PEPPERCORN

THE ANU LAW STUDENT SOCIETY MAGAZINE

LAW

POLITICS

HUMOUR

LIFESTYLE

ANU Graduates at Australian Law Firms
Is there potentially something missing from our ANU Law School experience?

Aboriginal Legal Aid Services
Why Aboriginal Legal Aid Services are failing our First Nations peoples

It's Only a Dream
A Review and Analysis of 'Eyes Wide Shut' by Stanley Kubrick

SEMESTER 1. 2022

ACKNOWLEDGEMENT OF COUNTRY

Peppercorn would like to acknowledge the Ngunnawal and Ngambri people as the traditional owners of the land upon which this publication was written and distributed. We would also like to acknowledge our neighbours: the Gundungurra people to our north, the Ngarigo people to our south, the Yuin people on the south coast and the Wiradjuri people of greater inland New South Wales.

We acknowledge their elders – past, present and future – and the elders and first peoples from all nations across this continent. This was and always will be aboriginal land; sovereignty was never ceded.

Peppercorn also acknowledges that colonisation is ongoing and racist structures continue to perpetuate the power imbalance inherent within this nation's cultural, economic, and political institutions. Policies such as the Stolen Generations are not historical, but rather sustained oppression, paternalism and cruelty seen in the continued removal of over a thousand Indigenous children from their homes per year.

As the publication of a Law Student's Society, we cannot ignore the role that our legal system plays in entrenching systematic failures and injustices to Indigenous peoples. Namely, by incarcerating Indigenous Australians at the highest rate in the world and continued separation of families and communities, the system we live and may work in is continuing a colonial genocide. As law students, we must all undertake to change the racist operation of our legal system and the views within it.

Until an Indigenous voice to speak on their affairs and country is heard; until there is a treaty; until truth is told and the historical and ongoing pain of those whose land on which we profit from is recognised...

There is no justice in our country.

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LETTER FROM THE EDITOR

Second Semester 2021 Edition

Letters like this are always hard to write. They're not really articles. But they're also not a dialogue. There's no conversational element, there's no creative bent, there's no academic exploration. Usually, they're used to introduce the edition to the reader – give them a taste of what the rest of it looks like. But this has always seemed like a bit of a waste to me. If you wanted to do that you could just turn the page and read the contents or go straight to the articles. The truth, I think, is that they are something more like a platform. Something that gives the editor an opportunity to speak directly to the reader. Platforms do not come often. Many people spend their entire lives earning the opportunity to speak. Some, much more talented than you or I, will never be heard, as they are crowded out by a culture which rewards noise and speed over honesty and thoughtfulness. I guess this letter is my platform.

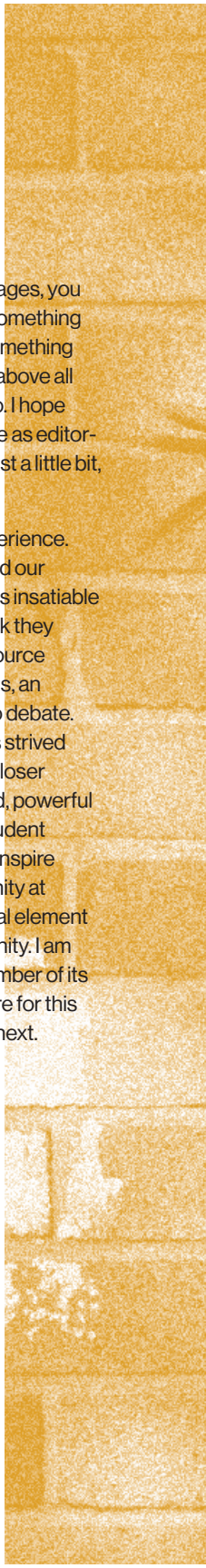
I thought about just summarising the year, going through 2021 and talking about how it affected us. But I realised we all lived the same twelve months, wouldn't it be a waste for me to just recite it back to you? Writing surely has to be about something more than just regurgitating facts which the reader already knows? One of the reasons I got involved in Peppercorn is because it offers us, the students, an opportunity to speak, to argue, to explore, to create and to offer. It is this pooling of ideas, opinions, creativity and imagination which makes something worth reading. But more than that, sometimes it can be an escape. It can present the opportunity to pour your thoughts out on paper and translate your feelings into words. Contributing to the debate is not enough. Journalism, real journalism, must allow people whether they contribute or not, to feel whole, to feel seen, to trust in their own humanity, and to feel like they are part of something greater than themselves.

But what is this greater meaning? Wealth? Fame? Power? I think it's much simpler than that. It is the capacity for people to relate to one another, to understand each other and to exist together in one single human enterprise bound by common understanding and trust. It is this meeting of individuals to form a single purpose which opens up the possibilities of debate, discussion, imagination, creativity, thoughtfulness, care and love. In a word, community seems to make it all worthwhile. You would think that something so vital and so important would be easy. But then why is it often so difficult? Why does it feel like our ability to relate to one another is so often compromised?

The pandemic has not made this easier. Locked in our houses, confined to our own experiences, the ability to reach that higher meaning and relate to each other has been made so much harder. The greatest cruelty of COVID-19 is how it has closed us off from ourselves, reduced our lives to the barest possible functions, (eat, sleep and repeat), isolating us from others and indeed, ourselves. The pandemic runs strongly throughout this edition, its political, social and economic consequences explored in depth. But we should not forget the personal implications of this event. We must strive to reconnect with one another at a basic human level, to argue, to talk, to discuss, to laugh and to enjoy without worrying about the world which rages on behind us. I hope that in these pages, you will find something to discuss, something that piques your imagination, something that captures your interest and above all something that you can relate to. I hope that this edition and my own time as editor-in-chief has contributed, even just a little bit, to the student experience.

Peppercorn is a part of that experience. Our editors, our contributors and our readers from a crucial part of this insatiable human need to belong. The work they produce and the articles they source represent a meeting of the minds, an offering of ideas and a license to debate. In these pages, Peppercorn has strived to bring students just a little bit closer together, producing an informed, powerful and authentic account of the student experience, one that I hope will inspire and sustain a feeling of community at ANU. Peppercorn forms a crucial element of this university and its community. I am very grateful to have been a member of its team and I hope that it will endure for this generation of students and the next.

New Year's Eve, 2021



LETTER FROM THE PRESIDENT

Welcome to the 2022 edition of Peppercorn, ANU's law student magazine.

Peppercorn has a long tradition of publishing a wide range of high-quality student articles, from insightful op-eds to engaging creative pieces and biting satire. These literary treats are a reflection of the intellect and the diversity of the ANU student body and the varied, distinct, but always fascinating pieces they create. The LSS is pleased to continue its support of the magazine in 2022 so that ANU students can enjoy the best their peers have to offer.

Happy reading, and we do hope that you enjoy this issue!

Henry Palmerlee
President
ANU Law Students' Society

CONTENTS

COMMUNITY

ANU GRADUATES AT AUSTRALIAN LAW FIRMS

By Callum Florance

Law school is cast upon many ANU law students. Many of these students do not have the benefit of prior legal contacts or experience with the legal system. Late nights spent trawling through High Court decisions with individual judgments and no clear ratio will certainly sharpen legal research and argumentation skills, but is that all you need to enter the legal system? Is there potentially something missing from our ANU Law School experience?

The sagest advice is often born from the end of something, and then reflecting on how that something compares to reality. To capitalise on this invaluable perspective, I reached out to several Australian law firms for advice from their ANU law graduates. As recent graduates have only just made the jump into the thick of clients and billable hours (without being too enamoured by it just yet), they have recently been confronted with the stark contrast between the ideal legal system presented at law school and the dense reality of what the legal system does and what it requires of lawyers. I asked these recent ANU law graduates about the strengths and weaknesses of their ANU Law School experience in preparing them to enter the legal system.

Maxwell Padley is a law graduate at Maddocks' Sydney office. Maddocks currently has a cohort of eleven law graduates across their Sydney and Canberra offices, with ANU graduates comprising six of this cohort of eleven.

I found ANU's several law fairs and law firm information nights very informative in terms of knowing what my options were and the sort of work I could expect to see as a clerk, including at Maddocks. However, I have found that my university academic work translates only so far to actual practice. Incorporating some practice-specific components for study, such as how to draft an array of basic legal documents, may be beneficial for future students looking to practice after their studies.

Gabriela Freeman is a law graduate at the Canberra office of Maddocks.

As the ANU law degree has embedded honours and is delivered at a university with a strong emphasis on research, I found that the high standard of research and writing expected at ANU prepared me well to work at a law firm like Maddocks. However, as ANU is so research-centric, I found that exposure to practical skills (e.g. drafting contracts or court documents) was lacking in the ANU law degree unless actively sought through clinical programs or internships.

Katarina Throssell is a law graduate at Arnold Bloch Leibler and graduated from ANU in 2020. Arnold Bloch Leibler have a particular interest in ANU law students because of the high-quality education they receive.

My experience at ANU equipped me well for my graduate role in the litigation team at ABL. ANU's strong focus on legal research, delivered through the honours by coursework model, has meant that I was able to step into my graduate year confident in my research skills and ability to tackle complex questions (which is put to the test daily!). The career opportunities I had access to at ANU prepared me well for the fast-paced work environment of a litigation practice, and the exposure to government in Canberra gave me practical insights into our legal and political systems that have proven helpful regarding the broader strategy required to resolve disputes.

An area for improvement of the ANU law degree may be that ANU has less of a commercial focus than other law schools, which meant that I started out in my graduate year less comfortable with various commercial concepts than some of my peers. However, this hasn't proved to be a major issue by any means.

Isabel Charny graduated from ANU in 2019 and is a lawyer at Arnold Bloch Leibler.

I graduated from ANU in 2019 and joined ABL as a graduate lawyer the following year. It was undoubtedly a steep learning curve. I had limited prior experience in the legal sector and particularly in the commercial sector. Perhaps that is a flaw of the ANU degree, the absence of a practical learning component. However, what my ANU law degree did teach me was how to navigate complex content quickly with invaluable reasoning and problem solving skills. At the end of the day, drafting skills and commercial acumen will come from exposure to deals and good training by a firm like ABL, but the critical reasoning skills that you develop are much harder to pick up and must be cherished.

Douglas Horn is a Hall & Wilcox law graduate. Hall & Wilcox have several ANU alumni, comprised of approximately two current law graduates, five lawyers, three senior associates, and two special counsel.

In retrospect, the courses at ANU provide for an excellent foundation of core legal skills, particularly in undertaking comprehensive research and drafting persuasive legal reasoning. I am often called on to use those skills in my role and am thankful for that foundation, as there would be very little time to work on those skills independently of the rest of my workload. I personally found that nothing beat experience when it came to leaning the practical elements of working in the law and that obtaining part-time legal work, which for me started via the law school's clinical course, was the best source for that.

Tianna Reddie-Butler is a law graduate Hall & Wilcox.

ANU equipped me well for the transition to commercial law. I consciously took electives that complemented my areas of interest (as someone who always wanted to do corporate/commercial work), so having an academic understanding of the relevant legal framework of my practice areas allowed me to focus more on managing clients and commercial considerations more broadly (instead of having to start entirely from scratch and learn the subject-matter on the job). ANU also encourages you to think critically and analytically from day one. This strength cannot be overstated when having to advise clients of the risks associated with their position, or when unforeseen circumstances crop up.

I also found the soft skills I obtained during university (e.g. being involved in societies and sport, having a part-time job, etc.) have been complimentary to the academic skills ANU provided. Much of commercial practice is knowing how to forge client relationships, managing time when you have conflicting priorities, and knowing how to communicate effectively. A big struggle of my transition to HW (as a plain-English firm) is the transition of communicating complex legal ideas in a clear and concise manner, away from the academic tone we are all encouraged to adopt at ANU. Knowing how to write to the level of knowledge of your audience (particularly with clients who do not have a legal background) can be challenging and knowing the appropriate level of formality to communicate through is a key skill to be successful in the industry. Fortunately, HW has several graduate workshops run throughout the year set to address these difficulties, to ensure you can get the most out of the experience and to smooth out the transition.

The consensus appears to be that ANU Law School's focus on legal research, legal problem-solving, and critical analysis skills prove to be invaluable for those ANU law graduates just entering the legal system, including invaluable for the firms that hire them. There is support for the argument that 'law school is what you make of it' and that practical skills are to be found through participating in the broader ANU law community or through part-time work. However, this argument has a caveat: 'I made the most of it, but law school didn't provide it'. A legal practising certificate will likely address these missing elements once you have completed your studies. However, the oft-cited anecdote of a stressed law clerk on their first day searching for someone at their firm to teach them how to write a legal memorandum will continue to haunt future graduates if nothing changes. Being thrown in the deep end has been a feature of legal learning for centuries, why change that now?

ANU College of Law was contacted for a response to some of the issues raised in this article. Associate Dean (Education) (ADE) Associate Professor Wayne Morgan responded that the College "aims to teach students to 'think like a lawyer'" and emphasised that "practical legal skills" includes "legal research, legal problem-solving, and critical analysis". These "are all crucial practical skills... necessary to master before a lawyer can draft documents like contracts, trusts and documents necessary for Court." The ADE also noted that "skills like drafting documents are... a feature of the graduate Practical Legal Training programmes that all graduates must complete before being admitted to practice".

The ADE pointed out that skills in "drafting legal documents" can be found in "some elective courses, and in particular through the internship and clinical programs." The weight placed on these work-based programs aligns with the College's belief that "these skills are best taught in situ and in work environments". The ADE states that "we aim to increase the coverage of these programs... by increasing each year the clinical and internship opportunities open to students."

To avoid weakening the existing ANU Law School's emphasis on invaluable research, problem-solving, and critical analysis skills, the School might benefit from pairing up with the ANU's Centre for Continuing Education (CCE). CCE supports the concept of continuing learning through a non-award program (i.e. you can learn practical skills to add to a resume without the fear of failure). If current ANU law students were provided with the opportunity to learn the practical and procedural elements of law – like a practical overview of writing basic legal documents – in an environment without the stress of Grade Point Averages, the caveated argument would certainly be changed to 'law school is what you make of it, and I made the most of the additional practical skills on offer.'

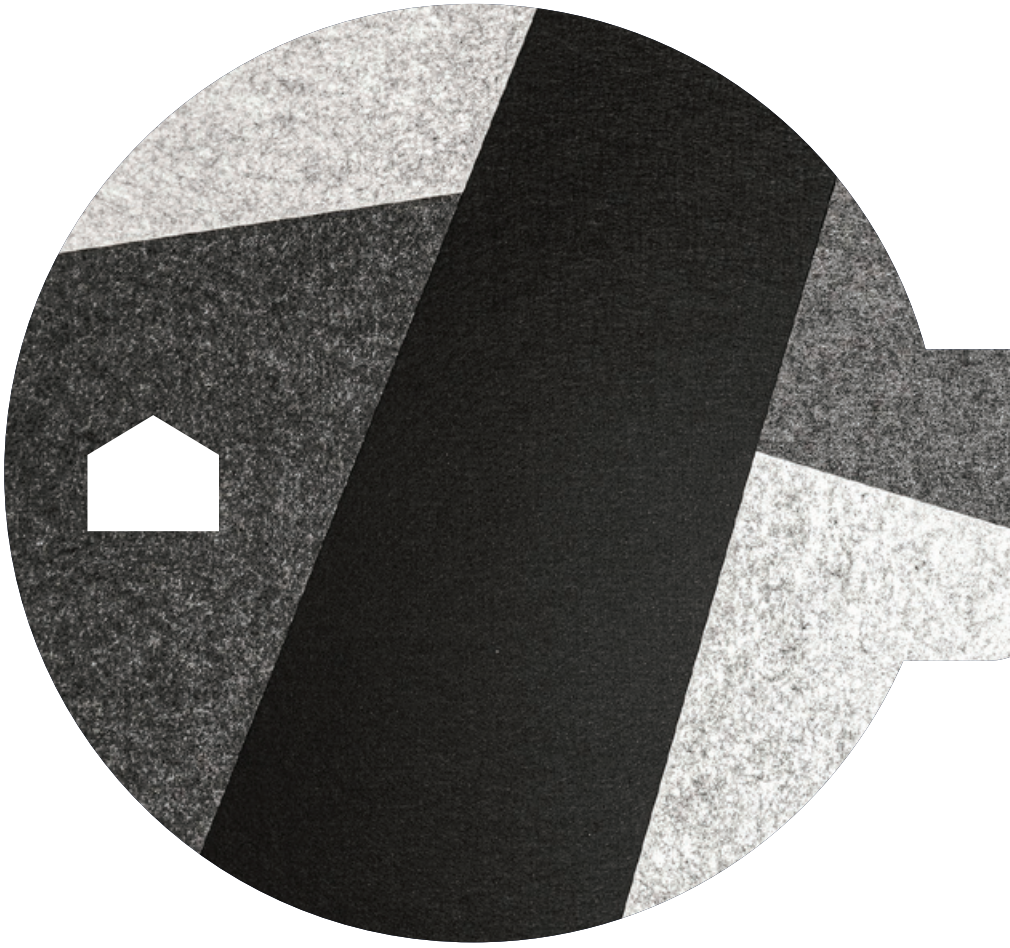
The ADE responded to this potential solution by noting that "we do already offer some courses through [CCE]. To date, these courses have focused on the area of law and new technologies, such as AI, blockchain and smart contracts, knowledge of which is crucial to the modern lawyer." Leaving open the question of whether the recommended practical and procedural CCE course may be a potential solution, the College noted that "we do intend to explore offering more courses through CCE."

