

De Minimis

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THEY WEREN'T 'FREE' IN VEGAS



TIM SARDER

The immediate, visceral reactions I felt upon hearing of the recent deadly Vegas mass shooting included shock, anger and sadness. And yet, in spite of the horror; a singular, positive spark – as an Australian, I felt grateful.

Grateful, because we live in a country where within 12 days of our deadliest mass shooting in 1996 our government passed heavy restrictions on semi-automatic and automatic weapons. Grateful, because when you and I heard the news about Vegas, we didn't feel the fear that we, too, are especially likely to be a statistic in a mass shooting like that. Grateful, that in our country, a misunderstood Second Amendment isn't trotted out to re-ignite the same lazy debate over and over again, causing no change, until the next shooting. Jim Jefferies has expressed it better than I ever could – if they didn't tighten things up after Sandy Hook; will they ever?

We live in an era where any major newsworthy event results in not just reporting but a flurry of click-bait think-pieces demanding that you pick a side (tribe). Look at Hugh Hefner's death; you need to make a decision on whether you think he was a "oppressor" or a "liberator". On the Vegas shooting, you have to have a view on whether we

should call the perpetrator a "terrorist", or a "lone wolf", or whether mental illness is relevant to the debate. The gun control debate, too, is framed appositionally an issue of freedom vs. safety.

To the extent that *De Minimis* plays any role in such a reactive culture, we can do better than demanding you pick what side (read: tribe) we align ourselves with on an issue. It's both more interesting, and more helpful, to consider whether the binaries before us are really correct. Freedom vs. safety? It's the same old dichotomy that goes far beyond gun control. Freedom, somehow, has become accepted as the bread-and-butter of the political right (read: tribe) while the left has effectively thrown up their hands and let them have it.

Everyone appears to have accepted that's where the debate lies: gun control – do we "give up" freedom to own guns to be safer? Healthcare, social security – do we have freedom to keep our own profits, or "impinge" it with more taxation to better fund these services and provide for the sick and the vulnerable? Do we have the freedom to say whatever we want or do we "reduce" our capacity to speak our mind with laws like s18C?

What rings ultimately hollow about all of these dichotomies, is that as much as one man's trash is

another man's treasure, one of our freedoms might just be another's terror. We are freer to participate in public life when we can attend a concert with no fear that we might be gunned down in a mass shooting, because of the laws we have in place. Someone who has a debilitating condition treated by the public healthcare system, or someone in poverty who has increased opportunity in life due to the support of a social safety net, has far more freedom in their existence than the scenario where they are left to suffer without that assistance. And if s18C does indeed reduce racial vilification, then ethnic minorities are freer to go about their lives without being abused for something that they have no control over (where they come from).

I don't want the kind of freedom that leaves 59 dead, 489 injured, and friends, family and the nation of the victims grieving with trauma that might never be repaired. I want the freedom for us all to lead happy, fulfilling and less threatened lives. And increasingly, the pursuit of that seems to require leaving 'freedom' by the way-side in political debate, lest it lose any shred of meaning it might have left, and continue to do more harm than good.

Tim Sarder is a third-year JD student and Managing Editor of De Minimis

WOMEN'S PORTFOLIO

A YEAR IN REVIEW



ANNIKA MCINERNEY

This time last year, Gabby and I were gearing up for our time as 2017 Women's Directors and figuring out how we would approach our term. Our three immediate goals were implementing our campaign promises of a Facebook page, an outreach program and interactive workshops.

It's clear that we can never be politicians because we've managed to keep all of our election promises.

We kicked off 2017 with our keystone International Women's Day panel with Kristen Walker QC and Magistrate Urfa Masood. The panel was incredibly insightful and a brilliant way to start the year. In semester one we ran three workshops - a consciousness raising session, Women of Colour Breakfast, and legal writing crash course. For the breakfast we collaborated with Karri Walker, the 2017 Indigenous Representative, and had author and former MLS Women's Officer Alice Pung speak. It was incredible to hear Alice share her story of her time at MLS and experiences since.

