". "Next to buying a house", he went on, "choosing a university education is, for most students, the largest financial commitment they will ever make. A degree costs more than a car, but if consumer advice for cars was this poor, there would be uproar".

I should be clear that the fault is not all that of the university. As mentioned, the Labor government of the late 1980s began the

Continued on page 3

Melbourne law school fees continued

privatisation of the university sector. Now, Australian government funding of universities is the second lowest in the OECD:

Governments across the OECD spent an average of 1.1 per cent of GDP on universities; Australia devoted just 0.7 per cent. Six countries – including Canada, at 1.6 per cent – spent at least double Australia's proportion of national income. Finland, at 1.9 per cent, tops the list.

It is government, therefore, and especially the Labor party (remember those videos of Joe Hockey protesting in favour of free education?), which is to blame for the corporatisation of universities.

But corporatisation has been pushed from the inside as well. Corporatisation and an emphasis on profits tends to concentrate power in an elite at the top. We can see this in the huge salaries paid to corporate executives university Vice-Chancellors: a headline from The Australian recently read, "Nine university vice-chancellors on more than $1m". Melbourne's Glyn Davis got $1.1 million last year. In June he also received, as a present from the University Council, more or less dictatorial powers as a result of University of Melbourne Statute changes.

The concentration of power and wealth at the top has meant that, rather than fighting for increased public funding, Australia's premier tertiary education institutions, in their own words, have "consistently supported the proposal for the deregulation of higher education fees as the only long term sustainable solution". Admirably, our own Glyn Davis at one time tried to argue against this and in favour of higher public funding. He even "once argued for higher taxes on people like me so more Australians could access a quality university education". The reaction he got, however, was "hostile, personal and visceral", he says, and so he now simply enjoys his money and power without complaint.

Perhaps this suggests that if we want to save our universities we will need to be a bit hostile and visceral (though "personal" may be too far).

What I hope to have shown in the above, at least in part, is that an education is not something which should be privatised and commercialised. An education is a public good; it makes us into responsible citizens; it gives us the tools of intellectual self-defence; it allows us to question; to embark upon intellectual journeys.

An education is not an "investment". We cannot tell what a return on an education will be. Thinking of it as such will only prove to better serve the already well-off, shift risk onto students, and massively increase student stresses. It will make us into machines, there to mechanically do tasks without assessment of their merits and without question. That will be the only way for students to ensure a "return on investment". In short, it will mean that we won't be getting an education at all.

Education must be free. To paraphrase Charlie Chaplin, we are not machines; we are not cattle; we are human beings. And we deserve to be treated as such. Unfortunately, it seems we'll have to be a bit hostile if we're going to convince our university's Supreme Leader(s) of this.

Duncan Wallace is a third-year JD student and Chief Editor of De Minimis. *This article was written in his personal, rather than editorial, capacity*

I'm Not Mad, I'm Just Disappointed

KATY HAMPSON

Recently we all received an email from the Dean of MLS Carolyn Evans. She methodically outlined the reasons the law school would not take the step to record our seminars. Some of you may have felt anger, confusion, indignation or apathy.

I am a student in the mentioned small group of students whose genuine ongoing medical needs for lecture capture were acknowledged then brushed aside. I'd be lying if I said I was surprised, or even that angry. Just disappointed.

When you have a disability you hope that policies that welcome students with a disability would lead to substantive, rather than formal, equality. There are steps by administrators, staff and other students to make this happen. Steps like 10 days extensions, friendly emails from lecturers letting you know you can drop in in their available hours to discuss the readings and students who offer to give you their notes from classes you missed.

As the Dean correctly pointed out, seminars are a great way to have a dialogue and interact with lecturers and other students. They are fantastic. Recording lectures would be a poor substitute.

As a person with a disability I'm okay with poor substitutes. I've been getting them all my educational life. I've done readings while still sick in bed and emailed off questions, I've put in the extra work. Yesterday morning, after a seizure the day before, I felt like I was glued to the bed, like my brain was filled with mashed potato but I forced myself to get up and to university. I physically sat in Remedies while drifting in and out of sleep and understanding. I did this, as I have done many times, because I couldn't afford to miss the class. There would be no opportunity to go back and listen to it when I was feeling functional. This is not constructive to learning or wellbeing.