The sage advice provided by our recent graduates makes it clear for students who do not have legal contacts or experience: make the most of your coursework, but look for other opportunities to gain practical legal skills. Unless ANU Law School starts offering an 'Introduction to Legal Documents' CCE course, you may end up like the stressed law clerk: without explanatory memoranda.

TIPS FOR FIRST-TIME RENTERS

By Varshini Viswanath

It was 5 days before the end of contract at my residential hall. My prospective housemates and I had applied for what felt like 20 places, but we were yet to receive positive news. The tension was palpable, and couches were being prepared for us to surf on. Later this day, while at work, I received an ecstatic message from the group chat with my housemates saying we had received a contract for our desired apartment. In true millennial (in Australia) fashion, we celebrated by grabbing a bevy and posting a selfie on Instagram with the caption, 'avoided homelessness'. While the caption may have been a hyperbole, the competitive nature of Canberra's renting market and the impact of the pandemic is not. With COVID-19 still casting a dark shadow on our lives and with the end of the year fast-approaching, I want to share some tips for university students thinking about moving off campus.

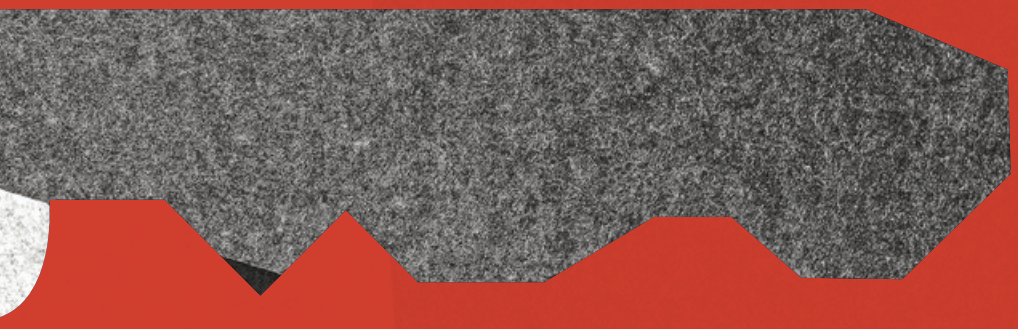


1. GET READY EARLY

It is important to enter the process of rental applications with realistic expectations and to do so early. While its entertaining to browse apartments and houses online, the application process is frustrating and exhausting to be transparent. I wish I knew that different real estate agents use different platforms for applications, which means that my housemates and I answered several pages of the same information multiple times. With the sheer number of questions, they now know more about us and our financial background than our own parents. To make applications easier, I would recommend consolidating your1 00 points of IDs, something I found challenging as an international student.

2. GET A JOB, YA BUM!

Due to the financial impact of COVID-19 on tenants, real estate agents are more particular now about the tenant's proven financial stability. Luckily, my housemates and I secured jobs just as we began applying. While having a job is great, it is possible to have parents or guardians as primary financial supporters. The best scenario, however, is a job and the availability of secondary sources of financial support. This may also allow you to offer a rent rate slightly higher than the asking amount, a factor of understandable significance to the homeowner and real estate agent.



"Don't be shy to follow up with the agent within two or three days of submitting your application!"

3. WRITE AN HD COVER LETTER

A cover-letter is the smartest yet easiest way to improve your chances of being selected because it provides the homeowner with a holistic and personalised insight into you. Depending on the platform, it may be possible to attach this with your application. Alternatively, you can choose to send it via email to the real estate agent.

Introduction

The introduction of the letter should cover who you are, why you are applying for the particular unit, why the unit is perfect for you and how you will care for the house or apartment. Importantly, and if circumstances allow, mention that you will consider extending the contract if there are no extenuating circumstances.

Financial Capacity

Here, you are simply trying to show the agent and homeowner that you can pay. I recommend providing a breakdown of each applicant's source, type and amount of weekly and monthly income. Add this amount up to provide the aggregate household weekly and monthly income. If applicable, provide that you have contingency financial sources. Conclude strongly by saying that you are financially capable of meeting your contractual obligations and to take good care of the unit.

About us

In this part, you are attempting to connect with the homeowner personally by providing more insight into each applicant. This can include information such as place of origin, hobbies, occupation and goals for the future. Bonus points if you are able to connect with the homeowner on some piece of information you have gleaned about them from the agent during inspection.

4.FOLLOW-UP

Don't be shy to follow up with the agent within two or three days of submitting your application!

Finally, keep your head up and seek help if needed! Before you know it, you will be posting cliché pictures on Instagram and decorating your own place.

DIVE IN

By Sue Ven Lee

In law school, one must not only have a good academic record, but must also possess quality practical experience and valuable networks. For fourth and fifth-year students, internships, clerkships, and paralegal positions are the way to go. From international law firms to local boutique firms, there is a plethora of options for law students seeking practical experience to make themselves more competitive as graduates. However, younger students are often denied these opportunities to gain deeper, real-world insight into the legal realm by virtue of their lack of familiarity with the law. Therefore, any determined, proactive law student yet to be eligible for internships and clerkships may naturally wonder what programs are on offer for them to gain a competitive edge in this cutthroat legal world.

"Dive In participants will also develop practical skills that will boost their competitive advantage."

In the past several years, Allens has faithfully delivered their annual Dive In program to young law students across Australia. Dive In is an introductory program offering pre-penultimate law students a glimpse into the workings of a leading, international commercial law firm. In 2021, the program was held virtually over zoom due to the COVID-19 pandemic, but in previous years has been held in-person in Melbourne, Sydney, Perth and Brisbane. Participants of the Dive In program will have the opportunity to network with the firm's partners, associates, and fellow law students. Held over three days across several weeks, students may discover first-hand the type of work commercial law firms generally do, the supportive and dynamic culture of the firm itself, and hold informative conversations with lawyers working at Allens. As an alumni of the 2021 Dive In program, I had a rare opportunity to establish networks with diverse individuals from various universities across Australia, which was personally an invaluable experience.

Additionally, Dive In participants will also develop practical skills that will boost their competitive advantage. Across the first and second days of the program, I learned how to write and deliver an effective elevator pitch, alongside several important tips to form better, more impactful networks. For instance, one key takeaway I gained from the Dive In workshops on creating my image as a law student is that an essential element to leaving a lasting impression when networking is to pay attention to the room at large. As the basis of most relationships are mutuality, one should keep an ear out for shared interests or connections, which could subsequently serve as a conversation starter.

On the third and final day of the program, students are given a rare opportunity to participate in mock client interviews. I found this most helpful as we were divided into teams of four or five, and were given a rundown by a lawyer on how the client interviews are generally run. Instead of having to follow a script, the teams were given space to be flexible when conducting our mock client interviews, which I found to be an incredibly useful exercise. Feedback on what could have been done better, and what was done well was given after the exercise. This is a valuable experience for all who are interested in participating in client interview or negotiation competitions at law school.

Attached here is a link to Allens' Dive In program, which I highly recommend all pre-penultimate law students to explore. https://graduates.allens.com.au/our-programs/

LAUGH, PRONOUNCED 'LAW': A COLLECTION OF LEGAL JOKES

By Callum Florance

Kirby's Success

How does Justice Kirby measure his success?

In dollars and dis-cents.

A Scream Beyond the Chambers

Justice Ronald Wilson was staring intently at a copy of External Affairs Magazine when he heard a pained scream from down the corridor. Fully reclined, he got up from his chair and opened the door of his chambers. With his head poking out and peering down either end of the dimly lit corridor, he couldn't see anyone around.

"Ahhhhh," someone called out from far away.

Wilson didn't know who else sat in their chambers that day and decided to scope it out. He knew the light switch sat deep within the darkness, and so he slowly waded his way down the dusty corridors with his arms outstretched.

"Ahhhhh," someone called out, slightly closer now.

Wilson said to himself: 'I need to help this person!' The fear of darkness left him and he sprinted towards the voice.

In a loud *thump*, Wilson crashed into someone in the darkness: "Ahhhhh," the person painfully called out after the collision.

"I am terribly sorry," Wilson said with sincerity, grasping the shoulders of this person in the dark corridor. "I have been trying to reach you for some time now. Are you hurt?"

A light turned on.

"No," the person said, "I'm not hurt, you damned fool! I'm just Aickin."

The Mystery of the Judge's Status in Australia

If judges in powdered wigs aren't just clones of Santa with incredible perms and stunning red dresses, then how else do you explain why they're so powerful in contemporary Australia?

Bentham's Contraption

Jeremy Bentham was hard at work in his extravagant workshop late on a foggy Winter night. Upon hearing a ruckus, his close friend and next-door neighbour Toldya Friendo knocked on Jeremy's gold-plated workshop door.

"Jeremy?" Toldya called out, opening the door and peering cautiously inside. "Jeremy, what are you doing up this late?"

Jeremy put down his tiny little silver hammer on his ebony work table.

"I'm creating a new device, it's called the 'Tilly'," Jeremy said with manic, flailing limbs. "It brews tea in a new and exciting way," Jeremy continued. "It's much more egalitarian than the previous approach to brewing. Each brew is consistent, so it isn't just upper-class judges and legislators brewing tea without any objective set of criteria. The 'Tilly' literally 'tillies' the tea!"

Toldya knew that Jeremy was constructing another one of his quirky conceptual devices. Toldya always found himself trying to justify Jeremy's eccentric behaviour to their pals at the pub, but to no avail. No one quite understands Jeremy, especially those closest to him.

"I just need to give the Tilly a whirl before I unveil it," Jeremy says. "Would you be okay trying it out with me?"

"Okay," Toldya responds, hesitantly. "Let's try it out."

Jeremy turns back to his ebony work table and, after some clicking and clacking, the room flashes and both Jeremy and Toldya are knocked to the ground. Jeremy's new conceptual device has switched their minds and bodies! Jeremy slowly sits up as Toldya and Toldya slowly sits up as Jeremy.

Toldya as Jeremy turns to face a nearby mirror and screams, "I'm hideous! I've been turned into Jeremy Bentham!"

Jeremy as Toldya pauses. Jeremy knows that he still needs to unveil this conceptual device. It will change the way the world brews, for the better.

"You must take the reigns as Jeremy Bentham," Jeremy as Toldya says. "You need to tilly the tea, for the benefit of the whole world!"

"I can't do it," Toldya as Jeremy says despairingly. "I just can't."

Jeremy as Toldya stands up firmly and says "I Toldya Friendo, you Tilly tea!"

Negligent Headmaster

What do you call a negligent school headmaster who doesn't accept a duty of care for students living outside of her suburb?

A neighbourhood principal.

Old Man Justice Higgins: Challenge Extraordinaire

When I was young, I found myself wandering through the streets of Geelong. Back in those days, bread was bought by the pound and pounds were our bread and butter.

As I passed by the various arcades and shopfronts, one mysterious tented stall caught my eye. The sign read: 'Old Man Justice Higgins: Challenge Extraordinaire'. This intrigued me, so I went to find out what this Old Man Justice Higgins could do.

I nuzzled my way through the curtain of purple beads and found a scruffy-looking man sitting on a large pillow.

"Hello?" I said quietly.

"Welcome," Old Man Justice Higgins responded. "I am here to issue you with a challenge. I will give you three times what you bet, if you can guess what's in this box."

I accepted the challenge and put down a four-pound bet. I pondered for a moment, scratching my chin, and carefully examined the box.

"Is it a box of barcodes?" I asked.

"No," Old Man Justice Higgins responded.

"Is it a series of numbers, like '4304789663'?" I asked.

"No," Old Man Justice Higgins responded.

"Is it a two-kilogram box of apples?" I asked.

"Why," Old Man Justice Higgins scoffed in a fluster, with sweaty, trembling palms. "W-why yes, yes, it is a box of apples! You must be some kind of sorcerer! Tell me plainly and without haste, how did you manage to go from barcodes, to numbers, and then arrive so swiftly and with such certainty at apples?"

I pointed at the box and said, "you forgot to take the label off."

The Overturning of Doc Trinal

Doc Trinal walked into a lift and saw a button that said 'Edent'. She accidentally pressed the button for Level Four, and the lift was overturned. Doc Trinal forgot to press 'Edent'.

Take Your Soil to Hell

If trespass to land is traditionally established by the phrase, 'whoever's soil it is, it will be their soil from Heaven to Hell', then why do people keep leaving their trash on my front lawn?

Tuberville Reloaded

People are always going on about how bad Tuberville was when he issues the famous conditional threat, with hand on sword, "if it were not assize time, I would not take such language." Yeah, I guess Tuberville was pretty bad. But have we all forgotten who the real villain was in that case, who took out Tuberville's eye? Even his name was Savage!

PPSA-P-P-P-Perfection

A secured party once told me that "practice makes perfect". But, they forgot to mention that practice is not sufficient to establish perfection... so now I'm fighting a liquidator to get my leased equipment back.

The Jurisprude

The big name on campus, Jurisprude, was walking down University Avenue, minding their business, when three law students ran up to them.

"Hey, Jurisprude," one of the law students said. "What do you call law with principles?"

"What do you call it?" the Jurisprude asked.

"Law without a Hart," the student giggled.

The Jurisprude put on a cringed smile. The Jurisprude didn't enjoy dry legal jokes, but wanted to maintain a good face in front of the students. The Jurisprude was up for re-election in the ANU Law Students' Society, but all their friends had graduated years ago.

"Hey, Jurisprude," a second law student pitched in. "What do you call a legal theorist who's eaten too much food?"

"What do you call them?" the Jurisprude asked.

"Full," the second law student said. "And what do you call a legal theorist who'd eaten too much, but still maintains a balanced diet?'

"What do you call them?" the Jurisprude asked.

"Even Fuller."

The Jurisprude cringed again, but smiled... again. The Jurisprude wanted to participate, but nothing was coming to mind.

"Hey, Jurisprude," the final law student pitched in. "What do you call a legal theorist who doesn't like to have fun?"

"Let me guess," the Jurisprude pause. "A... A Dorkin!" the Jurisprude exclaimed, bubbling with giggles and a self-congratulatory smirk.

"No," the student said bluntly.

"Oh," Jurisprude responded, the smirk and giggles falling flat. "Well what do you call them?"

The student paused and said, "a Jurisprude."

The Jurisprude smiled, begrudgingly.

LAW STUDENTS: AN OUTSIDER PERSPECTIVE

By Ally King

We all know that the law school experience can be insular. If you've ever wondered what your non-law school friends think of you, look no further – your helpful neighbourhood law student Ally King interviews two non-law students who have the mixed blessing of knowing them since first year.

What's your degree?

Topples

science bby

Titania

Barts/BSc

How many law students do you know apart from me?

Topples

uhhm maybe 1

Titania

2

From an outside perspective, can you suggest a possible motivation someone might have for completing a law degree?

Topples

Stonks. Nah, law students want to be motivated to achieve something. The challenge is the motivation.

Titania

You get paid to argue

You meet someone new. Without them explicitly saying so, how do you figure out they're a law student?

Topples

I ask them how crazy their schedule is ... science students would be like "I'm never leaving the lab (: (: " and law students are like "I'm going to spend the next 12 hours reading (: (: "

Titania

Ask them where they're from. If they give you a school name instead of a location, they're a law student. Or they're just from Sydney

Only law students expect me to know that your school is in Sydney.

Let's say you meet a first-year law student. What's your advice?

Topples

Open up ur diary and block out a chunk of time for C H I L L + friends

Allow some time for your brain cells to recover

Titania

Ps get degrees !!

Would you say there are different types of law student? Can you describe them?

Titania

yeah, there's "the adjusted ones" who have lives and interests outside their degree, and the "ones I don't talk to"

Topples

hm, the study bees and the procrastinators, then the devil's advocates and angels.

What's an angel?

Topples

Like those who do law because they wanna help make positive change. Good lil beans essentially.

In conclusion, law students: quick review and star rating?

Titania

3.5 stars – two of my best friends are law students and I love y'all. If I know anyone else I think I've just blocked that aspect of their personality out tbh.

Would recommend the author of this article xxxx

Topples

Law students: your best friends in a study crisis; not bad to hang out with if you can convince them to unwind for 2 fkn minutes.

Just don't start an argument with them because you will not win. 3.8 stars

DEALING WITH A DIFFICULT LANDLORD 101

By Alicia Barron

Look, most of us have been there. Dealing with an incompetent landlord who keeps raising your rent or takes a million years to respond to maintenance requests is, unfortunately, a rite of passage into adulthood. While some landlords may think they can take advantage of younger tenants, there are plenty of options to ensure your home stays liveable and affordable. I've done all the research so you don't have to, because, let's face it, we'd all much rather be watching Netflix. Just a quick disclaimer: this is a brief summary of tenant's rights regarding rent increases, maintenance issues and options for recourse - please check the relevant legislation and your rental contracts before sending an angry email to your landlord threatening to sue!

First things first, READ YOUR RESIDENTIAL TENANCY AGREEMENT. Even better, read it before you sign it. Hopefully this advice is redundant to all you law students out there, but my eyes tend to glaze over after reading the word 'tenancy' five times in one sentence. Time to crack open the red bull and finally, after 3 years living in the one place, realise that you're not allowed to put a bare mattress straight onto carpet. Your lease contract should give you most of the information you need about your specific rights, obligations, and options for recourse but here is a brief general summary in case you just can't be bothered.

The legislation that regulates tenancies in the ACT is the Residential Tenancies Act 1997 (ACT). As any good property law student knows, your landlord is not allowed to interfere with the 'quiet enjoyment' of your home, however in turn, you must not interfere with your neighbours' quiet enjoyment.