Semester two began with the Breaking the Glass Ceiling panel which was masterfully chaired by Dean Jenny Morgan. We were lucky to have 4 partners from our sponsor firms openly and honestly talk about their career paths and experiences as women in the corporate world. It was a frank discussion and we received positive feedback from students. This semester we ran two workshops, namely, a feminist reading of the law with Hilary Charlesworth, and a verbal assertiveness workshop. Our workshop with Hilary ended in a discussion of experiences of sexism, sexual assault and faculty training. Gabby and I took what students said and met with the Dean to discuss student concerns and MLS' response to the HRC sexual assault survey. Outside of events, a key role of the Women's Directors is to advocate for students, and to be a point of contact when and where students need support.

This semester we also launched the Women's Portfolio Outreach Partnership Program through which we facilitated the placement of MLS

students in our four partnership organisations - Women and Mentoring, safe steps Family Violence Response Centre, Women's Property Initiatives, and Fempower. This was one of Gabby's and my proudest achievements. MLS is an incredibly privileged bubble, it's important that we acknowledge that and use our position in the community well.

This week is the Women's Moot Grand Final which I would encourage everyone to attend. We worked closely with the Competitions Directors to expand and solidify the moot.

The Women's Portfolio has been fortunate enough to have a lot of support from the student body, the LSS, MLS Faculty, and sponsors. I've only named a few of the incredible women we've worked with this year. However, it's no secret that the Women's Portfolio can court controversy at times. Indeed, I'm sure there are people within MLS who do not think it should exist. Contrary to this mentality, feedback we received from students and Faculty throughout the year has made it abundantly clear that the Women's Portfolio is needed and remains relevant.

There is still more work that can be done in this portfolio. MLS is majority women, but each woman and non-binary student's experience is not the same. The Women's Portfolio does not exist in a vacuum, it exists within MLS which is synonymous with upper middle class, white, heterosexual privilege due to its history. The Portfolio needs to act as a platform and facilitator to project other voices and experiences. It's role as an advocate can, and should, be strengthened by addressing intersectional issues like class, race, sexuality and non-binary gender identity. Gabby and I have tried this year to achieve that, and I do think progress has been made, but I am not arrogant or naive enough to think that it was enough. Any systemic change within MLS cannot occur without student support so I would encourage everyone to get involved with advocacy, diversity and equality initiatives throughout MLS, not just Women's Portfolio ones.

It has been a privilege to work alongside Gabby, Natalie and Sophia in the Women's team and a privilege to represent the students of MLS. I can't imagine being a Women's Director with anyone except Gabby. She is an inspiration with her endless enthusiasm and warmth and I have no doubt that she will change the lives of so many women in her career to come.

The incoming Women's Directors are just as passionate as we are and I'm sure they're excited to get going. The Portfolio can be strengthened by working closer with other LSS portfolios to address intersectional issues, and with other universities. It would be wonderful to use our position and resources to collaborate more with other Victorian universities to address systemic issues.

Annika McInerney is a third-year JD student and outgoing Women's Director. This article was originally written for the Women's Edition and some of the wording reflects this.

THE DEMISE OF CRITICAL THINKING AT MLS



ANONYMOUS

Last week we were informed that, as a result of the recent curriculum review undertaken by MLS faculty members, Dispute Resolution and Legal Ethics would no longer be taught separately. A new subject would be taught instead: 'Disputes and Ethics'; an amalgam of the two courses.

One issue that immediately came to mind was that, given the lack of crossover between the two subjects, Disputes and Ethics are an awkward combination.

More importantly however, I believe this curriculum change is emblematic of a far more significant issue: MLS does not encourage critical thought outside of jurisprudence. It is quite possible that MLS is not unique on this front, and that the failure to develop critical thought is an issue across contemporary law schools. However I can only comment on what I have seen at MLS.

What does this curriculum change have to do with critical thought? I believe Legal Ethics, as a standalone subject, is of great importance in prompting law students (future lawyers) to critique their personal ethics and professional intentions, and to question whether becoming a lawyer is right for them, given the stringent ethical requirements. Perhaps most importantly, Legal Ethics is an opportunity to inculcate an understanding of the solemnity and magnitude of becoming a member of the legal profession; of committing oneself to become an officer of the court.

