

De Minimis

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Just Leave the Human Rights Commission Alone

Gabrielle Verhagen

Last week I made the mistake of reading an Andrew Bolt article about the University Sexual Assault Report being a “fraud”. As expected, it sent me into a rage about how the media of the socially conservative right seem to misunderstand the policy, law and symbolic justice behind the Report. So here is a feminist perspective clearing up a few things based on Andrew Bolt’s critique (for other conservative perspectives see Bettina Arndt, Mark Latham and Janet Albrechtson).

Bolt claimed that 51% of students being harassed is unlikely and remote, and that it is nearly 30 times that of “violent” South Africa (not sure why he felt a need to do an irrelevant jurisdictional comparison to a country of a completely different culture, but hey, you do you). He probably never researched the nature of statistics and conducting research since he usually just does trash opinion pieces. But it is well known that sexual assault and rape are severely underreported crimes and frequently associated with grey statistics. The associations of shame for the victim, social humiliation and a loss of control lead to a lot of people staying silent. It is likely that 51% of University students are sexually harassed, particularly in an anonymous survey where student’s identities were protected so that they felt safe coming forward.

He also had a problem with none of the claims being tested or that only ‘motivated’ students such as social justice or identity warriors would respond. Implicit in these

comments are allegations of fabricated experiences. As I said earlier, making the face to face complaint for victims is really hard, and honestly if they are not wanting to make a complaint for those personal reasons, why the heck would they do a survey that would test their allegations?

When someone calls police for an alleged sexual assault the usual process is: the police arrive and they recount the story to them, then usually the Sexual Offences and Child Abuse Investigations Team arrives and they do it all over again, and then, if needed for DNA testing, they explain it to the forensics team, and then they are usually referred to the Centre Against Sexual Assault or one of their equivalents for mental health care. That is 3–4 different recounts an alleged victim does in the investigation stage alone. Not to mention if it has to go to trial, that the victim would be cross-examined and asked questions in an extremely sensitive and emotional state suggesting they are a liar, “mixed up” or just “confused”.

Don’t get me wrong, I am not saying that all alleged complaints should not be tested, or that they should all be taken at face value. But the entire point of this survey was to better understand student experience in an anonymous way that accounted for this, to emblematically encapsulate a rape culture entrenched with various power dynamics throughout Australian Universities. So no Bolt, I do not care that some students didn’t bother responding – and you know why? Because it wasn’t for them, it was to give students a safe space and voice to express these experiences and show an entrenched social problem that needs addressing.

Probably the most painful points in his article were his problems with the survey’s definition of sexual assault: that it included inappropriate staring or leering, sexually suggestive jokes, inappropriate displays of the body and being tricked into sexual acts against their will or without/withdrawn consent (like you know, the definition of rape). Sexual crimes under the Criminal

Code and Equal Opportunity Act 2010 include:

- **Rape:** sexual penetration without consent (which includes blatant lack of consent, ‘might be consenting’ or without any thought to consent), withdrawn consent or forced penetration without consent.

- **Indecent assault:** broadly defined to include sexual acts other than penetration.

- **Sexual harassment:** unwelcome sexual behaviour which is expected to make a person feel offended, humiliated or intimidated. This actually includes the examples Bolt listed himself like sexually suggestive comments or jokes and leering.

So if he has a problem with the way the Report defined sexual harassment, he literally has a problem with the current state of law and how it operates in the ‘testing of claims’ he so desperately called for. So maybe instead of using his opinion pieces to constantly attack the HRC he can have a go at the Victorian Legislature.

Bolt also raised the point that only 1.6% of the incidents occurred on or in transit to campus to imply that universities should not be liable however university policy, tort law or the events being off campus but run by the university or their affiliated student associations would all impact on their liability. In defending universities, Bolt said universities earn us \$20 billion a year, I honestly could not give a crap if they earned us \$100 billion a year, no amount of money justifies altering their duty of care or discounting experiences of sexual assault/harassment. I have no idea why he brought money into something that is clearly irrelevant to it.

Paraphrasing his own words: Bolt’s article is a disgrace. The failure to educate himself on the law, legal processes and culturally relevant facts shows why he only writes opinion pieces.

Scrap ignorance. And read the HRC’s footnotes before launching uneducated attacks.

Gabrielle Verhagen is a Third Year JD student, and is writing in her personal capacity.