If your lease is for a fixed term, your landlord cannot increase your rent at all during that term unless your residential tenancy agreement specifically allows for it. If your agreement does provide for an increase in rent, it can only be done every 12 months. Similarly, if your agreement is periodic, the rent can also only be raised every 12 months. The lessor must give the tenant eight weeks written notice of intention to increase the rent which must include the increase amount and the date it will come into effect. The Residential Tenancies Act only allows rent to be increased by the 'prescribed amount'. I'm not going to lie, there's a reason I'm not an economics student so if the following explanation also doesn't make sense to you at first, please seek out your nearest Econ or PPE friend (or hang out around Wright Hall for five minutes until you bump into one). To calculate the prescribed amount, you need to find the percentage increase in the rents component of the housing group of the Consumer Price Index (CPI) for Canberra. These figures can be found on the Australian Bureau of Statistics website. A landlord can increase your rent 10% more than the increase in the CPI. If your rent increases more than this, you can apply to ACAT for a review and your landlord will need to prove that the increase was not excessive. You can still apply for a review

if the increase is below the prescribed amount, but the onus is on you to convince the tribunal that the increase is excessive. S 68(3) of the Residential Tenancies Act outlines what ACAT must consider in determining whether a rent increase is excessive. It includes matters such as the rental rate before the proposed increase, the value of fixtures and goods supplied by the lessor, and rental rates for comparable premises. A case example is Richards v Chu and Anor (Residential Tenancies) [2016]. In this case, the rental increase was above the prescribed amount and the lessor argued that it was not excessive when taking into consideration rental rates of comparable properties. The Tribunal stated that the primary consideration should be what a reasonable person would, in an open market, be prepared to pay to rent the property. Without going into too much depth, after conducting a market evaluation, the Tribunal decided that the proposed increase was in line with other similar properties in the area and was therefore not excessive.

"If your landlord fails in their repair obligations, you can apply to ACAT to seek orders requiring the repair work to be done, payment of compensation, or reduction of rent."

Moving on to maintenance issues, the basic rule is that your lessor has a legal duty to perform repairs as soon as they are notified of the need, unless the damage was caused by the wilful or negligent act of the tenant. A failure to do repairs required by law could potentially lead to a breach of the lessor's obligation to not interfere with the reasonable peace, comfort and privacy of the tenant. Your rights regarding repair of maintenance issues are set out in Schedule 1 of the Residential Tenancies Act - Standard Residential Tenancy Terms (SRTT). At the start of a tenancy, the lessor must guarantee that the premises, including furniture, fittings, and appliances, are fit for habitation, reasonably clean, in a reasonable state of repair, and reasonably secure. The lessor must make repairs (if such repairs are not urgent) within 4 weeks of being notified of the need for repairs. If your residence is classified as a unit under the Unit Titles Act 2001, and your enjoyment of your home reasonably requires repairs to be made to a common area, the lessor must take the necessary steps to ensure the owners corporation makes the repairs as soon as possible. If the repairs are urgent, you must notify the lessor as soon as practicable and those repairs must be carried out as soon as necessary depending on the nature of the damage. Clause 60 of the SRTT sets out what is considered an urgent repair and includes things like a burst water service, roof leak, or a failure or breakdown of any service essential for hot water, cooking, heating, cooling, or laundering. If you're unsure if the repair is considered urgent, you can find the SRTT online or your residential tenancy agreement may also indicate the difference between urgent and non-urgent repairs. If the repairs are urgent and your attempts to contact the lessor fail, you are permitted to arrange for repairs yourself to the maximum value of 5% of the rent of the property for a year. At the start of the tenancy, your lessor or property manager will often give you a list of nominated tradespeople to use in such situations, however, Clause 62 of the SRTT states that if they are unavailable, you can choose any qualified tradesperson, and the lessor will be liable for the costs of the repairs. However, it is important to note that if you do not act in strict compliance with Clause 62, you will be held liable for the cost of any urgent repairs you personally arrange, so this is not a sign to call your mate who just started a plumbing apprenticeship.

If your landlord fails in their repair obligations, you can apply to ACAT to seek orders requiring the repair work to be done, payment of compensation, or reduction of rent.

That's the basics regarding your tenant rights relevant to rent increases and maintenance issues but remember that most of these rights and obligations can be altered or overridden if your residential tenancy agreement explicitly provides for it, so always have a look at that first. However, if your landlord is seriously breaching their obligations, don't be afraid to assert your rights - it's good practice for your future law career!

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EXCEPTIONS FOR LONELINESS
EXPLORING PERSONAL RELATIONSHIPS THROUGH ACT COVID-19 PANDEMIC DIRECTIONS

By Callum Florance

As a child, stories of isolation were abundant: a person stranded on an island, a person braving a winter journey in the forest, a person escaping a warzone. Those stories of individual heroism in the face of isolation are situated far from the imagination for most Australians, although for some it may describe their path to freedom in Australia. What about a person coping alone during a pandemic? Most Australians willingly gave up their social freedoms for the greater good of the community by staying at home and following directions in the face of the COVID- 19 pandemic. For those Australians who did it alone, how is that individ ual heroism in the face of isolation being appreciated and acknowledged?

How did we arrive at a place where visiting 'intimate partners' was an exception, rather than a norm? How did the loneliness of single-person or single-parent households produce a public discourse that normalised the term 'single bubble buddies'? This article explores personal relationships through COVID-19 pandemic directions in the ACT.

FIRST LOCKDOWN

On 19 March 2020, when the *Public Health (Indoor gatherings) Emergency Direction 2020* (ACT)[1] (*'2020 Direction 1'*) was made under section 120 of the *Public Health Act 1997* (ACT) (*'Health Act'*) referencing the 'declared emergency' under the *Public Health (Emergency) Declaration 2020 (No 1)* (ACT), this was a time for immediate action. When a group faces a shadowy new enemy, the group will seek to address it *absolutely*. There is no nuance when a monster emerges. There is only the panic-stricken press of the 'destroy it all' button. Panic is only replaced by a more measured response over time, especially if you are later told to learn to live with whatever you sought to destroy.

Under *2020 Direction 1*, an enforceable obligation was placed on a 'person who owns, controls or operates premises' to 'not allow an indoor gathering of greater than 100 people'.[2] 'Premises' has an open meaning in the *Health Act*, 'includ[ing] a vehicle, vessel or aircraft, and a permanent or temporary structure'.[3] Practically, this made no difference to the way Australian homes operated and for hosting friends and family in the ACT. A maximum of 100 people would only be an issue for sardine parties at student share houses, or for birthday parties on Mugga Way.

This all changed on 31 March 2020 with the *Public Health (Non-Essential Gatherings) Emergency Direction 2020* (*'2020 Direction 2'*),[4] which revoked, replaced and extended *2020 Direction 1* and its outdoor equivalent direction. The enforceable obligation was swiftly directed to 'occupier[s] of residential premises' *and* those 'not ordinarily resident at residential premises' to restrict non-residents to a 2-person maximum and be mindful of a '1 person per 4 square metres' rule.[5] Overnight, Australians had to be mindful of space in their home and the number of people entering. The '2-person max' rule was open to interpretation, as it was not clear whether this meant the more generous interpretation of '2-persons per day', or the more restrictive interpretation of two identified persons selected for the duration of the direction's enforcement.

The home was now a matter of concern, as 'premises' was defined to mean 'not residential premises'.[6] The implied freedoms of normal everyday life were quickly shirtfronted, for good reasons. 'Essentiality' was born as – and still is – an ill-defined concept, expressed only as an exception to the restrictions. Activities like 'medical care', 'law enforcement', or 'urgent… repairs' fell under this slippery concept.[7] Non-essential activities were activities *other than* the normal activities of our everyday home lives. For outdoor activities, people were allowed outdoors in groups of 2 if they were from the same household.[8] Some exceptions to the limitations on 'gatherings' included allowing grocery shopping, and use of public transportation.

"Overnight, Australians had to be mindful of space in their home and the number of people entering".

Importantly, exceptions to *2020 Direction 2* included 'circumstances where it is necessary for a person to enter and remain in residential premises... for the purposes of providing necessary care or support'.[9] 'Necessary care or support' was left undefined, which may have included on a broader interpretation the ability to visit loved ones who are alone, visit single-parents with issues coping with work and care responsibilities, or visit an 'intimate partner' during an emotionally exhausting period of modern history. This broader interpretation is contrasted with the narrower interpretation of 'necessary care and support' meaning the supplementary caring responsibilities for those who require medical care or who are unable to generally care for themselves.

> ***"the lack of a clear understanding of what our 'declared emergency' was at this stage meant that broad-brush restrictions were inevitable."***

After a month, 'household' was given a closed definition of 'persons who ordinarily reside at the same residential premises'.[10] The 'one household' exception also applied,[11] but the nature and extent of this exception had interpretation issues much like 'essential' and 'necessary care and support'. Was it one household per day, or one selected household for the duration of the direction? A week later, the '10-person max rule' and the 'two household exception' were introduced.[12]

This marked the beginning of the easing of restrictions, given the ACT's bubble-like distinctness from the experience of major cities like Sydney or Melbourne. From this experience, we did not see the measured specificity and clarity that we would expect from directions that restrict our freedoms. We did see directions that were aligned with health advice – but did it evince a holistic account of our wellbeing as social animals? Scientific advice is justifiably applauded for moving slowly rather than bumbling brashly, but the lack of a clear understanding of what our 'declared emergency' was at this stage meant that *broad-brush restrictions were inevitable*. Only after public concern and interjurisdictional experience did the directions capture any social nuance: for those who were unable to visit a romantic partner, visit a single parent without a moment of peace, or visit a friend sitting isolated and alone.

SECOND LOCKDOWN

On 12 August 2021, *Public Health (Lockdown Restrictions) Emergency Direction 2021 (No 1)* (ACT) ('*2021 Direction 1*') arrived.[13] The clarity and precision of *2021 Direction 1* stands in stark contrast to the broad-brush *2020 Direction 1.* The concept of 'essentiality' has been clarified, with constructions that are no longer up to individual interpretation. A lot of planning and reflection produced this comprehensive direction.

One interesting example of reflection producing social nuance is the mentioning of human rights. *2020 Direction 1* made no mention of compliance with human rights. The Chief Health Officer issued a statement months after *2020 Direction 1,* noting the restrictions were justified given the proportionality between the directions and the declared emergency.[14] The product of this reflection is elucidated in the preamble of *2021 Direction 1,* where the justification for restricting rights is considered.

The temporal and numerical elements for interactions are identified in the operation of the 'exercise exception', where people can 'engage in physical activity... for no more than 1 hour per day... either: on their own, or with one other adult [not from] the same household; [sic] or with members from the same household'.[15] A 'caring exception' also appears, harkening back to the *2020 Direction 2* 'necessary care and support' exception. This exception was a remit 'to provide assistance, care or support to another person who is not ordinarily a member of the same household'.[16] This broad 'caring exception' also operates as an exception to the limitation on 2 visitors at a residence per day.[17] This was interpreted to be the introduction of the 'intimate partner' and 'single bubble buddy' provisions that first graced Australia through Victoria, but this construction emerged through public discourse and messaging rather than explicitly in the directions.[18]

In Victoria, the 'intimate partners' exception – where you could visit the house of your intimate partner if you do not ordinarily cohabitate – has existed since 2 April 2020 when it was introduced in their first lockdown via the *Stay at Home Directions (No 2) 2020* (Vic).[19]

"The Chief Health Officer issued a statement months after 2020 Direction 1, noting the restrictions were justified given the proportionality between the directions and the declared emergency.[32]"

The 'single buddy bubble' exception – called 'social bubbles' or 'buddy bubbles' – was introduced on 13 September 2020 during Victoria's second lockdown via the *Stay at Home Directions (Restricted Areas) (No 15) 2020* (Vic) and its equivalent non-Melbourne direction.[20] This scheme then transitioned to the 'household bubble' system.[21] There were limitations on choice via Victoria's 'nomination system', as single persons could only nominate one other household or person to visit within a 5-kilometre radius.[22] The 'intimate partner' and 'single bubble buddy' exceptions were created as a response to public mental health concerns for the wellbeing for those Victorians who were alone and isolated.[23]

However, even at 10 September 2021 through the *Public Health (Lockdown Restrictions) Emergency Directions 2021 (No 8)* there were still no explicit 'intimate partner' or 'single buddy bubble' exceptions stated.[24] These were still implied in the ACT through initial public discourse and messaging,[25] as the operation of the 'caring exception' was interpreted to mean that residents who are alone can nominate a single person or household to obtain assistance or support *and* that the intimate partner exception applied.[26]

On 17 September 2021, the explicit exceptions eventually arrived in *Public Health (Lockdown Restrictions) Emergency Direction 2021 (No 9)* ('*2021 Direction 9*').[27] The concept of 'identified household' was introduced, which operated separately from the 'caring exception' that was carried over from previous directions.[28] The 'identified household' system operated like the nominated 'intimate partner' and 'single buddy bubble' schemes that Victoria introduced in 2020. The definition of 'identified household' had a closed meaning for 'person[s] living alone', single 'parent[s] living with children (of any age)', and 'intimate partner[s] of a person from [another] household', where the stated persons could nominate 'one other household' to visit.[29]

There were some issues with the operation of the 'identified household' system, especially regarding its temporal and numerical elements: could identified households make and receive visitations from *only two* identified households with unlimited visitations per day, or was it two identified household visitations on one day with two *different identified households* allowed each consequent day? On 20 September 2021, I sought comment from the ACT's Chief Health Officer regarding issues around the operation of the new 'intimate partners' and 'single bubble' exclusions. I received the following response on 21 September 2021 from the ACT Government's COVID-19 Media team:

The following information is already publicly available on https://www.covid19.act.gov.au/act-status-and-response/lockdown:

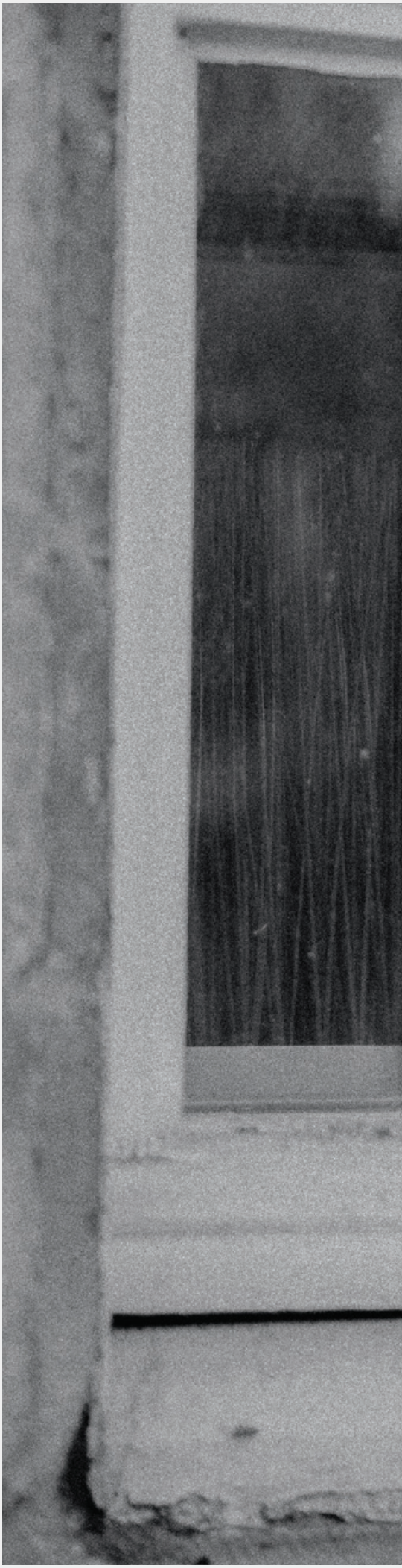
Private Gatherings at Home:

- No more than two people permitted to visit another household, but only for the approved reasons under stay at home or for compassionate purposes.
    - This does not relate to the provision for outdoor exercise or non-organised recreation.
- Intimate partner visits are allowed.
- People who live alone can identify one other household that they can visit or receive visits from, with all members of the other household permitted to visit or receive visits. This includes parents who live alone with their children.

The issues around their operation remained, and the vagueness lingered on.

The 2021 directions added clarity. Broad-brush was never the new norm – the directions adapted to the threat based on health advice. Why did the ACT take so long to include explicit 'intimate partner' and 'single bubble buddy' exceptions, given that Victoria introduced the 'nominated household' system in 2020? This was likely a matter of policy underpinning the enforcement of the directions rather than an oversight of planning, as the 2021 directions were clearly a result of measured reflection and interjurisdictional learning. It is unclear why the broad 'caring exception' remained once the 'nominated household' system was introduced.[30]

Only later upon the easing of restrictions from the second ACT lockdown were the following guiding principles explicitly introduced and acknowledged:[31] 'We will always put the health and wellbeing of the community at the forefront of our decision making, especially the impact on mental health... We will continue to listen to the community... about the impact of the public health measures.' The 'caring exception' stands as a stark reminder of the vagueness of personal relationships during the COVID-19 pandemic – mentioned in passing, never directly addressed.



CONCLUSION

This article told a story of personal relationships as they appeared in ACT Directions during the COVID-19 pandemic. Broad-brush directions emerged alongside COVID-19's arrival in Australia. Interjurisdictional experimentation and a trial-and-error approach slowly produced more nuanced directions over time that accurately addressed some of the negative side-effects for those isolated and alone. This article did not recount an individual's story of heroism in the face of isolation, rather it explained a source of that isolation. For many Australians, this story was not far from their imagination. I hope those who experienced that isolation can mend the personal relationships and connections they may have lost during this pandemic. For those Australians who did it alone, thank you for your service to the community. You are appreciated and acknowledged.

