

# De Minimis

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## An Update on the Corkman



Duncan Wallace

hold its meetings.

A couple of weeks ago an article in *De Minimis* reported the commemoration, on the 3rd of February, of 50 years since the last ever execution in both Victoria and Australia. A couple of weeks before that, on the 20th of January, a similar commemoration occurred. This one marked 175 years since the first ever execution in Victoria.

The first people executed in Victoria were Tunnerminnerwait and Maulboyheenner, members of, as the Melbourne City Council has stated, the “widespread Aboriginal armed resistance to colonisation of the day”. The two were represented by Redmond Barry, the University of Melbourne’s first chancellor. He argued that since there was no treaty with the local Aboriginal Nations, the court had no jurisdiction to try the two individuals (an argument, incidentally, which carries significant force still today).

Redmond Barry was also for a time the head of the University Forensic Society, a precursor to Melbourne Law School’s own LSS. And in the 1860s the Corkman Pub (or, the Carlton Inn as it was then known) was one of the places where the society used to

Famously, the Corkman Pub was illegally demolished late last year by developers. Their plan, it seems, was of a similar kind to those of the “group of businessmen” who illegally established Melbourne. After seizing sizeable land holdings, the businessmen “managed to secure retrospective endorsement of their illegal actions”.

I’ll give a short update on what is happening to ensure that the pub’s demolishers do not secure similar endorsement of their illegal actions.

Following the demolition a pretty frantic two days of activity occurred, with law students, law school professors, local residents and heritage activists all involved. It was a fun few days, with enthusiastic contributions from a great and diverse number of people – the raising of various, sometimes highly intricate legal arguments; the collaboration and shared work in research regarding legal avenues, the history of the pub and heritage laws; and collaboration in the production of legal documents and letters. There were also a great number of jokes told, memes made and reference to the movie *The Castle*. It was

open source work done completely by volunteers.

As one student remarked at the time,

*“30% Love of Corkman. 70% Procrastination. 100% Bloody Brilliant! I’ve never been so interested in the law!!”*

One of the results of the activity was a VCAT application to get an order to have the pub rebuilt as closely as practicable to what it once was, with Tim Matthews Staindl and me as the applicants. After significant public pressure, including the institution of the first Green Ban in Victoria for ten years by the CFMEU Melbourne City Council and the Victorian State Government made their own application to VCAT on the same terms as ours. Melbourne City Council and the Victorian State Government made their own application to VCAT on the same terms as ours. The developers also made a verbal commitment to rebuild the pub, though they are contesting our VCAT application to force them to rebuild.

The VCAT hearing is due to take place in July. Before that, a compulsory conference is due to take place on the 17th of March.

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*Continued From Page 1* the compulsory conference may still go ahead on the same day.

At the compulsory conference the developers are required to present plans for a rebuild of the pub. If the plans are accepted by the applicants, the VCAT hearing in July will be dropped. The plans, which were required to be kept confidential, were supposed to be presented to us on the 6th of March.

On the 6th of March, however, the developers, instead of sending us their proposed plans for the rebuild, requested that the VCAT hearing be stayed pending the outcome of criminal proceedings regarding various criminal offences the developers are alleged to have committed in demolishing the pub. The VCAT hearing, the developers say, will prejudice their ability to defend themselves in the criminal proceedings. Facts which are said to prejudice the developers' case include that the developers owned the land, and that they didn't have a permit to demolish the pub.

The stay application hearing will occur on the 17th. If the application is unsuccessful,

Acting for the developers are Stuart Morris QC and Andrew Walker (who, incidentally, is a construction law lecturer at Melbourne Law School), instructed by Griffin Law Firm. Appearing for Melbourne City Council and the State Planning Minister is John Rantino, a solicitor from Maddocks lawyers. Tim and I are in discussions with Fitzroy Legal Service and construction law specialists regarding our own representation.

***Duncan Willis is a Fourth Year JD Student***



Nevermind that the Victorian government is served by a whole department ready to remedy such acts. Never mind that the government acquiring that same money could spend it on public housing (for which there is a thirty-year wait list in Victoria).

We live in an Australia where women in hijabs are thrown off trains, where halal certification apparently funds terrorism, and where Sharia law is somehow being implemented within our legal system. Where Hindu temples are desecrated with anti-Muslim slurs because the vandals have no idea what Islam is – and yet the Corkman was somehow a priority.

When this kind of idea (i.e. alt-right ideology) gains mainstream currency, when white men and women are Trump's greatest supporters; and when, at what is still a very white institution, the demolition of a pub is a matter of urgency, there is something horribly wrong.