The following example illustrates why these discussions are so critical. I remember my first LMR class well. We went around the room, each student expressing her motivations for studying law. Most of the students (predictably), myself included, espoused some variant of a wish to save the world through practising law. Most students in the class provided genuine and considered reasons. Skip ahead two years, to my first class of Legal Ethics. In an attempt to demonstrate the varied reasons that people study law, our teacher asked us to state our career goal in law, along with an explanation. The result was literally the inverse of what I had seen in LMR. 90% of the students responded with "commercial law", explaining that they "enjoy problem solving". Fair enough, but teachers, engineers, nurses and construction managers probably also enjoy problem solving. Also, it's pretty unlikely that most of the students in the class had independently decided on this career path because they all generally "enjoy problem solving".

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ANNUAL GENERAL MEETING & ELECTIONS

Tuesday 10 October, 6.30 pm

MLS Room G27

DE MINIMIS

IT'S ONLY RECENTLY I'VE FELT INADEQUATE

ANONYMOUS

During the mid-semester break I was approached by a friend from *De Minimis* to write something for last week's Women's Edition. I declined this invitation citing my belief that I did not think a special edition was needed just for women, or if there was to be a women's issue I would hope we would have a corresponding men's issue.

I am proud that female students are in the majority at MLS and during my time here have been well represented on student bodies such as the LSS. However, what we need to realise is representation does not equal recognition or equality, something that has really hit home to me recently. With that in mind I think it is profoundly important that *De Minimis* sets aside editions for males, females, people of colour etc. so that a body of work can be presented to the student body at a single time that says these issues are important and deserve our unreserved attention.

As an ambitious female I have rarely until recently felt inadequate purely for being a female, this is despite being in many male dominated environments throughout high school, undergraduate study and the workplace. However, most recently I have witnessed, and been a subject to, a culture perpetuated by some male students at this law school who I can only assume are intimidated and scared by the intelligence of their female counterparts.

During this semester many students have been busily applying for Clerkships and Internships. This is a stressful time where students are busily refreshing their emails, preparing for interviews and checking that Whirlpool Forum. Trolls on a forum was one thing I expected, however witnessing students belittle and play one another off against each other is something despicable

and ought to be frowned upon. Unfortunately, this behaviour has taken place right here in MLS.

Whilst the perpetrators could be either male or female and the victim either male or female, I have specifically witnessed male students making female students feel unnecessarily anxious, uncomfortable and left questioning their self-worth throughout this process.

I have witnessed male students make demeaning comments about what female students wear to networking events, disparaging women in the course and demeaning them as lesser. Speaking with friends, I've come to realise that many of us have experienced male peers in the cohort specifically commenting on the performance and behaviour of female students in a way that they would not other men, with many of the comments turning out to be inaccurate and seemingly made to make those female students feel inadequate and unsuccessful. That is, instead of accepting their own shortcomings, these students sought to sabotage the hopes of others, particularly of female students. I do not purport to claim this behaviour is explicitly targeted by males at females, however the instances I have been privy to unfortunately share this feature.

At the same time, I have found great support amongst male friends who have stood up to those who have behaved unacceptably and have supported and encouraged myself and others to call out these people.

Whilst the scenarios I describe above are limited, law school is tough, and we don't need people going out of their way to make life more difficult for others. I want to take this opportunity to remind us all that we have a collective duty to do our best to stand up to comments and behaviours designed to make others feel inferior. Whether it be a group assignment, an LSS Competition, sports team,

club or society, all comments that are misogynistic, homophobic or otherwise designed to hurt, should not be tolerated. We have a collective duty to ensure people at this law school feel safe and comfortable, as no amount of safe spaces or student welfare services will help if we are too afraid to confront the issue head on and call these people out.