SO YOU WANNA BE AN ASSOCIATE?

An interview with Xiao Lin King, Associate in the ACT Magistrates Court

Xiao Lin graduated law from ANU in 2021, and became an Associate in the same year. Here are her thoughts, advice to those thinking about applying, and some fun memories on her time in the role.

How do you become an Associate?

There is no set process for applying for an Associateship. Sometimes the position is advertised, either on Facebook or through ANU College of Law. More often than not, the positions are not advertised widely, and you need to be aware of where the current Associate's are up to in their contract so you can enquire directly with them or the Chamber's Manager about an upcoming opening. You can apply to be an Associate for a specific Magistrate or put in a general expression of interest by emailing the Chambers Manager you resume and CV. If successful, the next step will be to participate in an interview with the Magistrate that's interested.

It's important to note that positions are arising throughout the year, there is no set time to apply. This is because the positions arise as current Associates reach the end of their contract which is usually twelve to eighteen months.

Associates are normally in their penultimate year of law school or have recently graduated, mostly because it's usually a full time job!

What has been the most surprising thing about your role?

I was really surprised about the diverse range of legal areas that I am working every week. Magistrates in the ACT don't specialise in a certain area, with the exception of Children's Court. Every Magistrate hears criminal, civil, protection unit and coronial matters. It is invaluable that as an Associate you are exposed to all those different areas as well!

What has been your favourite thing about being an Associate?

I love that I get to watch advocacy every day – to learn what work and what doesn't. As an associate you are also privy to judicial commentary behind-the-scenes and get to discuss legal issues with your Magistrate in Chambers. It's hard to imagine a better opportunity to learn.

The bond between the Associates is also very special. The role is fast paced, stressful and chaotic. You can't get through it without the help of the other Associates and that creates a very strong bond.

On the flip side, what is your least favourite thing about the role?

One of the main roles of an Associate is facilitating all court appearances. Everyday in court requires a lot of preparation and liaising with all of the parties that are appearing. You are reliant on other people giving you information, often which comes very last minute – so things can often feel out of your control.

On the other hand, I think this aspect of the job has forced me to develop some time management skills to really utilise any free time I have to do what I can.

What do you think helped in your application?

I did have some basic knowledge of practical Court processes from my experience as a paralegal in other community legal centres. However, I don't think that is necessary at all - you do not have to be an expert in anything to apply. Indeed, I think the one of the things that helped me in my interview was that I was open and honest with my Magistrate about my career aspirations and my genuine desire to learn.

What is one tip you would tell someone wanting to become an Associate?

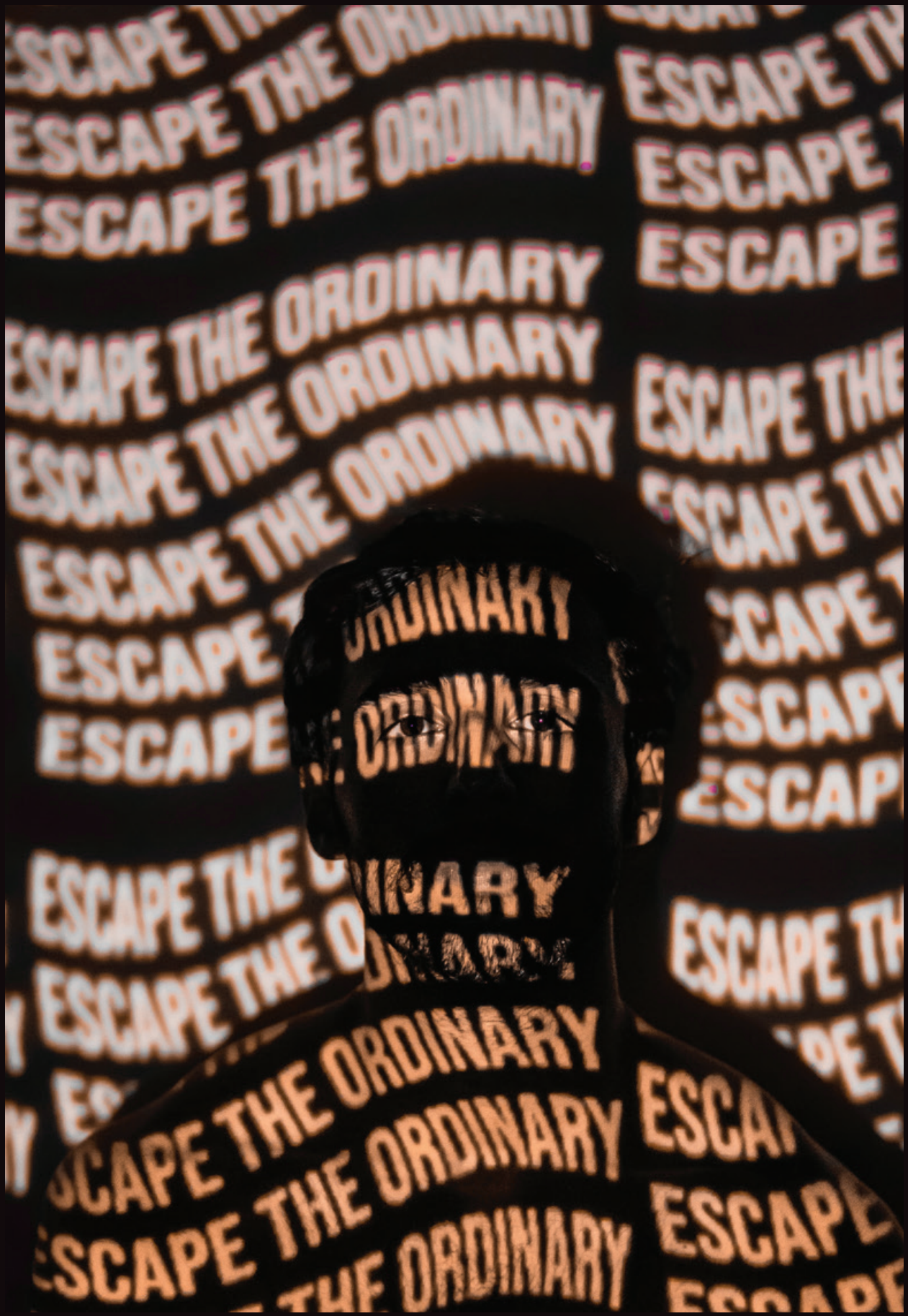
I would advise people to take the time to sit in Court and observe. This will make you aware of the basic operations of the court and the role and responsibilities of an Associate.

The other thing that it is important is to be genuine and show your personality in the interview. Although as an Associate you have a responsibility to the entire Court, you end up working very closely, one-on-one with your Magistrate, so they are looking for someone they can get along with for the next twelve to eighteen months.

Lastly, what is the craziest thing you have seen in Court?

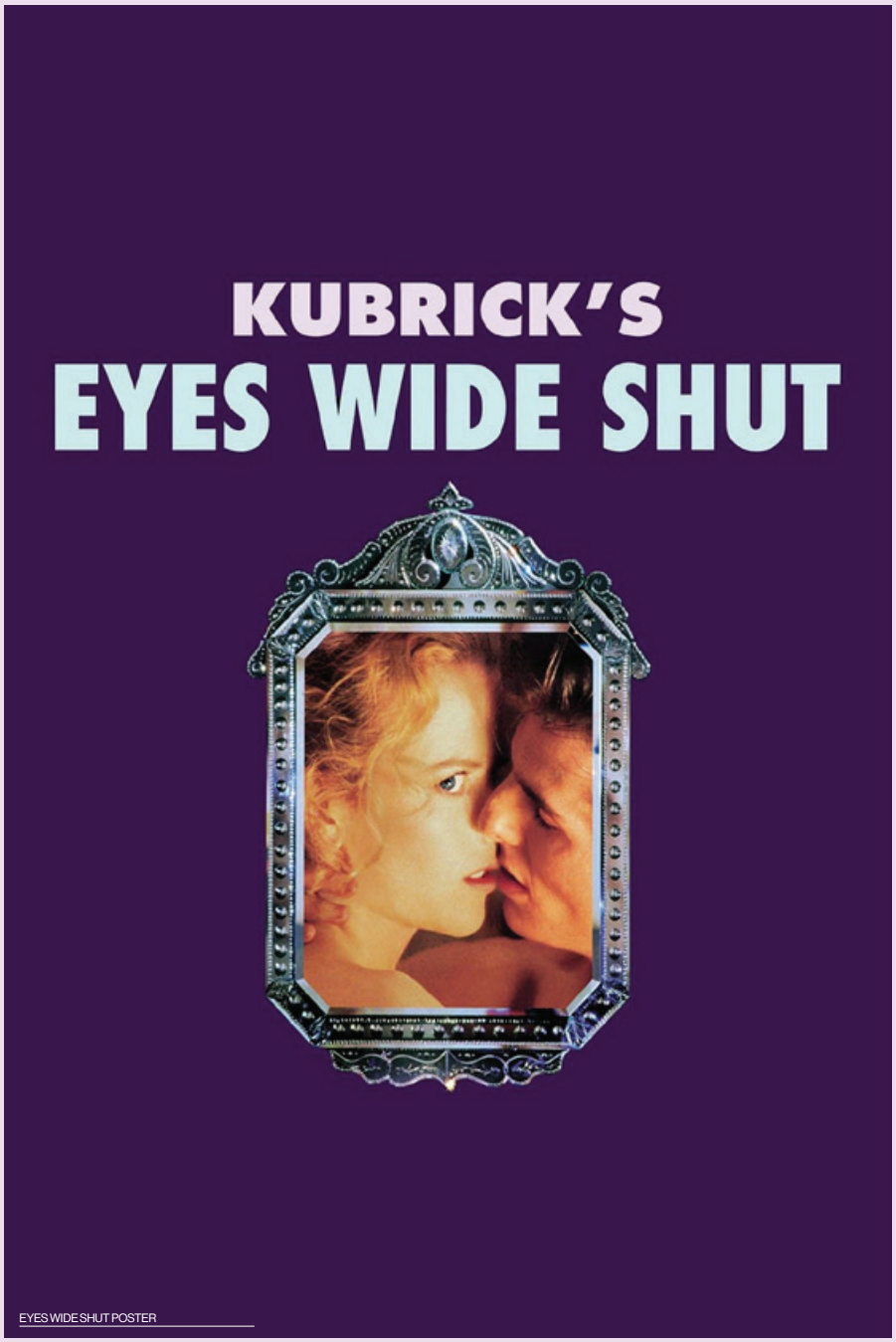
There are so many crazy things that happen in Court every day that it is really hard to pick just one story. During COVID Associates have had to facilitate remote appearances of parties in court. This has led to some pretty funny and concerningly informal appearances by defendants in Court. Sometimes I will connect defendants into court for their matter and they answer the phone while just at a servo, walking their dog or sometimes driving when they have been charged for a driving while disqualified offence!

CREATIVE


ESCAPE THE ORDINARY

IT'S ONLY A DREAM
A REVIEW AND ANALYSIS OF 'EYES WIDE SHUT' BY STANLEY KUBRICK

By Anonymous



EYES WIDE SHUT POSTER

THE END

On the 7th of March 1999, Stanley Kubrick died. He was 70 years old. For the past 18 months he had been working on what would be his final film, a psychological thriller called Eyes Wide Shut. It was a curious project to finish on. Kubrick's work spanned five decades, nine presidencies and three marriages. It's sometimes difficult to imagine that a man known around the world for bringing outer space into theatres, laughing in the face of nuclear winter and pulling audiences into the chill of the Overlook Hotel would finish his career with a seemingly-simple feature about a husband and wife who never slip the bonds of their domestic life.

For two hours and thirty-nine minutes we watch as they navigate the deceptions which make up their daily-lives. There are no spaceships floating in the air, no gravity-defying manoeuvres by unimaginative astronauts and no atom bombs dropping from the sky. We simply watch two people as their lives change from within as their conceptions of the world disintegrate around them. And yet, in this final work, Kubrick manages to paint a picture of a swirling whirl-pool of desire, exploitation and suspicion, lit by dancing lights of blue, red, orange, purple and green, all framed within the setting of a typical American Christmas. In his last film, he tells us a story more daring than space exploration, more terrifying than a haunted hotel and more threatening than the risk of nuclear exchange.

All of Kubrick's stories depict the moment where our conception of reality meets reality itself. The central tension of his films is whether or not his characters survive these realisations. We watch as they wage war with themselves, their minds and the world around them in an effort to safely adjust and adapt. It is this idea of a forceful and violent awakening to the reality of life as it really is what defines each of his works. People spend their whole lives perfecting one thing. They go over it again and again and again, using different methods, different words, different language, different colours. The work of a filmmaker is no different. Kubrick starts with this central idea; that there is beauty in the world, but it can only be valued if we are awake to life as it is, not by lying to ourselves and living dreams, never to wake up. If this is what makes Kubrick Kubrick then Eyes Wide Shut is his final masterpiece, a film where this central theme dominates absolutely.

Kubrick examines the struggle between dreams and reality at a microscopic level, as we watch the unravelling and unmasking of married life. At the height of his powers and the twilight of his career, Kubrick employs his mastery of cinematic craft and his total control of this central theme to peel away at a rotten onion of deceptions, while wrapping the audience in Christmas lights and the glow of the New York skyline. The marriage of our protagonists forms the central tenet of this story, but Kubrick clothes this deception in a further autopsy of Americana as he hints at themes of capitalist exploitation, middle-class angst and the nature of conspiracy. Released more than two decades ago, just before the turn of the new millennia, Eyes Wide Shut and its whispers of the corruptions of popular capitalism and the allure of conspiracy theories are more relevant today than ever before. Indeed, somewhat ironically, the film has become known for its depiction of conspiracy, not its call for realism and strength in place of denial and fantasy. However, the brilliance of Eyes Wide Shut is found in its cold and disturbing dissection of one couple's life together; the secrets they keep, the powers they wield, their abilities to love and hurt one another in equal measure and their joint struggle with madness as they are violently pulled out of a dream and forced to see each other as they really are for the first time.

"A VERY GOOD TIME"

All of Kubrick's works are both aesthetically, contextually and morally distinct despite all being anchored in the same basic tragedies of human error. They were also all received by a defiantly confusing mix of interest, disgust, contempt and fascination but rarely ever praise. 2001: A Space Odyssey was ridiculed, A Clockwork Orange was misunderstood and maligned and The Shining was nominated for two Razzie awards, with Kubrick himself nominated for 'Worst Director'. Of course, after twenty years, the critical class has spontaneously reversed and now lauds films they once despised as masterpieces in waiting, trying to convince themselves that they never doubted such a magnificent artist in the first place. It is a rare career which spans almost fifty years and produces twelve feature films but is always at least two decades ahead of its contemporaries. Above everything else, it suggests that Kubrick himself had an eye and a brain unmatched by any one of his generation.

Eyes Wide Shut was of course no different. Kubrick died almost four months before the film was released and therefore had no control over how it was marketed or framed. The grim result was that it was billed as some kind of high-class erotic thriller, starring the two hottest stars of the 1990s, husband and wife Tom Cruise and Nicole Kidman. The trailer reeks with a blatant mechanical sex appeal as the names 'Cruise', 'Kidman' and 'Kubrick' flash across the screen. The fact that it runs less than two minutes suggests that the studio itself had no idea what to make of the film, deciding to double down on marketing 101.

> ***"the brilliance of Eyes Wide Shut is found in its cold and disturbing dissection of one couple's life together"***

Inevitably, the film was misjudged and maligned even before its cinematic release as the marketing tuned audiences to expect something which never materialised. However, unlike his other films, more than twenty years later Eyes Wide Shut remains controversial and misunderstood, and it is often listed as one of Kubrick's worst. One journal even titled its review of the film "A Bad Way to Go Out", referencing the director's death just months before. All this shows is that even now, more than two decades since his death, Kubrick is still miles ahead of his rivals, his critics and even his audiences. Eyes Wide Shut not only represents the culmination of Kubrick's career but is the

perfection of a peculiar tragedy of human error which he filmed over and over and over again.

DREAM STORY

Funnily enough, though almost three hours long, almost everything that happens in Eyes Wide Shut is perfectly summarised in the first twenty minutes. The film opens with our two protagonists, husband and wife Dr Bill Hartford and Mrs Alice Hartford, as they are getting ready for a party held by one of Bill's wealthy patients, the affable and seemingly harmless Victor Ziegler. As they say goodnight to their daughter and drive through Manhattan, New York City glows behind them, lit up by millions of Christmas lights. Ziegler's party is lit with thousands upon thousands of tiny little fairy lights, hung from the ceilings and the walls, covering every inch of his mansion. The result is this intense and warm glare, as all these little points of unnatural light bloom together, flooding the camera with a dream-like infantile gleam.

At the party, Kubrick makes sure you get the sense that the two of them, despite their apparent wealth and style, don't really belong there. Whilst dancing in the ballroom of Ziegler's Manhattan Mansion, resigned to what appears to be a common occurrence for her, Alice asks "Do you know anyone here?", "Not a soul" her husband replies with a laugh as she rolls her eyes. Bill spots an old friend of his playing in the band and wanders off as Alice heads to the bar, downing a glass of champagne in one go. Reaching for another drink, she is intercepted by a handsome, rich and charming man who seductively drinks out of her glass and asks for a dance. While they waltz and flirt to the backdrop of Ziegler's Christmas lights, Alice sees her husband with two models, seemingly oblivious to their salacious intentions and apparently completely undisturbed by her jealousy. "Someone you know?", the man asks, "My husband" she replies. "Don't you think", he asks in reply, "one of the charms of marriage is that it makes deception a necessity for both parties?". She laughs. He asks why she would want to be married. "Why wouldn't I?" she says. He replies, eyebrows raised, "Is it as bad as that?".