Exam Soft: Enthusiasm and Concerns

Ben Wilson

You may or may not have had the option to complete an exam using your laptop. The University is trialling 'Examsoft', an application which temporarily commandeers a PC or Mac laptop, dedicating it exclusively to completing your exam from the time you launch the program to the time you click the submit button.

The upshot is that you can type, rather than handwrite, the exam. This is a very good thing.

One principle of assessment in education is that an assessment should, as far as is possible, assess the knowledge and skills relevant to the subject, and not some other skill peculiar to the method of assessment. Handwriting large amounts of text is no longer a general skill. Handwriting furiously for three hours without stopping is a herculean nonsense undertaken only by law students. Typing is, by comparison, an everyday life skill.

I'm sure it's appreciated by the examiner as well. Inevitably – and I say this as someone who's marked my fair share of exams – if the examiner has to read over a paragraph a half dozen times to make sense of it, they are unlikely to be in a generous mood when assigning a mark to it. Typed exams are easier on our hands and their eyes; I encourage the University to keep developing this option for students.

However, introducing computers into the exam environment does raise some issues regarding the integrity of the assessment. The two I've noticed doing laptop exams both have to do with reading time. Firstly, Examsoft doesn't shut down the applications on your laptop until writing time starts. That means that during reading time, your web browser is still fully functional. Secondly, the program doesn't start until you launch it, at which point your own exam time begins. It would be possible for the unscrupulous to intentionally delay launching the program to extend their own reading time.

So the University needs to think carefully about how to invigilate laptop exams. But overall, the benefits greatly outweigh the potential problems.

Ben Wilson is a Third Year JD Student

No-One Said Climbing Wasn't Hard

Janelle Koh

When you got your mid-semester marks back, they were much lower than you expected. Lower than you would ever have expected of yourself. The people around you did better than you, and you're happy for them, but can't shake the feeling that you're better than this. (You are.) You think about the circumstances surrounding the assignments. Something had been going wrong for a while. A panic attack had hit you, early this semester. It shakes your hands still, now and again, like an old friend whose face looks different from how you remembered. But you tell yourself you can't blame the marks on that alone. You say you could've worked harder, smarter. But you won't tell yourself you should have.

You know when you say 'should have', you mean that there are more valuable outcomes than the one you got. You could've gotten a better mark, probably. Could've felt better about yourself, about the whole damn thing. But the only real thing you get out of doing better, the only really real thing, is not having to deal with the way we treat marks like they're wounds. And is that all that desirable?

In her poem 'Climbers', Ellen van Neerven restates the above. She writes: "the hold patterns in the bunya pine...do not fit hands/ or feet anymore/but it is not a wrecked kind of meaning...marks are not wounds." Though the 'marks' Ellen speaks of aren't grades, the truth of her words still apply. You couldn't hold on to as many marks as you would've liked. They didn't fit you this time, for whatever reason – perhaps you were dodging branches at the time. But those marks are not for you to take on, to ingest and allow to become your wounds, to wreck your meanings. But if marks are not wounds, and they don't look like holds... what are they?

You remember going rock climbing in the gym the other day, as a beginner. You remember seeing that as the difficulty of the climbs got harder, the holds barely imprint on the rock. These holds didn't look much like holds at all, but they were called 'holds'

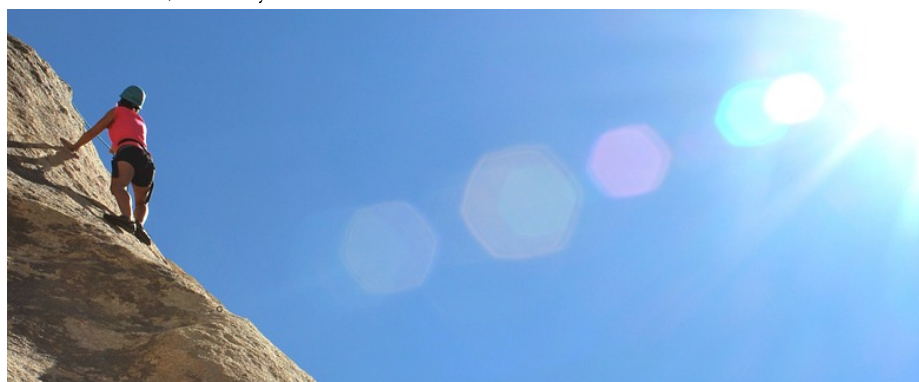
for a reason. They held meaning, one that you perhaps didn't yet have the techniques with which to understand. You didn't know how to scramble up walls; to use your momentum; when to stand instead of crouch, or when to crouch instead of stand. But on one climb you were already halfway up the wall. You weren't about to let yourself down. You knew only how to jump and put one hand in front of the other, so that's what you did. You jumped and grabbed, your hand slipped and you fell, but the harness caught. You swung slowly in mid-air. You felt a little like a fairy in a school play, and realised then that this was all pretend. If you don't grasp these plastic handholds, all it means is you didn't grasp it, and therefore you should try again.