Anonymous is a second year JD student

Demise of critical thinking continued

This is not a diatribe against commercial lawyers - I too plan on practicing commercial law. But whether we plan to become a commercial lawyer, a criminal lawyer, a legal academic or something completely unrelated, we must be able to make our own decisions. We should be able to explain why our choice is meaningful or important, what we want to get out of it, and how it fits into our ethical code. Otherwise, we risk creating lawyers who are not thinking, are ethically apathetic and do not respect the legal profession as a commitment to honour and serve something bigger than ourselves.

It seems that something occurred between LMR and Legal Ethics to dissuade this kind of critical introspection. Perhaps not enough of an effort is made throughout the course of the JD to ensure students are thinking critically about their decisions. Perhaps the curricula of Legal Theory and Legal Ethics need to be updated and students made aware of their significance. Nonetheless, I believe that Legal Ethics can, and should, play a role in combatting this reluctance to critically assess our careers and ethics.

I urge the MLS faculty members to reconsider the amalgamation of Legal Ethics and Dispute Resolution. I also urge law students to do a lot of thinking about why you are doing what you are doing. Not only might this result in more meaningful career paths for individuals, but it will also create more ethical, aware and committed lawyers.

Anonymous is a JD student

CARTOON: *first year JD student Lily Hart*



DOES COLLUSION HAVE AN MLS PROBLEM?



GUY INCOGNITO

As an pseudonymous coordinator of two compulsory subjects with weekend take-home exams, I read last week's article on collusion with great interest. And amusement.

But first the moralising. Collusion – talking to others about an exam while you're sitting it – is seriously against the rules (unless the rules say otherwise.) And breaking rules is bad, m'kay? If you're caught, the Uni will fail you or worse. And you may be barred from legal practice. Indeed, it's much easier to make an example out of a team than an individual.

Even worse, if you're not caught, you'll end up becoming a lawyer and then getting booted out of the profession (or worse) for breaking other rules, 'cos rule-breaking is addictive. The higher you rise, the harder you'll fall. Just ask Marcus Einfeld.

Forget rules and morality, though. Last week's author, 'Anon', says that collusion 'is rife at MLS, more a product of fear than anything.' As a pseudonymous marker who's been at the law school for 15 years, I wouldn't call collusion 'rife', but it certainly happens – we take-home examiners see it occasionally in rather strange patterns in answers.

The author argues that if some students collude, then it makes sense for everyone to do it – and MLS does its students a disservice by demanding a 'shroud of deception'. Interestingly, as Anon notes and I can confirm, there's little (indeed, no) sign of collusion in the Evidence take-home, where some talking about the exam is expressly allowed.

But it's also noteworthy that Anon's cheating in constitutional law 'didn't even turn out that well. My group didn't get amazing scores'. Yeah, no kidding. That pattern of similar answers we sometimes see? It's ALWAYS a pattern of similarly bad answers.

It's not hard to see why. Who runs around organising cheating groups? Who joins them? Not the good students, or the diligent ones. Instead, it's the ones who spend more time covering up their lack of study than actually studying. Anon faintly claims, 'Is there a clear cut advantage? Possibly.' After all, are two, or five, thick heads better than one?

Anon also claims (surely tongue-in-cheek) that collusion isn't a 'problem' either: 'Employers ask for students with teamwork skills and this is what such projects provide.' Earth to Anon: teamwork sucks.

To put it nicely, teamwork is very difficult to do well. To put it less nicely, teamwork is a great way of doing everything badly. Those team members of yours? At best, they're scared to criticise your bad ideas in case you get narky. At worst, they're feeding you their worst ideas in the hope that at least they'll do better than you. They are definitely keeping their best ideas to themselves, just like you are.

Only children and university administrators think that teamwork is a good way to do anything. Everyone else avoids it like the plague, or finds a way to do the whole team's work themselves. If you didn't manage to learn any actual law in constitutional law, at least you should 'take home' that life lesson.

Is MLS worried about collusion? Hell yes, because our reputation is everything (to us and to you.) And because marking lousy answers is such a drag. But are we in a panic? Nope. Not unless we start to see suspicious patterns of good answers. This pseudonymous professor won't be holding his breath.

Guy Incognito is the author of The Ouija Board Jurors (Waterside Press, 2017), published on 4 October.

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