The next night, Alice asks if Bill if he was attracted to the models at the party. He says no, surprised she would ask. He retaliates, asking who she was dancing with. When she says that she thinks the man she was dancing with wanted to have sex with her, Bill says "I guess that's understandable", saying that he knows that despite being "a beautiful woman" she would never cheat on him, such is the strength he places in her and their marriage. Furious at his sheer ignorance and repulsed by his lack of jealousy and anger, she decides to tell him something. In one of the best scenes of Kubrick's career, sitting against the window, far removed from Bill who sits upright on the bed, Alice tells him of a desire she once had for another man.

Just a simple man she saw at a hotel when they were on a family holiday. Yet, the desire was so powerful, she tells her husband she would have happily left him, their daughter, everything for just one night alone with this man. The music rises to a thin cutting pitch as if it is suspicion itself translated into perfect sound. As she goes deeper and deeper into her secret the warm glow of the unnatural light slowly recedes, and the cold blue moonlight seeps into the room. By the time she is finished, the atmosphere has frozen solid and all Bill can do is stare at his wife, horrified by the scale of his ignorance and embarrassed by the confidence of his love and the faith he has placed in her.

"Though almost three hours long, almost everything that happens in Eyes Wide Shut is perfectly summarised in the first twenty minutes"

The phone rings. One of Bill's patients had died, providing him with an excuse to escape. He walks out of the room. In the first twenty minutes, Bill's conception of the world and his own self-belief, anchored in the faith he places in his marriage as its defining feature, has been shattered by five minutes of dialogue. At twenty minutes in, Kubrick presents the protagonist with his central human challenge, as he is violently pulled out of a dream and forced to see his marriage as it really is. For the next two hours and twenty minutes, we watch him flail around New York City after dark, waiting to see if he survives the night. He wonders around a city drowning in Christmas lights just after midnight, driven by a desire to avenge the hurt, humiliation and pain which has been dealt by someone he thought he knew, someone he thought he could trust. Her revelation shatters his self-confidence in one defining blow, unleashing a torrent of insecurities which look poised to drive him mad before the night is up. He embarks on a journey of self-destruction, limping from street to street as he walks alone through the night, truly awake for the first time.

"DO YOU KNOW WHAT PEOPLE LOVE ABOUT DOCTORS?"

Alice's revelation and Bill's reaction forms the central tension of the film. She has unceremoniously pulled them both out of their slumber, and they now have no choice but to confront their deceptions, their jealousies and the pain they have inflicted on each other. However, Kubrick analyses this idea at two levels, both at an individual basis (the Hartford's marriage) and at a wider societal level, illustrated by a thinly-veiled critique of capitalism and an autopsy of conspiracy. By examining both individual, personal and societal delusions together, Kubrick is trying to prove that while Bill is fighting to survive after his intense and traumatic awakening, he remains completely oblivious to other larger delusions of Americana, enterprise and conspiracy which continue to overhang him as he slowly self-destructs.

Kubrick was in middle-age when the Keynesian consensus of the 1940s

collapsed and was replaced by a free-market revolution led by the titans of neoliberalism, Margaret Thatcher and Ronald Reagan. By the time Eyes Wide Shut was released in 1999, these ideas and their cultural connotations had been around for almost twenty years. One of the well-recognised features of neoliberalism is its ability to amplify the distance between rich and poor and erode the middle-class as those in-between are squeezed out and pulled apart by market forces.

This phenomenon is present throughout Eyes Wide Shut as Kubrick uses his mastery of cinema to subtly dissect the Hartford's socio-economic position, painting a revealing and timely portrait of middle-class angst. Despite their wealth and apparent confidence, the Hartford's regularly appear out of place, regardless of where they are. Take the Ziegler's dinner party for example; they are the only guests who appear notably bewildered by his extravagant and somewhat exploitative display of wealth. During the party, an occasion which should render all its participants equal, Bill is called up to help Ziegler with a medical problem, demonstrating that in Ziegler's eyes, and by extension the upper-class in general, Bill is only ever his profession, even at a Christmas party.

Watching the Hartfords at the party, you can never shake the sense that they just simply do not belong among the rich, the privileged and the powerful which surround them. They appear almost suffocated by Ziegler's wealth, unable to escape his Christmas lights, the crystal chandeliers which hang from every room or the furniture so gold it hurts your eyes.

From the very beginning, we are made to believe that the Hartfords are incredibly isolated, from Alice's remark about not knowing anyone at the party, to Ziegler's warm but curt greeting and the draining social awkwardness. Later, when Bill goes a different party of the elite (but with arguably the same people) he sticks out almost immediately, even though he is wearing a mask and a hooded cloak, just like everyone else. Likewise, when he is walking around the streets at night in a full suit and expensive coat, he looks equally out of place, stumbling from street light to street light, jeered and leered at by the locals.


STILL FROM EYES WIDE SHUT

Bill seems perennially incapable of fitting in anywhere, whether it be among the rich and powerful at an excessive Christmas party or on the streets, among the workers, the forgotten and the powerless. The protagonist's profession is another indication of his middle-class credentials. Bill Hartford is a doctor, a career which has long been associated with a typically middle-class background. Doctors see both sides of the social coin; they earn a living out of tending to rich and poor alike but are wealthy enough to access the higher echelons of society whilst maintaining connections to the ground. The tension between these two disparate social groups isolates the middle-class doctors as they are neither poor nor rich, the powerless nor the powerful. Therefore they are hopelessly lost as they forever float along in the middle, with no agency and no voice, terrified of the destitute and the prosperous alike.

This distance between the lower, middle and upper classes is magnified throughout Eyes Wide Shut as the story presses on. Kubrick uses a keen sense of colour, a talent for scripting awkwardness and a talented ability to disguise power in dialogue to illustrate these socio-economic tensions. At the very beginning, while dancing with his wife at the party, Bill spots an old friend of his who he went to medical school with in the band, Nick Nightingale. Before the two even speak, the gap between these old-friends is magnified as Nightingale and the rest of the staff are dressed in white, while Bill and all the guests are dressed in black. After they reintroduce themselves the conversation is stiflingly awkward as Bill repeatedly slaps Nightingale's back and stares forward, desperately searching for an unlikely convergence in their lives which he can use in conversation.

Before the awkwardness dissipates, they are interrupted by a watching staff member, presumably Nightingale's superior, who glares disapprovingly as he sends him back to the staff quarters. Their second meeting is held at a late-night jazz club after Bill spots Nightingale's photo on the window. It is here where Bill persuades Nightingale to give him the password to the mysterious party of the elite for which the movie is now known, where Nightingale has been hired to play

the piano, blindfolded. It is significant that when this inevitably puts Bill in real danger, the only people who suffer as a result are those below him on the socio-economic ladder, like Nightingale. By the end of the film, all we know is that Nick has disappeared, possibly killed or otherwise removed by the elite after he allowed Bill to interfere in their affairs.

Kubrick's covert evisceration of the neoliberal class system and his quiet discussion of its personal and psychological impacts runs like a steady drip throughout the film. However, there is one particular sequence where Kubrick points the finger directly at the morality of capitalism, particularly its talent for exploitation and ability to translate the obscene into the financial. About halfway through the film, just after his second chat with Nightingale, Bill heads to a costume store to pick up the necessary uniform for the mystery party he plans to infiltrate. The shop is called 'Rainbow Costuming' and is run by an old man called Milich. Milich is fast asleep when Bill knocks on his door and rings his apartment number. He is furious when he discovers why his slumber has been disturbed.

But, after Bill mentions he's a doctor (not the first time he has name-dropped his profession in order to acquire acquiescence) and offers to pay $200 above the rental price, Milich is completely at ease, like he was never angry to begin with. While Bill is trying on his costume, Milich hears a bump in the office at the back of the store. There he finds his teenage daughter, in her underwear with two semi-naked middle-aged businessmen. Irate with rage he throws them out of his shop, ferociously berates his daughter as he vows to kill them and her. Shaken, Bill leaves shortly afterwards. The next morning, returning the costume, Bill notices that Milich is completely at ease once more, even though his daughter is standing next to the businessmen from the night before, right in front of him. Bill, confused and disgusted, asks why he is so calm. Milich pauses, looks at the money in the till and says, with a smile, "we came to an arrangement".

"A HINT OF LACE?"

It speaks to Kubrick's ability to translate complex ideas into film that he was able to outline such a striking critique of capitalism just below the surface of an already deeply layered work. However, his conclusions about the psychological connotations of class and the moral corruptions of economic exploitation do not exist in isolation of Eyes Wide Shut's misunderstood legacy. Overwhelmingly, the film is remembered for its depiction of conspiracy, particularly the sexual and moral depravity of the masked elite at the infamous midnight party scene, roughly halfway through the film. The audience is never really told who is at this event, nor does Kubrick present any clues. We are simply led to believe that anyone who gets even a glimpse of this world is in grave danger.

It speaks to Kubrick's ability to translate complex ideas into film that he was able to outline such a striking critique of capitalism just below the surface of an already deeply layered work.

After Bill is found out, the masked guests surround him in the main hall of the mansion. Kubrick swings the camera around each of them, as the lens stares into the gaping black chasms of their Venetian masks. Bill is saved by one of the girls present at the event, a prostitute who overdosed at Ziegler's party only to be saved by Bill moments later. This sacrifice allows Bill to leave unharmed. The next day he retraces his steps to find out who the people at the party were and what he has witnessed. He finds that Nightingale has mysteriously disappeared, with the only onlooker claiming to have seen him being escorted from his hotel bruised and battered. He approaches the gates of the mysterious mansion where the party was held hours ago, only to be handed a typed preprepared note warning him to stay away.

That night he is followed through the streets by a sinister looking man always 10 steps behind him, just watching, his stare unbroken by moving trucks or passing pedestrians. Bill stops and buys a newspaper next to shop called "A Hint of Lace?". The man, walks on and slips out of our vision, never breaking his gaze. Kubrick's use of music and mise-en-scene is fantastic here. As the watcher comes closer and closer to Bill, a slow tapping of piano keys rapidly intensifies and flutters out as he leaves the camera's view. Minutes later, Bill reads in the same newspaper that the girl who 'sacrificed' herself for him has died of an apparent drug overdose. Overcome with guilt, he goes to see the body, and cries over her pale corpse.

That same night, he is summoned by Ziegler to his pool room, brightly lit with books hanging off the walls like paintings. Ziegler reveals that he was at the party the night before and tells Bill that the girl's 'sacrifice' was an act designed to scare him. He tells us that her death was purely coincidental and that Nightingale is alive and well. He warns Bill of the danger he was in but stops short of suggesting the masked men and women of the elite are capable of the horrors he imagines. Bill is torn. Sensing his (and possibly the audience's) disbelief, Ziegler creeps up behind Bill and says, "Someone died. It happens all the time. But life goes on. It always does. Until it doesn't. But you know that, don't you?".

Implicit in all of Kubrick's work is his delight in the ambiguities his stories create. We are never conclusively told what actually happened nor are we incentivised to belief Ziegler or not. For all we know, he might have been telling the truth, and everything that happened was merely a harmless little performance with no real-world consequence. And yet, Bill's and our doubts linger. This is one of Kubrick's greatest victories, as he is able to capture exactly what it is about conspiracy which intrigues and repulses us in equal measure; a belief that there simply must be some evil force at work, and that such a bizarre, terrifying and mysterious event demands a nefarious explanation.

On one view, the elaborate and excessive displays of wealth and the shear deformity of the masked party and its sinister undertone prove that Ziegler is both powerful enough to get away with lying and too afraid of losing that power to tell the truth. However, what he says makes logical sense, and he sounds like a man who is telling the truth, frustrated by the imagination of his contemporaries. This is the central tenet of conspiracy; in the mind of a fearful and powerless individual, a hunch strung together by a loose connection of events and a display of elaborate excess can grow into an all-consuming labyrinth which eats the world from the inside-out. Here Kubrick argues that there is something about the human personality which makes it impossible for us to believe in coincidence, particularly when we are made to realise the extent of our own vulnerability and weakness.


STILL FROM EYES WIDE SHUT

"WE'RE AWAKE NOW"

However, despite an intricate and cutting critique of modern capitalism, a revealing dissection of our predisposition to conspiracy and the examination of other fantasies we live, the central anchor of our story is Bill's battle royale with his own mind, as he struggles to survive the violent end of his dream story. Will he adjust to his new reality or collapse inwards like a dying star in a vibrant and sad implosion? As he walks the late-night streets of New York, Bill spends the first half of the film trying to find consolation in retribution by searching for a way to make his wife jealous. But despite his efforts, he is never more than a snowflake drifting in the cold winds of winter and is someone who things happen to rather than someone who has any real agency. Firstly, he meets a young prostitute called Domino who brings him back to her apartment, the stench of which brings his hands to his face as he walks in the door. Seconds away from consummating this dalliance, he gets a call from his wife, wanting to know when he'll be home. Late he tells her, and hangs up. He tells Domino he has to leave, pays her anyway, and walks out. Later at the mysterious masked party, he does basically nothing, just looking through the thin veil of his insufficient disguise. He witnesses shocking acts of sexual depravity around the house but is never anything more than a spectator.

In these moments, Bill is someone who wants retribution and knows how to get it, but for whatever reason, simply cannot do it. By following his desires outside of the family unit and doing things which are alien to his marriage, he is desperately trying to equalise his relationship with his wife, making her feel the pain that he does. But all his efforts are in vain and bring him no comfort, no peace, just more terror and pain. All of his surrenders to his curiosity and desires end poorly, with Bill in more danger than he was before. Towards the end of the film, when Bill goes back to see Domino, presumably anxious to continue their encounter, he meets her roommate, who closely resembles his wife. They too are seconds away from sex when she tells him that Domino has just been diagnosed with HIV. Without a shred of knowledge 24 hours earlier, Bill was just seconds away from a sexual encounter with possibly fatal consequences. In addition, after he is expelled from the mystery party, he is followed, his saviour ends up dead and he is told that if he knew who the masked guests were "he wouldn't sleep so well." Later that night, he finds his misplaced Venetian mask sitting perfectly on his pillow, just next to his sleeping wife. He finally breaks down and says to his wife "I'll tell you everything", as the camera is awash with the icy blue light of the moon.

It's morning by the time he finishes. Shocked and pale, grasping a smouldering cigarette, Alice reminds him that they promised to take their daughter Christmas shopping that day. Kubrick cuts to a toy shop, full of light, laughter and happy families wandering around the shelves, in typical ironic form. Alice's eyes look everywhere but at Bill, unable to meet her husband's gaze. "What do you think we should do?" he says. "Maybe I think we should be grateful", she replies, "grateful that we've managed to survive". She concludes that despite his actions, despite her jealousy, despite the distance which now exists between them, that "the important thing is that we're awake now, and hopefully for a long time to come".

In this final five minutes, we learn that both husband and wife have survived the interruption of their dreaming and that they now see their marriage as it really is. Their conceptions of one another and of themselves are no longer compromised by ignorance, optimism or fantasy. And therefore, their relationship survives not despite Alice's revelation and Bill's reaction but because of it. They have each realised that the dangers they face and the threats to their own safety and sanity come not from within the family unit but outside of it. Alice's dreams of a passionate affair with a man other than her husband and Bill's desire to kill his jealously with his own adultery put both husband and wife in grave danger, isolated by a resentment which threatened to destroy them both. And yet, they survive not by closing themselves off from the reality of who they are but by opening their eyes wide, finding security, power and love in embracing the good and the bad together.

STILL FROM EYES WIDE SHUT

WHERE THE RAINBOW ENDS

Kubrick is not often labelled as an idealist. In fact, in many of his films, naivety, optimism and confidence are swiftly punished and brutally condemned. His fiercest critiques labelled him a cold and unfeeling recluse with an icy contempt for the human race. They argued that his work only depicted our worst impulses as a species, exaggerated internal and external threats and tried to prove that evil is not reserved for supervillains, but exists within every human being, mundane and extraordinary alike. This typecasting completely misses the point. Kubrick was a rare filmmaker by today's standards. He realised that film has a rare power not just to entertain, but to distract or to confront.

Therefore, directors must choose what kind of stories they tell. Do they present the world as it is? Or do they craft a fantasy which reinforces the dreams we live and the delusions which sustain them? Kubrick consistently chose to tell stories which dispelled ignorance and acted as something of a mirror, reflecting our own nature back at us. Where many storytellers decide to focus exclusively on either the good or the bad, Kubrick gave us both, leaving his audiences to form their own interpretation of which was which. Yes, his films may have been difficult to watch and yes he might have revealed difficult truths, but he recognised that reality is worth more than a million golden lies.

In many ways, Eyes Wide Shut is the perfect embodiment of his life's work, not just because it was his last film, but because it is about a man who is sleepwalking. At the beginning of the film Bill Hartford's life is a complete fantasy. He has his eyes wide shut to himself, his marriage and his own life. His relationship with his wife is just a dream. He is drowning in his own delusions. After he is violently woken up by his wife's revelation and forced to confront their relationship as it really is, he teeters on edge of madness and death. The subthemes of the film such as Kubrick's critique of capitalism and his analysis of conspiracy correspond perfectly with Bill's dream story, as Kubrick recognises that they too are just deceptions of a different kind, fantasies within a fantasy.