I should be finishing my degree at MLS soon. This is not why the lack of change doesn't rouse me to action. Other students with disabilities will still be here but they know what they are getting into - they've experienced this their whole lives. Having to work around things, work harder and work smarter to get to the same result is disability 101. My anger is tempered by the fact I am completely certain the result of this agitating is the law school will, at some point in the future, be to record seminars.

It's somewhat analogous to same sex marriage. It affects a small minority of people greatly. Formal equality is not what is being asked for - we all have the same opportunity to go to seminars. Substantive equality is being asked for because not everyone is able to do so. The majority wants it to happen. One of the reservations are that it will "cheapen" seminars for everyone else. I am disappointed that it hasn't happened yet because it will, and it will be embarrassing to be behind other universities. But time is the enemy of conservatism, and MLS cannot cling on to indirectly discriminatory policies for much longer.

Katy Hampson is a third-year JD student

The Matter of Marks

BEINI WU

So I was thinking about my first law exam today It was definitely an experience. I've never spent so long studying for an exam, and never feared failing more. But hey, what's done is done. What did I want to talk about in this post again? Oh yeah, how it all doesn't really matter, but kind of really does.

It's easy to say that you should place little importance on your marks, since you know, you're not defined by a number, focus on the big picture, and all the other wise sentiments being thrown around. After all, it is only a two-hour exam worth 70% of my mark in one subject, out of 24 subjects in the entire course, so percentage wise, it's only worth around 3% of my overall mark, but hey, if everyone could think about things rationally in terms of how much they actually matter in the grand scheme of things, then what good would learning curves and reflections be?

But it is true, a mark on an exam (or most numbers, for that matter) never will define you as a person, however, it certainly does affect you in many other respects. For me personally, law school is certainly the hardest thing I have ever done in my entire life, it might not be the case for everyone, but it definitely is a common consensus amongst many. And to come out of an exam feeling as though I've done even remotely okay makes me so happy, because I've conquered the challenge of sitting the gruesome exam already, regardless of what my mark is. I think that's sort of easier to put into perspective than pushing the idea of "marks don't matter because they shouldn't", at least for me personally.

So here's my take on exams: study for them, give them your all, and then maybe your marks won't matter. But hey, what do I know, I'm only six months into this whole thing, maybe by the end of the three years I'll read this post and laugh at myself for being so young, innocent and naive, but that would just prove my point on the learning curve thing, so at least I got that right. Here's to hoping.

Beini Wu is a first-year JD student

Lastly, we should not be so blind as to only see First Year Representatives through the lens of gender. As a student body we should be considerate of students' sexuality, identification as a person of colour, international student background, mature age status and the like. All of these characteristics affect our identity. How could we exclude a person based on gender alone?

This was a crudely drafted provision that failed to take a holistic approach to equality of opportunity at the Law School. In the future, cooler heads should prevail. This provision could have disadvantaged other minorities due to a failure to listen to our concerns. Thankfully it did not pass. The student body deserves better from future constitutional amendments.

Michael Sabljak is a second-year JD student and Virginia Holdeson is a first-year JD student

approached me and said the majority of people she spoke to were men, and she really wanted a woman in the running. I was really put off at first running against people who were more confident and socially connected than me, particularly when everyone at the info session was male, and I don't think I would have been as hesitant if there were a provision in the Constitution that encouraged participation.

These changes are needed, commonplace and were soundly drafted. Perhaps the strong opposition was a uniquely JD reaction: at the undergrad level, UMSU's affirmative action policies are much stronger, extending to Women's spaces, committees and collectives. If the intention or proposed implementation was unclear, hopefully next year through a forum and consultation process we can pass something most of us agree on. Because the push won't stop here.

Gabrielle Verhagen was a First Year Representative in 2015. Jacob Rodrigo was a First Year Representative in 2016 and originally proposed the motion discussed herein.