There's no use denying that hold had meaning. Trust yourself, and know that you wouldn't have begun to climb the wall, wouldn't have gotten this far up unless it meant something to you to do it. Know that you're not going to get hurt, unless you let yourself. Unless you're negligent, unless you beat yourself up about it, unless you get angry and kick something you shouldn't. You've done all those things. You know not to do them anymore. Let yourself dangle with grace, and remember that you're swinging, not falling. Is that all a law school grade is, a plastic handhold? Is that all this brand of failure represents? I think so. (That's as close as I can get to understanding it today, anyway.)

So don't worry if you're not brilliant in the ways those tests need you to be. Don't worry about the 62%, the 57%, or how others seem to be going better than you. There are so many things you're dodging, some of which you maybe don't realise – though trust me, they are real. But don't forget about the marks altogether. See them for what they are: things to learn from, things that are there to help you be better – things to hold on to.

Marks are not wounds. Marks are not wounds. Marks are not wounds.

Janelle Koh is a Second Year JD Student





LET OPPONENTS OF SAME SEX MARRIAGE SPEAK

Scott Draper

If you're aged 8-80 and are exposed to any news media outlet, you've likely become aware of the impending postal plebiscite on same-sex marriage. A few identical messages have been plastered on the social media pages of every proponent for change. The first, a caveat that the plebiscite is not a good idea for various reasons. Secondly, a call for 'yes' votes; that if it's going to happen (absent a successful High Court challenge), proponents of an amendment to the Marriage Act may as well win it.

Since the majority of LGBT people do not want a plebiscite these messages are reasonable and expected. But controversy, I think, arises from the way in which individuals conduct, and demand others to conduct, themselves during this process. The third message from proponents is one which attempts to pre-emptively demand silence from, and character assassinate those who will not vote, or even consider voting 'no'.

Let me begin by saying that I am a supporter of same-sex marriage/marriage equality. If the plebiscite occurs, I will be voting 'yes' and I would encourage others to do the same. And it is because of this that I understand the temptation to fall into the trap of backing fallacious arguments and using inappropriate means to achieve what appears to be an obviously moral outcome.

It is tempting to profess that "love is love", that "LGBT folk have faced endless persecution in the past and still today", and that any opponents to this change are necessarily "divisive homophobic bigots". No matter how true these things are, however, I think their endless expression as a

means of combatting opponents is a mistake.

I say this for two reasons. Firstly, as we should be especially familiar with within law school, disagreements of opinion are won with arguments, not mere emotional assertions, however strong. Expressions of solidarity, pride and love are fantastic, and inspiring for those who already agree. But they do not persuade those who disagree.

And the push to categorise all opposition as 'hate speech' – or, as Tim Minchin says: "at least we'll know how many Aussies are bigoted c****" – is problematic, and misunderstands something foundational. People are not wrong because they are bigots. They are bigots because they are wrong; because they believe unfounded, discriminatory things.

This abstract truth flows into the pragmatic point. Attempting to hinder the free speech of others rarely convinces them to agree with you. In fact, it is likely to do the opposite. We must be wary of believing that this is a battle already won, just as the polling before the 2016 US election and Brexit referendum was not determinative. The alleged racists of America, and alleged xenophobes of the UK were still victorious, no matter how many times they were told they were bigoted.

Is it 'hate speech' to compare such an amendment to legalisation of polygamy? It is a false analogy, but not hateful. What about comparisons to paedophilia? Almost certainly. Will describing these things as bigotry stop people believing they are accurate and good arguments?

No.