But the Hartfords survive. Bill and Alice's marriage endures because in her words, "they are awake now". Kubrick's most optimistic film ends with Bill and Alice leaving their dream stories behind and finding solace, strength and love in how things are, not as they would like them to be. In Eyes Wide Shut Kubrick shows us what life is like absent of idealisation and free of delusion. He warns us of the dangers of never-ending fantasy and the destructive power of individual, personal and societal delusions. He proves that there is light, warmth and great heart to be found when life is no longer only a dream.

In many ways, Eyes Wide Shut is the perfect embodiment of his life's work, not just because it was his last film, but because it is about a man who is sleepwalking.

THE TRIAL – A KAFKAESQUE NIGHTMARE

By Thomas Gedye

Structured like a nightmare, Franz Kafka's The Trial shoves and batters the reader through a legal world that lacks all sense and coherence. Through the protagonist Josef K, and his chilling account, we experience a legal system operating with a degree of arbitrariness that fogs the reader in a traumatising labyrinth. In this surreal world, the rule of law, and the freedoms and rights held by the people are an illusion. Indeed, the reality of the world becomes an illusion.

Kafka drags the reader through Josef K's trial, a nonsensical and inoperative process that distorts its victim's reality. The nightmare begins with K's arrest by police. When asked for what he is charged with, the police responds; 'As to whether you're on a charge, I can't give you any sort of answer to that, I don't even know whether you are or not'. Thus, Kafka introduces the first danger of his legal system; complete police discretion on funnelling people into the criminal justice system. Indeed, we are never told of K's charge, or even if there was a charge, but a legal system that traps unsuspecting victims is surely a veiled totalitarian state.

What makes Kafka's work so enrapturing, is his ability to craft a functioning society alongside a corrupt government. Kafka then utilises this paradox to unnerve the reader through darkly amusing yet disorienting events. A key example is when K opens a cupboard door at his work, and finds a man in a dominatrix suit, apparently caning the two police officers who arrested him. It is a truly bizarre read that one can't help but laugh at, despite the explicit horror that is unable to have any meaning derived from it. It is implausible, incomprehensible, and horrific. Yet these are the elements that defines Kafka's style. It shows how the uncontained powers of government seep outside their Parliaments and Courts, and infect even the smallest cupboard rooms of society.

"Kafka further advances his neo-horror style by disorienting and overwhelming us."

Kafka further advances his neo-horror style by disorienting and overwhelming us. Towards the end of the story K walks around with a priest in a darkened cathedral, who tells us a parable that provides some sense of how the law operates in this world. Ironically enough, their walk within the cathedral is akin to walking within the mist, and the reader loses all sense of direction. Indeed, K asks if they are near the main entrance at the end of their talk, but they are in fact far from it. This ultimately symbolises our understanding of the legal system. We might think we have some knowledge of its operation, its cruelties and injustices, but we still have no orientation on its workings and power. Kafka's positioning of the reader in a claustrophobic and unnavigable environment amplifies his warnings about a legal system that can threat nightmares into the lives of citizens, and distort all sense of morality.

The parable written in The Trial also has further warnings and revelations specifically relevant to lawyers and law students, even in the modern age. Kafka analogies the role of lawyers as gatekeepers to the castle of the legal

system. Those seeking assistance from the law are denied access to speak to the king by the gatekeeper, and told they may potentially enter later on, but not right now. The gate to the castle is open and the gatekeeper rests to one side. In the parable, the man considers bolting inside, but the gatekeeper laughs because there are doorkeepers for each doorway in the labyrinth castle. 'I'm powerful. And I'm only the lowliest of doormen' the gatekeeper says, and locked outside the citizen remains, with the gates to the castle always seemingly open.

This is perhaps the truest representation of the legal system today. No individual can directly enter the legal system, and must acquire legal assistance if they are ever to bring their case. But lawyers as gatekeepers exercise significant discretion in who they allow to enter the legal system, and indeed, Kafka observes that 'his duty seems to have been merely to turn the man away'. The conceited and simpleminded nature of the gatekeeper means he may well fully understand the law, but not understand it properly; 'a correct understanding of a matter and a misunderstanding of the same matter are not mutually exclusive'. Kafka rightly observes this weakens the function of guarding the entrance, by delaying those who have a right to enter.

Kafka's parable provides even more commentary beyond the obvious. He argues that the gatekeeper himself is cheated by the law. 'Above all, the free man is superior to the man who has to serve another'. The man may sit outside the gate all his life, but he does this at his own free will, while the gatekeeper is forced by his employment to remain there. Indeed, the gatekeeper's training and purpose is wasted by remaining in a job that is little more than standing as a dummy that legitimises the castle's power. It's interesting to reflect on because I think law is a discipline similar to politics and medicine; people study and work in those areas because they want to help people. But how many lawyers work in corporate skyscrapers, far removed from the essence of the legal system?

As I conclude I do want to make a full disclaimer that I don't think The Trial is reflective of the Australian legal system. The rule of law continues to operate strongly, and we have a healthy democratic society. The Australian legal system, despite its acknowledgeable flaws operates to assist and protect the Australian population; a far cry from Kafka's world. But that doesn't mean The Trial doesn't deserve attention for its discussion on how an arbitrary legal system can covertly infect public and private life. If 1984 is to be read as a warning to an unrestrained government, The Trial is to be read as a warning to an unrestrained legal system. Lawyers and law students have much to learn from Kafka's story, to ensure we don't walk as a formless and functionless ghosts in the nightmare of a sickened society.

BLUE

By Juliet Taylor (Listen now on Spotify)

There's a little house on the corner of Shoal Bay
I always take a detour just to see it on my way
It has windows to the roof
Light shines all the way through
The outside's painted white and
The door is blue.

It lives inside my mind,
The hope that I could make it mine
That I could curl up by the window
And waste away my time

And sometimes people say,
Why not take a break today?
But every time I breathe, I feel
The house slipping away

I'm holding out for a house on the seaside
Friends, some free time
And maybe a lover or two.
Some money to spare,
Beach waves in my hair
And the strength to laugh when I'm blue,
When I'm blue.

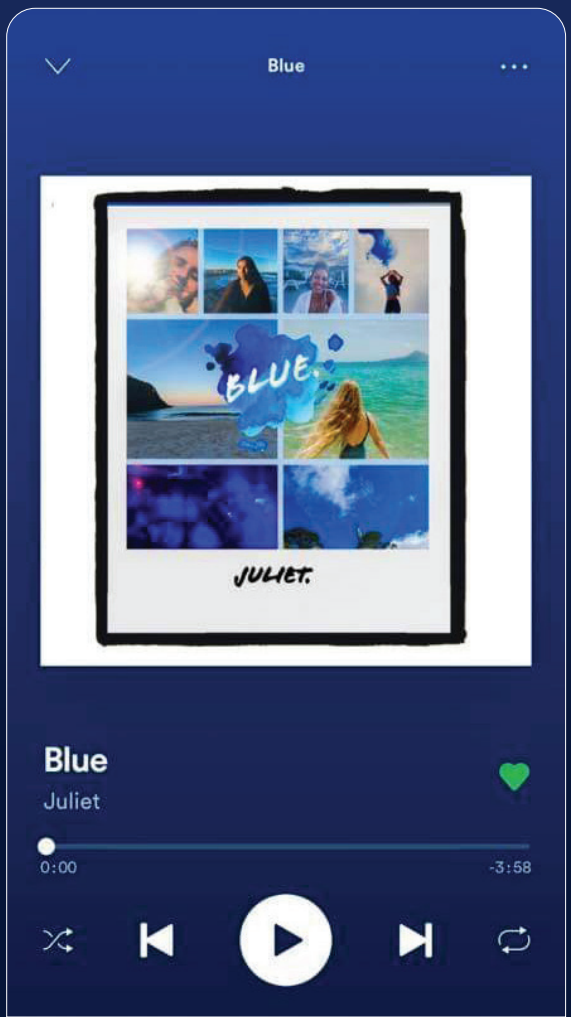
I'm working my fingers down to the bone
Just to try to feed the hope that I could call
This place my own, and
Sometimes I'm consumed
By all the things I want to do,
I want to run and dance and laugh and cry and
Live inside the view.

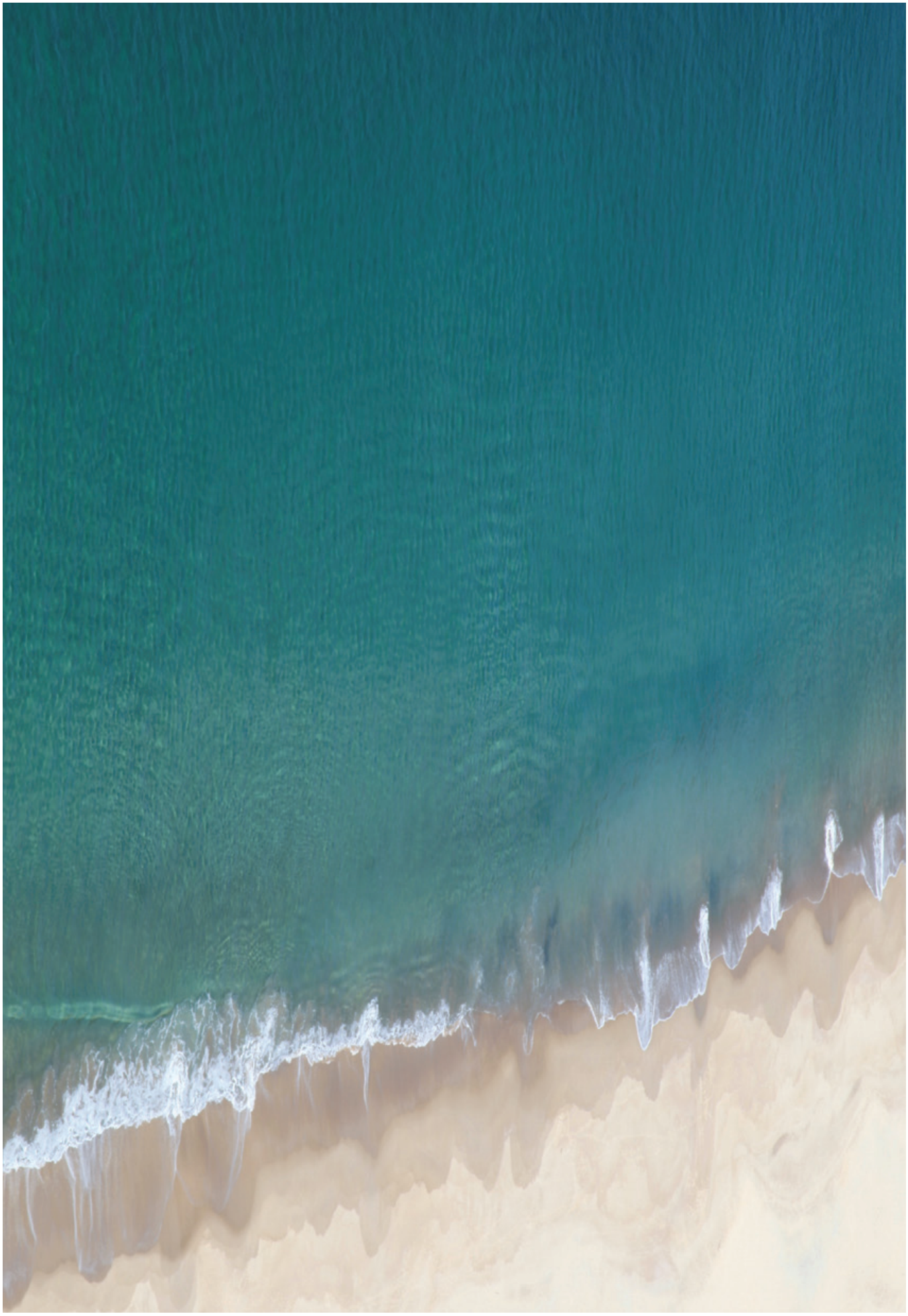
I'm holding out for a house on the seaside
Friends, some free time
And maybe a lover or two.
Some money to spare,
Beach waves in my hair
And the strength to laugh, when I'm blue.
When I'm blue.

That little house on the seaside was sold today
And I know I probably never could have swung it anyway

This old couple bought it for a holiday house, but
Maybe one day, they'll let me
Rent it out.

Oh, this dream of mine.





I WONDER IF I HAVE RESURRECTED BACKWARDS

Piper Keel

Whispered worldly wounds
beaten berated
Begins with
habit for I

have broken my own back far too many times to count
Wandering fingers slipped
and wedged
between vertebrates with a
Twist
A snap
A break
An echo whine
berates
whispered whimpers along my ribs
Have words with my heart
who is wordless
but for beating
itself up over the things it has broken
and breaks in
A bungled worship I can't bring god into.

The burned lines of thumb prints
wormed between my disks
warn their own kind
of bargain commandment with which I
Wax and wain
Burn and ferment
Bothered learning
bottled resurrection
I have a winning talent
for bandaging wounds
and broken backs
wasting healing on
Benevolent injury on the

self-imposed wasteland of being
Alive
On my belly painted
A Sistine chapel
Still wet, blotched, and
Written in renaissance
It hurts to be born
More than once
But

through cracked pelvis
I have inverted myself
into some semblance
of new
again-

OUTLANDER: A CONTENTIOUS REVIEW

By Anonymous

THE SHOW

Outlander begins with the story of Claire, a combat nurse from World War Two and her husband Frank. In 1945, the couple holiday in the Highlands of Scotland in an attempt to rekindle their love after years of war-imposed separation. Here, Claire is unexplainedly thrown back in time via magic standing stones to 1743 and into the midst of the politics of Clan McKenzie and the broader conflict between the Scottish Clans and the Crown. This time period was known as the Jacobite Rebellion where particular Scots rebelled against the Crown in an attempt to reinstall a catholic king to the throne and win freedoms for their people. As Claire tries to return to the 20th century, she is hunted by Frank's villainous ancestor, Captain 'Black Jack' Randle who has an identical likeness to her husband. To survive a dangerous legal situation, she marries Jaime Fraser. Eventually the two fall into an epic love story, Claire deciding to stay with Jaime even when he helps her find her way back to the standing stones and to Frank.

The couple, having Claire's understanding of the future, battle to stop the Jacobite Rebellion which they know will result in a victory for the Crown, the consequence being as Claire describes: "the destruction of *all* of this," the deaths of many of their countrymen and family, the destruction of the clan system, the outlawing of much of Scottish culture and the clearance and dispossession of the Scots from their ancestorial lands. Failing to stop the rebellion, at the brink of battle, Jaime takes Claire back to the standing stones so she (and their unborn daughter) can return to the safety of the 20th century. This also means Claire returning to her marriage with Frank. Together, they raise the daughter, Brianna. Following Frank's death in 1968, Claire learns that Jamie survived the Battle of Culloden and so she returns to the 1700s, arriving in 1768. Brianna soon follows and the family ultimately settle in North Carolina, America during the turbulent lead-up to the American Revolution.

Sounds enthralling, right! Well that's what I told my friend. Unfortunately, my reputation for making misguided recommendations rang true and he quickly gave up watching the show, instead begrudgingly agreeing to a limited viewing, specifically season 2 episode 12-13, season 3 episode 1 and season 5 episode 7. This forms the basis for our enticing discussion below:

X: Wait, you're not going to use my real name, are you? That'll do so much damage to my reputation!"

X: Everyone on this show is an absolute pervert, an absolute sex-pest.

Y: Ok, so let's begin our discussion

TIME TRAVEL: AN INGENIOUS PLOT DEVICE OR A CHEAP GIMMICK?

X: I personally have never loved time travel as a story telling device. I think it's a bit cheap, but I think how they do it in *Outlander* is better than a lot of other stories. It's an interesting take where the actual process of travelling back in time is very simple. We focus more on the implications of the time travel and how it affects the character's lives, less so on the ridiculous science-fiction of how they get back.

Y: They still haven't finished the source books so more lore will probably come out, but it's always been that there are some people with the ability to travel and others that don't. Claire, her daughter Brianna and son-in-law Rodger all have the ability, but Jaime doesn't. If you have the ability, you hear a buzzing noise when you go near the standing stones and that's it. It's just a device.

X: Not being fixated on the specifics because it adds to the escapism and imagination of the show.

Y: I started watching the show during lockdown so that was a big part of it for me.

X: Also, this idea that you could escape your life is very prominent in time travel. But if Claire never found the stones, I think she would have divorced Frank anyway. It might just be the terrible acting –

Y: TERRIBLE ACTING? It's Tobias Menzies!

X: Joking, joking.. but their relationship is doomed.

Y: You did see in the pilot that they travel to Scotland to relearn each other after being separated by the war and they spend no time together! Frank spends the trip researching his ancestor Black Jack with the local reverend and Claire explores the country to find healing herbs which is what actually leads her to the stones and ultimately to Jamie.

X: Even if Claire didn't meet Jaime, I don't think she would have fallen back in love with Frank after the war.

Y: In contrast with her relationship with Jaime who is her ultimate soulmate.

X: Exactly, they don't see each other for 20 years and then when Claire returns to the 1700s, they're still together and in love.

Y: I hadn't thought about that, and they're in different time periods!

THE CHARACTERS

Y: One of the things that I love about Claire from a feminist perspective is that she is a well-developed and complex woman, not just a two-dimensional #girlboss trope. Considering her strength, achievements and resilience in male-dominated environments this could be a cheap temptation. It was a really smart decision to make Claire a combat nurse because when she is confronted with all of these incredibly violent situations, and a very masculine hierarchy, she knows how to assert herself. That's been her life for all of World War Two. She stood up to men and earnt their respect and command.

In the pilot episode, one of the first times we see Claire is her saving a man bleeding out from war wounds. You can understand why she can respond to her experiences in Scotland in the way that she does which makes her a very well written character. I like that her behaviour makes sense and is accounted for.