'I'm Weary About the Ways of the World'

DINU KUMARASINGHE

So this has nothing to do with law school. The story has a barista in it, and I guess there's a (bad) joke there about none of us getting jobs blah blah so you go in wanting to be a barrister leave being a barista LOL lol lmfao rofl, or whatever. But anyway, the point of this preface is to tell you this article doesn't really have anything to do with law.

Anyone who has recently had a conversation with me/near me will have heard me wax lyrical about Solange's new album, A Seat at the Table. It is absolutely breathtaking as a piece of art, and even more so for its politics.

A little bit about Dinu: I spend most of my life and money at one café near my house. The coffee is good, the staff are fab and the music is always ~on point~. Today (I'm still here) I sat down for a quick coffee. Just as I was about to get up and leave, the opening track of A Seat at the Table, 'Rise', started wafting through the air. Obviously, I had to stay and see the album through to its end.

My favourite song on the album at the moment is 'Mad'. It features a pretty poignant verse by Lil Wayne. Here it is:

Yeah, but I, got a lot to be mad about

Got a lot to be a man about

Got a lot to pop a xan about

I used to rock hand-me-downs, and now I rock standing crowds

But it's hard when you only

Got fans around and no fam around

And if they are, then their hands is out

And they pointing fingers

When I wear this fucking burden on my back like a motherfucking cap and gown

Then I walk up in the bank, pants sagging down

And I laugh at frowns, what they mad about?

Cause here come this motherfucker with this mass account

That didn't wear cap and gown

Are you mad 'cause the judge ain't give me more time?

And when I attempted suicide, I didn't die

I remember how mad I was on that day

Man, you gotta let it go before it get up in the way

Let it go, let it go

Weezy uses the word 'fuck' three times, but it passes pretty unexceptionally; there's much more to latch on to in the verse. And yet, when we got to his verse today, it played for about three lines before the barista chose to skip to its end. To the barista's credit, the skip was deftly executed. Anyone who hadn't spent their week worshipping the album may not even have noticed.

But the second or so of silence was enough for a tight ball of unease to form at the pit of my stomach.

And I get it—café music has to be relatively inoffensive, nothing too profane. But I don't think Lil Wayne's swearing prompted the skip. Rap doesn't fit the café's aesthetic. It's not this café in particular; a lot of people don't like rap music and cafés often attract a wide demographic. (Patrons don't take too kindly to experimental jazz either, as it turns out.) But rap is an important product of African American culture, which is in turn an integral part of Solange's album. Songs like 'Don't Touch My Hair' and 'F.U.B.U.' firmly situate the album as an assertion of Black America, of its cultural power. So is there something wrong in skipping the rap verse, to go straight to Solange's undeniably beautiful vocals?

The second or so of silence was enough for me to think 'you've missed the whole point.'

It's not the specific fault of the person changing the music. I know from the conversation between the barista and waitress (on which I unashamedly eavesdropped) that he understands the importance of the album's politics. But that skip said a lot about what we are willing to listen to and celebrate.

Can we celebrate Solange and Frank Ocean in public if we only broadcast their aesthetically amenable offerings? Do we have an obligation to include the parts of their art that challenge us? More importantly, do we have an obligation to include the politics that challenge us? Can you listen to Nina Simone 'Feeling Good' if you don't follow it with 'Strange Fruit' and allow yourself to feel bad?

History is littered with dominant cultures appropriating minority cultures. We're at a point now that some within those minorities are powerful and loud enough to release albums like A Seat at the Table. Beyoncé can stand on a sinking police car. Frank Ocean can remind us that he's not so different to Trayvon Martin. And those voices sound bloody good when they do it. So it is completely understandable that we want to listen to their art. That we enjoy their art. There is a problem, however, when we only listen to the elements of their art that don't challenge us. That don't challenge how we constitute our public spaces.

Yes, those artists are talented. That's why the world went nuts over Frank's new album, and that's why the world is going nuts about Solange. But if we're going to so gleefully consume their talent, we have to also consume their critique.

I said at the beginning this has nothing to do with law. But maybe whom we listen to, and how we choose to listen to them when we finally give them our time, has everything to do with law.

Dinu Kumarasinghe is a second-year JD student

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