Surely it should be more controversial to be the supporter or adherent of an ideology whose basis is racial and civilizational superiority than it is to call them out. You're not impinging on anyone's rights, you're standing up for the rights of others to feel safe and welcome. Respecting rights to political views is not a free pass to disrespect minimum standards of human dignity.

Some say that the issues I've raised are too big, that the Corkman is an issue that we can do something about. It's unclear exactly how MLS students were going to add value to the efforts of better skilled government lawyers. On the other hand, there are many organisations ready to help refugees which could benefit from our efforts.

There's no reason why we can't care about both kinds of issues. However, it was very confronting that one evinced such a robust reaction, and the other remains largely ignored. I therefore encourage those who care about fairness and justice to speak up whenever bigoted or racist views become visible.

Many of the same students involved with the Corkman challenge are leaders in groups like Law Students for Refugees. My point is that even more urgently than challenging illegal demolitions, at a minimum racism and the open expression of white supremacist ideology should be unacceptable. Those who are not directly affected by the changes taking place in the world must step up and challenge these views. This is something small that we at MLS can do to make it a more welcoming space and place of respite for minority students.

The views in this article are entirely my own. Please check out the *Law Students For Refugees* Facebook page.

***Asad Kasim-Khan is a Second Year JD Student***

## Dear White People of MLS

***Asad Kasim-Khan***

Last year a heritage-listed pub, The Corkman, was allegedly destroyed by developers of an apartment block on the same land. 2016 also blessed us with a Trump presidency – seemingly impossible, especially after he had demonised and denigrated Latinos, women, African Americans, and Muslims. It was also the year One Nation made a return to federal Parliament, and polls suggested that close to half of Australians support a Trump-style ban and would be very concerned if a near-relation married a Muslim.

The tendency to populism which continues to prove ruinous in Russia, threatens the nascent democracy of Poland, and has led to an endless parade of Middle-Eastern dictators, has spread to the Western bastions of human rights and liberal democracy. Sad! The right-wing form of this populism, the white nationalist alt-right movement, has adherents at MLS. These are students who believe that Western, Christian cultures are superior to others, especially those of the Islamic world.

Many at MLS have been unwilling to call out expressions of white supremacy. The gaining steam of Western white nationalist movements has clearly emboldened its supporters. Trump's election might not directly cause vilification against minorities, but it emboldens those who, hitherto at the fringes of society, hold these views. It normalises their expression. When people – including we at MLS – do nothing in the face of the increasingly open expression of these

views, we are contributing to this normalisation. Students have told me privately that they see certain open holders of these views as extreme. This is not enough.

Supporting Trump's policies and being part of the alt-right should be unacceptable positions. This is not to say that right-wing economic populism is an immoral political position. Rather, that the white supremacist rationale overtly and covertly behind the policies and rhetoric of the Trump administration should be rejected, not normalised.

Empathy with the unemployed, misinformed former-factory worker who thinks their problems arise due to trade liberalisation is easy, even if expert analysis tells us this is untrue. Empathy with someone who is at one of the world's best law schools and holds these kinds of views is impossible for those of us who belong to the groups affected by Trump's policies.

The Corkman demolition was a cause of mass-mobilisation, and the outrage and fury this caused stand in contrast to the non-reaction to the expression of views that are inherently racist and bigoted. The passion these students showed should be commended and emulated for more significant issues (and more efficient uses of our time).

At the time the Corkman was destroyed, a piece in *De Minimis* declared: 'A Law Student working group has been created to look into the matter and to see whether a rebuilding of the Pub could be ordered.'



# VOTE FOR UBER

Luke Thomas

I used to be very deliberate about using taxis instead of Uber. In moments of drunken self-righteousness, I'd rail on to my friends about supporting the local economy while finishing the last swigs of my imported beer. Sometime around mid-2015, though, I eventually gave up defending 13 CABS and their annoying jingle. This was partly due to a few miserable taxi rides, but more because Uber is cheap, accessible, and really efficient. More than any ideological argument, I was won over by the convenience.

Now that Uber's program to collect data on local law enforcement officials (including in Australia) in order to prevent them from using the app has been made public by the New York Times last week, I have a new reason for feeling uneasy about using the service.

The program was a glaringly obvious attempt to prevent the drivers on their unregulated service from being fined, and it coupled with their aggressive approach to litigation, marketing, and service expansion. The Times merely confirmed and provided the name (Greyball) to a tool people knew existed since at least 2014, but more tellingly it summed up Uber's attitude to laws put in place by democratically elected governments.

Local laws don't matter to Uber. Uber exists in a global economy where legality is determined by winning consumer loyalty, not obtaining government approval.