X: I think generally the main characters are fleshed out pretty well. I don't much care for them, but they are well developed.

Y: What were your impressions of the other characters?

X: You mean all the Scottish highlanders and stuff?

Y: What was your impression of Jaime?

X: He was a cliché, the good-looking masculine Scotsman. He does the war –

Y: - He does that war...

X: Yeah, he does the war. He is a bit of a typecast, but I think the chemistry between Jaimie and Claire is really good and you don't get that in these types of shows. I don't think there is much depth to him. There is more to her.

Y: I think Claire is more interesting, but there is a lot of stuff with Jaime that you haven't seen from your episodes. The storyline of his sexual abuse and subsequent PTSD was incredibly powerful. We don't really see the experiences of sexual assault for

men in mainstream media and particularly for a character like Jaimie who is meant to be the epitome of masculinity: 'The King of Men'. We see how it impacts his idea of his manhood and the struggles of recovering from such an experience in his relationship with his wife.

Another thing is that Jaime really struggles with his responsibility as a father. Claire had a miscarriage in season 2, Brianna was born in 1948 and was raised as Frank's daughter, and his illegitimate son with The Countess of Ellesmere doesn't know of Jaime's existence as he'll lose his title and become a social outcast. There is this real grief from Jaimie that he never got to raise any of his children. It comes up a lot in later seasons.

THE HISTORY AND THE POLITICS

X: Despite its terrible characters and useless plot, I found the politics and the history of the show really interesting.

Y: It's interesting for us having a colonial history, understanding where Scottish immigration fits into that story. After the Jacobite Rebellion fell, lots of the Scottish culture was outlawed. They weren't allowed to have kilts, family tartans, Scots and Gaelic language, bagpipes and other traditional instruments, any weapons, and assemblies. It's a suppression of Scottish culture.

You also have the Highland Clearances were people were removed from their lands and the Crown tried to dismantle the clan system. Many Scots went to the colonies either to flee or for punishment. So when you think about places like Australia there is a clear connection. Claire and Jaime eventually end up following quite a common path for Scots which was settling in America. They're offered land by Governor Lord Tryon in exchange for loyalty to the Crown. They have no money nor resources, so they take the offer despite the fierce historical conflict with the Crown. A lot of Scots actually ended up being loyalists during the American Revolution for this reason.

X: That is fascinating. I do like that the show traces the history of the United Kingdom from whom we have inherited a lot, even our antipathy to England. It's interesting looking at the parallel with the Scottish independence referendum now. The show also illustrates a period of history in the 1700s which we don't really hear about. Lots of shows are based around World War Two, Roman times, more well-known areas of history. I think it's important and good that *Outlander* has brought a different period in time to audiences.

"Despite its terrible characters and useless plot, I found the politics and the history of the show really interesting."

Y: I can appreciate that. The show in season 3 moves from Scotland to Jamacia and then to America. I was initially really hesitant because Scotland is another character in the show! It feels like a love letter in a way through the cinematography and music especially. But what the show becomes is the story of immigrants and when you consider the class of people they were, they were forced to immigrate by circumstance. It then raises that powerful question of how you navigate the culture and identity of your homeland in a new country, especially one of many cultures. The harsh reality was that they weren't safe in Scotland. Their patriotism was what ironically had them exiled from their home. One powerful moment in season 5 is when Jamie has to prove his loyalty to the Crown by wearing their military uniform: the red coat. You see his identity start to crumble as he is forced to wear the garments of the people who destroyed his homeland and killed his family. It pushes the point of circumstance and that you don't know where you are going to resurface on the losing side of a conflict.

X: It's interesting that they look at failed revolutions and rebellions. In 1815 after the fall of Napoleon, a lot of the loyalists went to America and other colonies. It's a very rich vein of history to look at what people do once the rebellion is lost and life moves on.

Y: It's a side of history that I had never learnt about before. As foreigners we have this inclination to see the United Kingdom as far more homogenous than it is

X: Yeah, particularly because the United Kingdom itself is made up of all these different nations which have been bound together by conquest.

THE VERDICT:

Y: Well, I'm glad that you've enjoyed the history in the show.

X: Honestly, after watching these episodes, I hate it less and I probably could watch the show. I won't, but I could.

Y: I'm so excited for the new season! It starts on March 7. I'll keep you abreast of the developments of the new seasons.

X: God, please no.

THE TOMBS OF TREVIS

By Kieran Knox

Ah! So, you've come to see the Tombs of Tevis? You have not! Well, do you not have an interest in culture? In the scattering of humanity across the sheets-of-stars? In the multitude of limping-thoughts which make a web-to-hold that which falls?

You do not? Well! I have never been so affronted by such a lack of intellectual curiosity. You are telling me you do not wish to see the Tombs of Tevis? Which are also known as the First Iron Womb, the Last Barrier, the Forever Constant, the Spit in His Eye?

You do not? You came here for a sight, an indulgence which was not too heady, but not too thin that you wouldst swallow it in a singular gulp? My, my, aren't thou greedy. Greedy in the way few things can consume or eat or masticate. You are greedy in that all eating, all walking way. Why, why, I haven't seen such greed in the longest time.

I knew greed, do not fret that I cannot sympathise. Yes, I have known greed. However, such greed was akin to my skin. Superfluous. I have no need of it. When the Four tore space apart, and made every mother scream with their heinous crime. When the Four knocked on that singular of Doors, and made every father cry out in hideous pride. When the Few doomed Us all to this wandering state. I remember a friend, they said, they always said, that we are all vagrants.

I think they were wrong. Vagrants do not congregate. A vagrant, by definition, hath no home nor work. They move, aimless, through void-like places. They are emptiness taken into oneself, and expressed in that meandering shuffle. You know the kind. The shuffle which drags upon a floor, whether made of stars or gaseous giants. It has that faint shucking sound, as the sole of a boot catches and releases. A giant pair of lips suctioned against the side of some wet food. The sound of defeat rendered again and again unto a pitiful crown.

Oh. Maybe you don't know that sound. Regardless, we are not vagrants. For vagrants do not congregate, do not build, do not create. No, no, we are not vagrants if we could have built the Tombs of Tevis!

Perhaps I have tickled your curiosity just a bit?

Just a tad?

The littlest of iotas?

Yes? Excellent!

Well, let us look at these marvellous Tombs of Tevis, no?

I find it so very amusing that they call them the 'Tombs of Tevis'. For tombs are meant to lie beneath the surface, correct? Yet, the Tombs are spread far and wide across this rattling place called Floatsam.

Oh! Forgive me. I have not painted the scene for thee yet. Floatsam, oh, Floatsam. Well, place two hands in front of yourself. Spread them wide. Tangle the fingers into one another such as you might see in two rutting stags. Then spit into that tangle. That is Floatsam.

You are unamused. Understandable

Whether you enjoy my descriptive abilities or not, that is the closest one can come to understanding the nature of Floatsam. You must remember, that there are no bounds to human arrogance. Many understood this. What many did not understand when the Scattering occurred, was that there is no limit for human degradation. Floatsam is wonderful evidence for this.

It is the matted hair of a celestial giant, who partook of worlds and moons for his breakfast. Amidst these tangled lengths of fibre, rest a thousand-thousand ticks. Vast, fat, suckling things with wings of steel, and proboscises shaped like guns. They hid amongst the giant's hair, fearful of his retribution with soap and other forms of personal hygiene. Of course, the giant has been dead a long time, but giant hair is indestructible and everlasting. The ticks would learn, in time. Now they stretch across this gently floating skull with its long locks of greasy hair. They have built grand bridges which dwarf the cities of the Old Prison, between the strands. They tunnel deep into the cranium. Some whisper that beneath this layer of god-bone is a prize worthy of the Abandoner. I do not believe such things, steeped as I am in the material-knowledge. However, not everyone has such a neat grasp on their priorities.

I digress. The Tombs of Tevis! One would think that, perched upon the head of some celestial creature's skull drifting through the ultimate emptiness of Creation, the Tombs of Tevis have some connection to this long dead giant. Not at all. They are a creation gestated, birthed, and grown to maturity in the swollen minds of the ticks.

No, they are not actual ticks. Nor are they gigantic ticks the size of men. They are people, like you and I. Though, they have strayed in their composition towards more errant designs.

Look there, upon a single strand of giant's hair. Can you see it? The strand itself is perfect. No blemish nor erratic shape in its construction. It is blacker than the

space of night. To look at it, you must hold two colours within your mind. Black and nothing. Only then will you perceive even its softest edges. Now peer closer, squint thine eyes at this perfect strand. You are not mad, not even close. The gently glimmering beads of water, impossible in the Great Vacuum, are there. Do you see them? The tiny, scuttling figures lost beneath the shimmering haze? Those are them, the ticks, the people, us. They tend to gargantuan machines which nip, and nibble at the great strands. They are the Weepers, for they cry, and their tears float up to make these paper-thin bubbles where life may... exist. My tongue did move towards the shape of 'thrive', but that would have been a lie.

Beneath the bulk of the Weeper, sits a shanty town. This one is called Heimeinger, and is delightfully rustic. They carve symbols into bone tablets and pendants carried from the giant's skull. Heimeinger is the sound of the dead, bones rattling against one another in a windless bubble. This fascination with life after death is quite ingrained. From youth, the resident ferals of Heimeinger are extorted to pull forth their 'eternal face', meaning their skeleton. You can see it. Those children running free, between shoddy iron posts, and under bone laced carts, look at their arms. Notice how the skin is red, inflamed, itching. Notice how the skin pulls back, the muscles too, constricted by bands of bone and copper, to reveal the radius, the ulna in all their bleached glory. Wonderfully morbid, no?

The whole of Floatsam is like this. In some way or more, there is a fascination with the life beyond death. Perhaps, even, the death in life. Regardless, at the base of the Weeper, where the town of Heimeinger makes contact with this strand of eternal giant's hair, sits a Tomb of Tevis. Yes, a singular Tomb. As I said before, there are many said tombs spread across Floatsam. As in all cultures, and civilisations, particular modes of industry tend to be enshrined as a unique kind of stamp upon existence.

The Tombs are... well, you did not even want to consider them. Perhaps you'd be more interested in the other wonder of Floatsam? The Wandering Garden, which lies atop the back of a cruelly treated *thing* that has no place in this world. Perhaps you'd enjoy the Great Bone Mines? Those huge riveting cracks that span the giant's skull, whose edges teem with men and their tiny picks. Maybe the relics of the Scattering? Those graveyards at the edge of the giant's hair, which cling to the faint gravity of the skull, where a hundred-thousand void-ships lie serene as their figureheads.

No? You wish to see the Tombs? But... I do not understand, you had no desire, I had to wrangle you to even consider...

Who am I?

Well, what does it matter?

This is about you. This is about what you want to see, and I am merely accommodating...

Where are you, and who am I?

Well, yes, admittedly that first one is hard to explain.

I understand your... slight panic at this formless method of sight-seeing but I must ask you...

Be quiet.

I said *be quiet!*

You want answers? I have none. Who am I? I scarcely care what name or shape I take. Perhaps I am that boogey-man you all so fear, the Abandoner. You realize He has many names across the cesspits you have all found hovels in? Some call him the Runner, or the Dipper, or even the Vaulter. Of course, He is just God but you are all too scared to say it.

Maybe I am Him. Your God who left you behind, would that give you some peace?

No. No, it would not.

I could scarcely define for you the innumerable nouns and descriptions of the inane *things* you have all built. The Wandering Gardens, the Scattering, the Doors, the Four! Just sounds with no meaning. They have no meaning. Do you understand?

They are just dreams, built to weather an eternity.

Yes. The Tombs are amongst those dreams with no meaning.

I have tried kindness with *you*. Every single one of you, always crow for a truth. Your questions are unending. Why can't you just *accept!?*

But fine, you wish to see the Tombs? So be it.

The Tombs of Tevis are those grand rusted cylinders. A cake-tin worn by rain for a decade in grandma's backyard. They open only for the Other-Ones. Those strange creatures which are scarcely men.

Doctors, mechanics, psychologists, accountants, there is not a vital profession the Other-Ones do not sit their ragged shapes in. They are priests, and mystics. They are leaders, and revolutionaries. Their uniform is ragged strips of cloth, branded to sickly skin threaded with the steel cords of giant's hair.

They bring only the wounded to the Tombs. They carry, only, the terminally ill, the mortally hurt, the oldest of elders to the Tombs.

What is inside? Do not insult me with such a question. You are inside.

Yes. Within those rusted walls are the few given a chance at a second life. You are interred in a great sarcophagus, scavenged from the last working sparks of the solar-vessels.

You do not remember?

You were crushed. You were rent into only the most basic of human pieces. A heart. A brain. A spine. They pooled the remnants of you into jars, and carried you into this place.

The process is mind shattering. You will stand two body-lengths above your kin. You will have hands of polished metal. Your lungs with rage with fire. You will sleep until called upon. Yes, you will spend the centuries alone in a sleeping void. For how else could one begin to live the centuries as a jar of soup slaved to a metal shell?

They will wake you on hallowed days, and ask you to speak ancient wisdom.

And what will you say to them?

What will you tell your descendants in the millenniums that will pass?

What can you tell them?

You are just a child.

Lost too soon.

Wail all you like.

This is your Tomb.

POLITICS & SOCIETY

FEAR AND LOATHING IN THE AGE OF COVID-19

By Elliott Merchant

When I first started writing this in August of 2021, I was angry. Canberra had just been sent into its second lockdown. Delta had touched down in the Australian Capital Territory just a few days before. The streets were emptied as people rushed back to their homes for another COVID-19 sojourn. We didn't know how long it would last. I predicted 10 days at most. It lasted two months. Two very long months. Like most people, I tried to distract myself from a pandemic which seemed like it would never end. As the 11am press conferences rolled on, Afghanistan fell, scenes of utter desperation in Kabul flashed across television screens and the case numbers marched on relentlessly, like some invisible army, I found myself full of rage. I tried to block out the noise with whatever I could. And yet, no matter how hard I tried, that anger would come back. It was waiting for me every time. I became furious whenever I saw someone walking along the same street as me. I would quickly cross the road to avoid them, mask or no mask. In my mind, it was as if the threat of COVID-19 had been perfectly embodied by other people.

Lockdowns have this weird power to distort time. They extrapolate it by eliminating those things which make time go faster like parties, dinners, catch-ups and moments with friends. However they also reset it, dividing our memories into before and after lockdown. Such is the impact and terrifying force of these sacrifices. It's almost like when you restart a computer. The tabs you had open before the shutdown are now gone, and the restarted computer is bare, with just a blue screen starring back at you. Usually when I receive my grades for each semester I feel a blend of achievement and relief. This semester I felt nothing at all. No relief, no triumph and definitely no pride. I felt empty. Those four numbers were the manifestation of a period of time I would rather forget. Satisfaction was replaced by isolation. And then of course, suddenly lockdown was over. But my feelings of emptiness didn't go away. I didn't go back to who I was before. The lockdown version of me remained and I carried those months with me into a brave new world, one that was supposedly post-COVID-19.

This of course was not to be. As I write this, Omicron is spreading like wildfire throughout New South Wales, Victoria, Tasmania, South Australia and Queensland. Australians are facing another miserable year in 2022, after we began 2021 thinking that the worst was far behind us. Writing this in late December 2021, it looks like COVID-19 will be with us for a very long time to come. But this disease does not exist in isolation of the world it has captivated nor of the people it has infected. Many have described it as a mirror, reflecting the world back at itself through the lens of case numbers, hospitalisations and deaths. The idea that we were somehow all in this together has been outed as nothing more than a lie with the disadvantaged and impoverished more likely to suffer at the hands of this disease than the rich and the powerful. As of November 2021, Australia's vaccination rate had reached 80%, compared to just 54.2% globally. Low-income countries had averaged just 5.8%. While the developed world was planning to give its citizens a third-dose of a vital vaccine, billions of people were struggling to receive just one.

Before the pandemic, inequality was nothing more than a talking point for world governments despite being a disease more powerful and more permanent than COVID-19. The havoc, chaos and pain reaped by this disease are both a cause and a symptom of a global crisis which has smashed the neoliberal political consensus. In just ten years after the Global Financial Crisis, demagogues and charlatans took over the western world, promising that they alone could fix our problems using only a projection of strength, a rejection of ideology and a thinly-veiled contempt for democracy. And now, suddenly free-market economics are not absolute. Government is the solution to our problems and the age of big government is not over. The pandemic seems to have both marked and created a turning point in world history. Everyone is losing their minds claiming that a new world order is on the rise with a new model of global governance just around the corner. However, none of them can say what it might be. The whole world is waiting for our new normal.

But, what if this is the new normal? What if the world is waiting for nothing at all? What if instead of some realignment away from neoliberalism to social democracy, populism, disinformation and despotism become our new politics? If the pressures of COVID-19 go unaddressed and the sacrifices of ordinary citizens go unrewarded, this simmering dissatisfaction for liberal democracy could boil over into outright contempt as principles of equality, freedom and justice collapse in on themselves like dying stars. The pandemic is an inflection point that is yet to be addressed. A violent wake-up call that has so far been avoided by a world caught in a dangerous dream of its own delusions. COVID-19's reflection of the state of the world might send us insane, as we are driven mad by the scale and difficulty of our problems. Or it might mark a new era

of government, as we adapt our societies to solve the issues COVID-19 has unmasked. The choice is ours alone.