Many believe that it is impossible to convince others who hold opposing views. But I would note that all of us prefer to change our minds in our own time, and seldom during a real-time conversation. Some proportion of society – usually hard-line religious and conservatives – will be unpersuaded regardless.

But the fact is, there is likely a significant subset of Australians who are indifferent or undecided on this issue, and we cannot risk losing their support nor the moral high ground by branding any and all dissent as bigoted hate speech. Many, whom this issue does not affect, but are still eligible to vote, do not understand why their opposition is wrong, and rebutting their arguments in an open manner demonstrates that there is no foundation for a 'no' vote.

Reactionary hostility just indicates that this argument cannot be won on its merits, and promotes the illusion that a movement of tolerance is actually one of oppression. It is, of course, unfair that LGBT people are burdened with engaging civilly in this public conversation, given the history of gay rights (or denial thereof), that much of this debate will consist of debasing the legitimacy of same-sex couples and families, and that the target of these attacks is a particularly vulnerable group of Australians, far more prone to mental illness and suicide.

But to demand that others behave civilly is to shackle oneself with the duty to remain so. In fact, it is possible to view this as an opportunity. We do not need to run from an intellectual conversation that is, I think, impossible for the other side to win. Instead, we must demonstrate that this is the case.

So, let opponents of same-sex marriage speak, and let them lose the discussion.

Scott Draper is a Second Year JD Student

International Perspectives: *Romance of Raino*

Raino Wang

My name is Wang Yunong. 'Yunong' means 'Romance of Rain' in Chinese. I chose a similar pronunciation 'Raino' as my English Name. But later I found that many of my Australian friends wrote down my name as 'Raino'. Since then I knew that the concept of freedom was entrenched in Australia.

Raino? Who?

I bet it would be most students' reaction when they hear my name, since I am not very social and never attend drinking functions or parties. Fortunately, 'Who' is my mother's name. But I guarantee that I am a first-year JD student of Melbourne Law School, not something else. Yes, I promise.

Why Australia?

I studied Chinese law in Beijing at one of the top law schools in China and passed the Chinese Bar Exam. I may well stay in China and get a steady job without much pressure. However, as a popular Chinese slogan goes, 'The world is so big. Why not travel?'. Perhaps that is why I flew to another side of the earth and suffer so much pressure at law school. Yes, a very happy trip.

What law school means?

The first impression I got from Melbourne Law School was when I picked up my student card at Stop 1. When he heard that I was a JD student, the staff member said: 'Congratulations! You must have worked very hard!'. At that time, law school meant such a great honour to me.

Similarly, many of my Chinese friends

who study Accounting would be envious of me, since the requirement of PR (Permanent Residence) for an Accountant is much higher than that for a Solicitor.

Unfortunately, that is not the whole story.

During the first week of LMR (Legal Method and Reasoning), I applied for a piano accompaniment position at Apollo Choir, after I saw the notice in 'my.unimelb'. The interview was very smooth. I played some scales and a short Chopin piece. The two undergraduate students who interviewed me were very satisfied. I thought: 'Come on! I have learned to play the piano since I was five years old. Accompaniment? A piece of cake, ok?'

I remembered clearly that the last question they asked me was 'how would you balance study with our choir?'. I handed in my timetable of Semester 1 (only 3 courses) to one of the students and was confident that the accompaniment position was mine already. Suddenly, the student screamed: 'OH MY GOD! You are from the Law School?' The other student rushed to look at my timetable, murmuring: '...lots of readings...' At that point, I knew that I was out already.

It turns out that they were absolutely right. As a non-native speaker, I always have a hard time covering all the readings. Even if I stay up to go through all the readings on time, some important details may well be ignored. C'est la vie.

Law school, a warm community.

In LMR, my tutor Paula encouraged and helped me a lot. I have a strong feeling that I would have failed the assessment if it



were marked. Also, students in law school are so friendly to each other. For example, I felt that I was respected and valued during the syndicate meetings of PPL. My teammates would never look down upon me simply because my English was not as good as theirs. Instead, they encouraged me a lot. I am very grateful for it.

Lastly, I have to say that it is my great honor to live in such a warm community and bathe in the sunshine of freedom for three years, or even longer. It is my great honor. Yes, it is. All the best! Vive l'amitié!

Raino Wang is a First Year JD Student.

Does hearing Raino's story inspire you to tell your own? Share your international perspective in a De Minimis submission today.