Uber CEO Travis Kalanick confirmed this attitude in an interview with the Wall Street Journal when he claimed that corruption in the taxi industry and regulatory capture have made it impossible to gain permission for services that (he believes) should already be legal. While the taxi industry has its own issues, and hasn't exactly embraced innovation, this doesn't account for the fact that not seeking permission from local governments and then actively trying to avoid prosecution has become Uber's business model.

In San Francisco, Uber went through three rounds of this pattern for three different service rollouts over six years: release an unregulated service, fight cease and desist notices, win over consumers, and hope the government comes around eventually. In a blog post about their most recent rollout in San Francisco (a self-driving car service),

Uber's vice president of self-driving technology, Anthony Levandowski, dismissed the need for a permit application because '[m]ost states see the potential benefits' of a self-driving car service and their hope is that California 'will take a similar view'. The concerns of San Francisco's residents, its laws, or unique infrastructure needs weren't worth a mention in the media release, since their

self-driving service rollout worked in Pittsburgh so what's the problem, San Fran?

You have to give them points for their tenacity, though. When they experienced pushback from consumers and courts in Germany and France, they just re-branded into UberTaxi and UberPop and tried again, using legal loopholes to keep their brand on the market until these local governments learned to 'take a similar view'.

This aggressive strategy has won in Victoria, and now a logistics company who claims not to own any vehicles or employ any drivers has dismantled the taxi-licensing scheme. The Victorian government has stopped resisting or trying to criminalise Uber's consumer-led disruption and is now instead trying to implement a \$2 levy on rides in order to fund the licensing buybacks. Uber's response? Send out a rallying cry to get Victorian consumers to lobby against their own government.

I'm not writing about resisting technological advancement. Uber is an innovative solution to the way our transport and employment needs have changed. But their aggressive resistance to regulations, recent changes to their data collection policy, and disregard for the complexity of local economies (or the impact this disruption has on people's lives) makes me a lot less likely to lobby against their \$2 levy, and a lot more likely to just take the tram.

*Luke Thomas is a Third Year JD Student*

# TRICKS OF THE TRADE

Chi Han Yeo

Magic as a performance is one that combines psychology, deception, theatre, and the occasional bit of misdirection to create wonder. If that sounds fun to you, I'm hoping to give a little bit more information on how you can get started on your magical journey.

## What is magic?

This is a topic of some debate for practitioners, and what it means to magicians is a different kettle of fish to what it might mean to our audiences. I can't claim to speak for all magicians, but to me it's about entertaining and creating wonder. My end goal isn't to fool anybody into thinking that I have special powers, but to make you suspend your disbelief long enough to feel that bit of wonder we get when we witness the impossible. In the same way we don't really believe that the people in the movies are actually going on the epic journey's being portrayed, we can still be moved by them.

## Magic in Melbourne

Melbourne is a vibrant city for those

who love the art. Not only are there a variety of magic clubs that can be found with a quick google search, street magicians, and magic shows are abound. Every July the Melbourne Magic Festival gets world class acts from around the globe, and tucked away in the State Library is one of the largest magical archives ever assembled for the public. We're a magical city, in more ways than one.

Of course I can't get away with writing an article about magic without teaching at least one trick. It's super easy to do, but please practice it until you're comfortable before going out to perform it. It's a quick variation of an illusion from Howard Thurston's *400 Tricks You Can Do*, a book that is now in the public domain (for a much better lesson on this trick go look it up!).

## Set up:

You tear 3 strips of paper and crumple them into little balls (this can be done in front of the audience). Put them in front of you on the table, not in a pile, but in 3 distinct balls. Hold an identical 4th paper ball prepared beforehand loosely and secretly in your right hand.

## Performance:

Pick up one of the balls between the fingertips of your right hand (the secret ball still held loosely in your right hand). Look at

your left hand as you open it and place the ball from your fingertips. Pick up the second ball in the same way, and as you place it in your left hand look up at your audience.

In that same moment secretly put both the second ball and the hidden ball in your left hand, which then closes. No need to rush, act casual. Pick up the third ball (slowly), look at it as you lift it, and pretend to put it into your pocket. Secretly transfer it into that same hidden position. Now say a magic word and open your left hand to reveal that it has 3 pieces of paper. Pour them onto the table and repeat if you like.

Don't do it too many times!

*Chi Han Yeo is a Third Year JD Student*



# UNEQUALITARIANISM

Toby Silcock

We are Not Equal. Now by this I do not mean that there are some humans in this cohort who by constitution alone are more deserving of power and privilege than others, although there are some who see themselves otherwise. What I am stating is that, in first year, a veil can descend that, over the course of the degree, separates your new colleagues from their past and present context, their advantages, and their sheer luck. This veil, which it is seemingly passé to pierce, hides how deeply unequal is our School's character is.

It is my intention to humbly nudge new students into recognising this and other facts that our school, for its own self-preservation, denies. It is also my hope through this and future work to remind those who, for their own motives, have allied themselves with the institution that there are those, like spies, amongst you, who must henceforth give fewer fucks and demand that our School become more egalitarian, democratic and truly tolerant than it is.

I have had far too many conversations, even with self-identified “progressives”, who by words and conduct assume economic equality to effectively be established, and for whom inequalities in our school are those only of “identity”, conveniently quite equitably divided between rich and poor. A childhood's worth of material or cultural deprivation has been cleansed by the “welfare state” (that the speaker hasn't accessed and is rarely deeply committed to), scholarships (with the attendant sting of charity and obligation), and “extra-curricular opportunities” (which the speaker has, with their greater resources, co-opted). By the magic of “objective” entry examination, we arrive at MLS ready to embark on a 3-year assortative process propelling the deserving into the upper ranks of the profession, and others into ignominious obscurity in some average-tier outfit (oh, we'll get jobs, this is Melbourne). The fact that the vast majority of students are consistently privately-school educated, I suppose, is sheer coincidence.

This is, of course, utterly self-serving; always misleading, and often a lie. It precisely masks the fact that MLS is one of the few remaining bottlenecks Melbourne's elite pass through on to the profession, business, politics, and other aspects of “public life” where one's sense of the public good conveniently attends personal comfort, prestige and power. The School is so astutely conscious of its prestige and its history



(honour board? Really?) precisely because we don't just want to go to a law school, we want to go to one both that's both elite and elitist.

Papering over such undertones with our false sense of deserving-ness obscures the manifold ways in which some students succeed simply because they are, quite simply, practically and socially better off than their colleagues. I leave aside how family background and private-school training deliberately cultivates and intuitive comfort in the world of the powerful. I leave aside how well “special consideration” truly compensates those with dependents or health issues, suffering grief, or indeed suffering those “external circumstances” apparently so deviant from the norm they warrant the term “special”. And it is proper to leave the experiences here of sexual minorities, first- and second-generation migrants, and of course Australia's first peoples to those who can and do write better on them.

I can simply note that if your study, accommodation and living expenses are subsidised or funded by parents or relatives, it is quite obviously easier to succeed. Others must work, and work harder, for accommodation that is more expensive, colder, more neglected, of insecure term, and usually shared with indifferent or unhinged co-habitants (people often underestimate how living with sympathetic and friendly housemates, let alone family, lessens the emotional and practical toll of this course, especially in times of emotional distress). It is also, of course, further from the School, so

you simply are penalised in time — both emotional and literal — by your distance from (unrecorded) lectures.

Rent means work, and since government stipends (if available) for full-time students are set so as to ensure that students who don't work but study full-time will live in poverty, you must study for our degree (which is, indeed, full-time work), at the same time as finding work simply to avoid poverty. Now, most students, rich or poor, work. Long gone are the days of the truly idle rich. But since more lucrative, flexible and well-paid work requires superior bargaining power to attain and thus superior connections and background, disadvantaged students are in work that is insecure, more demanding, more inconvenient, and for less pay (the irony of “flexible” work is its inflexibility, since your life is contingent on whether management wants you).

If your study is subsidised and you don't have to work or pay rent, you can leverage that time into study, tutoring, competitions, and unpaid internships, “volunteer” positions, wildly expensive “international opportunities”, or indeed “giving something back” through service for our LSS. Anyone who believes that that makes no practical difference to one's time at MLS and indeed future career and life is usually lying by conduct if not by words.

Now, well-off kids can, and do, do badly. This attests not only how difficult it is to consistently succeed in the JD, but indeed why monarchies fail — even “good families” sire duds. This notwithstanding, it remains the case that an H2A to a privately-funded ex-Ormondian\* is not the same mark as an H2A achieved by a poorly-paid, self-supporting student with difficult employment, poor accommodation and no friends or mentors in the degree and profession. If you wish to set yourself against this claim, I don't envy the monumental task of reality reconstruction before you.

So before you castigate yourself for apparently “poor” marks, it is not only helpful but necessary to ask whether the person against whom you compare yourself really had to deal with what you dealt with; whether they had help you didn't; and whether they are more talented...and not simply the recipient of more consistently good luck.

\*Or probably simply Ormondian — such is alum pride that you never truly leave the cult...

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