I've thought a lot about why I was so angry back in August. If I'm honest with myself I still don't completely understand it. Certainly there is plenty of fury to go around and rage seems to be our default setting as human beings these days. Across the world, there is this real and palpable sense of hatred which has manifested itself in a deep-seated fear of vaccination, government and the consolidation of power. I don't know how the world reached a point where millions of its people were offered protection against a deadly disease by their leaders and simply said "no". But they didn't just refuse. They took to the streets, waving signs, smashing buildings and threatening the lives of their elected politicians. People seem to feel disconnected from others, their societies, their governments and indeed their own lives. It's almost as if reality is too painful so they tell themselves stories of stolen elections, government conspiracies and moral turpitude at the highest levels of society.

To understand this rage, we need to go back to first principles. Violence is the physical manifestation of anger. Anger is our natural response to fear. Certainly we're afraid, but where does this fear come from? Why are people so scared? I think I was so angry because I felt powerless. Powerless in the face of a disease I couldn't see or control. Powerless to a lockdown made inevitable by a global pandemic. Powerless to a chaotic world that frightened me. Powerless to a reality I no longer understood. Powerless to my own life. This is where all anger and violence starts, with feeling that you are not in control of your own life. Nothing could exacerbate this feeling more than a global pandemic. You are powerless to a threat you cannot see, hear or touch and the only defence is to limit your freedoms for the greater good. It isolates you from your own life.

Of course, for someone like me, this is an easy sacrifice. I have been given a fortunate life. I am untouched by the horrors of poverty, born into many privileges and enjoy the support of a loving and caring family. But I'm lucky. The pandemic is my first experience of powerlessness. The truth is that there are millions, perhaps billions of people who have felt powerless for their entire lives. They have watched their fiscal agency drained away by a winner-take-all economy, and have placed their faith in countless governments only to see it trashed again and again, compromised by corruption and political self-interest. It should come as no shock that the powerless have turned to disillusion, rage and violence in the face of a disease which is inherently incapable of being controlled and to which the only solution is government intervention. In 2021, this has manifested itself in the form of widespread vaccine hesitancy, pandemic denialism and a growing belief that COVID-19 is nothing more than an intergovernmental conspiracy. Mistrust and disrespect for government in the age of a global pandemic has shown that the powerlessness of a vocal and angry few can and will jeopardise the long-term future of the many.

"The truth is that there are millions, perhaps billions of people who have felt powerless for their entire lives."

We are all brought up to believe that we're worth something and that our lives have value and meaning. No one wants to be merely a spectator to their own existence, watching helplessly as they are pushed, pulled and knocked down by forces out of their control. That is a path to madness and self-destruction. But there are simply too many people who feel like that today. We should not be in a situation where trust in democracy has collapsed to such dangerous levels. If anything good comes out of this crisis, it will be that we realised our current political-economic model was unsustainable and that individual sacrifice for the greater good must be rewarded. People must feel like they have control over their own lives, whether it be social, political or economic. If we are serious about making the most of this crisis, and we see the pandemic as the inflection point which it can be, the world will build a new system of governance which recognises that a country and indeed the world is only as strong as its weakest citizen.

The pandemic has taught us the importance of individual sacrifice for the greater good. One way or another, the recovery will teach us the importance of rewarding these sacrifices. The long-term sustainability of our democracy depends on it. How we do this is up to us. In 1979, at a similar point in history, President Jimmy Carter made a televised speech. It is now largely forgotten by history. But its message and purpose are as relevant today as they were four decades ago. One part is worth quoting in full:

"As you know, there is a growing disrespect for government. This is not a message of happiness or reassurance, but it is the truth and it is a warning. It is a crisis of confidence. We can see this crisis in the growing doubt about the meaning of our own lives. And in the loss of a unity of purpose for our nation. Too many of us now, tend to worship self-indulgence and consumption. Human identity is no longer defined by what one does, but by what one owns. But we've discovered that owning things and consuming things does not satisfy our longing for meaning. We always believed that we were part of a great movement of humanity itself, called democracy, involved in the search for freedom. And that belief has always strengthened us in our purpose ... We are at a turning point in our history ... The path that leads to fragmentation and self-interest, down that road lies a mistaken idea of freedom. It is a certain route to failure ... Let us commit ourselves together to a rebirth of the national spirit. Working together with our common faith, we cannot fail."

WHY ABORIGINAL LEGAL AID SERVICES ARE FAILING OUR FIRST NATIONS PEOPLES

By Andy Chen

Australia's shameful and continuing colonial history has long entrenched systemic injustice and racism into its institutions, and the legal system is unfortunately no exception. Both racism and a lack of cultural competency on the behalf of the legal system, coupled with the continuing intergenerational ramifications of colonisation have manifested in numerous legal issues such as the disproportionate over-incarceration rates of Indigenous Australians. Aboriginal Legal Aid services are of critical importance in tackling these issues and enabling access to justice for Aboriginal Australians. Providing these culturally sensitive and specifically tailored services encourage Indigenous Australians to participate within the legal system and receive accessible and comprehensible legal advice. While there are a multitude of services becoming increasingly more available, their lack of funding and resources inhibits their ability to provide quality legal support. Recently, the National Aboriginal and Torres Strait Islander Legal Service has raised its concerns regarding the Government's decision to not increase funding for legal assistance services in the 2021-2022 Federal Budget, stating that the decision further 'entrenches Indigenous people in the justice system, disrupts efforts towards the Closing the Gap incarceration target, and minimises the national crisis of deaths in custody'. Their statement further amplifies the growing sentiment that Aboriginal Legal Aid services are simply, in their current form, insufficient to meet the growing demand and need for their services.

One pertinent consequence of the underfunding of NATSILS' is the shortage of legal aid available to Indigenous Australians regarding civil matters. Many state-based legal aid organisations have described how a significant proportion of civil and family law service needs are unmet due to the lack of lawyers and funding. Research commissioned by the Victorian Legal Aid and Victorian Aboriginal Legal Service revealed that areas such as housing, centrelink disputes and child protection claims are severely unresourced, due to a majority of resources often being siphoned towards criminal matters. In certain areas such as the Northern Territory, there is an estimated wait time of one month to even receive basic civil services, and many people are forced to travel long hours into inner city areas to receive support, which is often not financially feasible for them. The Civil Law Division of Legal Aid NSW has outlined how the neglecting of such claims can have catastrophic social consequences such as the breakdown of family, removal of children and incarceration, as well as the degradation of mental health and wellbeing of First Nations Peoples.

There are also significant geographic barriers to the scope of outreach Aboriginal Legal Aid services are able to provide. Many Aboriginal communities situated in rural and regional Australia are often left with little to no access to civil or legal services, due to the severe financial constraints and limited time that NATSILS are restricted by. The cost of travelling can be significant, particularly to remote areas and NATSILS' are more often than not are the sole service available to a large catchment area, which significantly drains their resources and capacity to provide face to face services. Conducting remote online meetings with clients is also difficult due to the unreliability of electricity and internet in remote communities, which can render the quality of communication and advice provided very poor. The National Family Violence Prevention Legal Services have also described how these online forms of contact also prevent the building of trust between clients and solicitors and may often be inappropriate when dealing with sensitive or traumatic matters such as domestic violence. There have been proposals to parliament to increase funding for outreach programs, with the Indigenous Legal Needs Project suggesting that

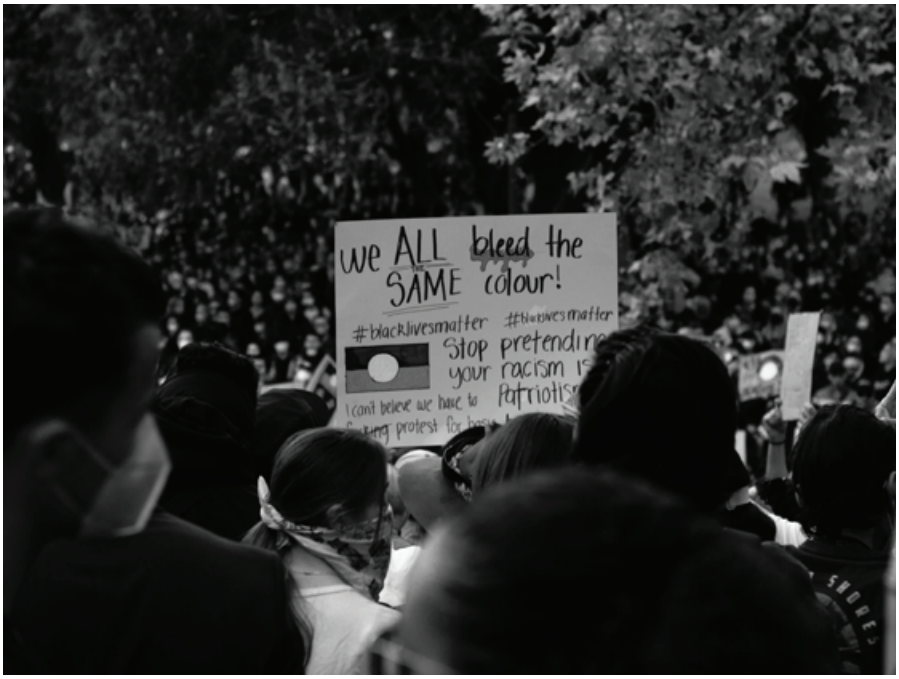
more permanent legal offices need to be established in regional and remote areas to increase the frequency and depth of services provided.

A lack of cultural awareness and competence has also significantly inhibited Indigenous Australians' ability to access legal help. The National Justice Coalition has emphasised the importance of community controlled legal services to ensure matters are dealt with in a culturally appropriate manner, particularly because of the widespread mistrust in the legal system due to centuries of racism, dispossession and trauma. However, such community based services are difficult to implement without funding, as are also shrouded by logistical issues. For example, there is a significant shortage of Aboriginal and Torres Strait Islander interpreters across Australia, even in major language groups, particularly due to the difficulty in ensuring appropriate training and qualifications. This can cause significant communication issues as well as undermine due process, particularly when the client does not understand English and are hence unable to comprehend the charges or court processes being decided. Interpreters are not only critical to providing culturally competent services and instructions within the courts, but also enabling community education about legal issues. Many Indigenous Australians, particularly in remote/regional areas are often unaware of their legal rights, obligations or any remedies they may have access to due to the complex nature of the system, and increasing the number of interpreters, as well as education programs, can assist in bridging the information gap.

While Aboriginal legal aid services strive to provide accessible and quality services, their efforts are severely undermined by their limited resources.

It is of severe importance that the government looks to increase the funding of these services to ensure Indigenous Australians' have access to efficient and thorough legal support, and also seeks to implement education and outreach programs to build awareness about legal rights and participation. A right to access legal support is of paramount importance in any society, and Australia should look to further improve the quality of services it is able to provide.

While Aboriginal legal aid services strive to provide accessible and quality services, their efforts are severely undermined by their limited resources.



WHAT TEXAS' "HEARTBEAT BILL" FORESHADOWS ABOUT THE FUTURE OF LAW MAKING

By Sharlotte Thou

At the time of writing, Texans seeking abortions in their home state have effectively been given two options: to receive illegal treatment, or to perform abortions themselves. It follows the passing of the "Heartbeat Bill" (Texas Senate Bill 8), which took effect on September 1. The bill has controversially made it illegal to intend to, or to actually "aid or abet" an abortion in Texas, from as early as 6 weeks - before many know they are pregnant. It overturns the landmark 1973 *Roe v Wade* decision, which ruled that pregnant individuals possess a constitutional right to an abortion. It strikes one as a scene plucked from *The Handmaid's Tale* - one that Australians might watch with a detached but unsettling sense of dread – but the resulting ramifications to the future of law-making are relevant to all.

The abortion debate - described in *The Atlantic* as an "unwinnable" argument - has polarised the US political sphere. It is a question couched in religion, ethics, and science, and one that ultimately boils down to a person's values and lived experiences. During Trump's term, we saw the president himself attend anti-abortion rallies, saying he believed in "defend[ing] the right of every child born and unborn to fulfill their God-given potential". Conversely, public response to the bill has been largely vitriolic, with current US President Joe Biden criticising the bill for "blantant[ly] violat[ing] the right established under *Roe v Wade*" and pledging that he "will work to protect and defend that right".

While the abortion debate presents varying positions on the morality of abortions, laws are not necessarily required to accommodate a particular ethical view. The Ethics Centre summarised that "the law...creates a private space where individuals can live according to their own ethical beliefs or morality". In fact, to conflate ethics with the law is problematic as it is entirely possible to obey the law and act "unethically". In some situations, to truly act in a manner that we believe to be the "gold standard" of ethics, it might be necessary "to go beyond our legal obligations". Accordingly, whether you believe that abortions are fundamentally "right" or "wrong" or should be allowed or prohibited has less to do with the law than you might think.

It's easy to dismiss arguments we personally don't agree with, and given the complexity of the debate, it is unlikely that there is a clear-cut answer. However, the creation of a bill almost entirely founded on opinion – an opinion of those unlikely to be directly affected by abortions and additionally one that ignores the multitude of harms arising from the bill– is cause for concern.

The "Heartbeat Bill" ignores the many harms that the bill creates. The bill will create additional risks for "low-income women, women of colour, trans men and gender queer people, as well as victims of intimate partner violence and sexual abuse", who already navigate a health system "stacked against them". Further, the introduction of illegal abortions ironically fails to reduce the number of abortion procedures performed, but instead elevates the risks pregnant women face, including "heavy bleeding" and "life-threatening infections" that result from performing the operation outside of a controlled medical environment.

Moreover, another harm rests in the message the bill perpetrates regarding the treatment of pregnant people. A bill as invasive as this one gives them little autonomy over their bodies, a violation of fundamental human right. This autonomy is further attacked when this restrictive legislation has been created by male politicians who are unlikely to undergo abortion procedures, and who effectively dictate a person's bodily autonomy. Further, the bill bans abortions resulting from sexual assault, which further degrades their rights and offers them little sympathy and support after an undoubtedly traumatic incident. Further, the waiving of legal fees and $10,000 awarded to the prosecutor if successful, acts as a monetary incentive for private individuals to sue, thus encouraging and exacerbating these harms.

If successful, the bill sets a precedent for future standards of law making –that in the context of law creation, a seemingly correct opinion held by the powerful few overrules numerous and dangerous practical and social harms. It also underlines and wholeheartedly supports the notion that laws are made by the powerful, with the constituents it primarily affects having little say.

The bill introduces unheard of legal provisions that renders the legislation virtually irrefutable. Specifically, private citizens are given the power to enforce laws, as opposed to state officials, which effectively safeguards the bill from being repealed. Josh Blackman, a constitutional law professor at South Texas College of Law Houston said, "Planned Parenthood can't go to court and sue Attorney General [Ken] Paxton like they usually would because he has no role in enforcing the statute.". This view was echoed by Jenny Ma, a senior attorney at the Centre for Reproductive Rights, who stated "anti-abortion politicians designed the Texas Law this way to try to insulate it from federal court review".

A bill as invasive as this one gives them little autonomy over their bodies, a violation of fundamental human right.

Thus, the bill represents how lawmakers have implemented hyper restrictive laws that are shielded from key tenets of our justice system, including democratic freedom and law reform - a terrifying window into the future of our legal system.

So, what comes next? As of 6 October, the law has been temporarily blocked by a US Federal Judge, with White House press secretary Jen Psaki acknowledging the ruling was "an important step forward", but ultimately "the fight has only just begun".

THE LAW

AU PAIRS – THE GOOD, THE BAD, AND THE UGLY

~*Au pair,* meaning "*on par with*".

By Andy Chen

The first prominent use of that French phrase was by the writer Honore de Balzac in 1840 in his work "Pierrette", describing the relationship between the two parties as economically equal. However, the modern world one hundred and seventy years later has turned the words "au pair" into one carrying mixed or negative connotations for many.

Au pairs are generally characterised as foreigners (many on gap years) and looking to diversify their cultural experiences, and were popularised in the expanded drastically after world war two. They undertake a variety of household tasks ranging from cooking, cleaning, and childcare, in exchange for room and board, fulfilling the notion of economic equality (or at least, as opposed to much worse working conditions as a slave or servant in the 1800s.) They predominantly seek employment in developed North American, European, or Oceanic countries.

Whilst the broad nature of expected tasks to be completed leaves a degree of freedom and flexibility, it also results in a lack of legal or structural framework through which the industry can be regulated. Some 60% of au pairs in Australia are undertaking more than the "reasonable" amount of work[33], and often are expected to complete extra tasks without additional renumeration. With such a broad scope of tasks and experiences, the overall relationship is described as "oppressive, but diverse".[34] Contrastingly, the actual composition of au pairs are less diverse, where Caucasian females of the middle to upper class whom are well-educated and from urban centres make up a majority of au pairs.[35]

The legal framework of each countries, or lack thereof,plays a pivotal role in the experiences of au pairs. On one hand, it allows for the easy hiring of au pairs, causing an expansion in this industry. As compared to hiring nannies or other forms of domestic labour, hiring au pairs in England requires no social insurance fees, and are not liable for tax.[36] Both the USA and Britain lack federal childcare regulations, and these areas are rather subject to state control and funding[37] which provides a lax set of laws and allowing for au pairs to replace domestic workers with less training and qualifications. The lack of standardised regulations specifically governing au pairs in Europe also plays a role in this boom.

However, the absence of such laws is also to the significant detriment to au pairs. Australia, Canada, and all European union countries have zero regulation whatsoever as to the au pair industry, including the immigration of au pairs. The only form of guide that exists in the non-binding European Agreement on Au Pair Placement[38] as the purpose of au pairs is primarily having a "cultural and non-economic purpose" is ignored by families who exploit au pairs with misguided impressions of cultural exchange. 60% participants are paid less than minimum wage (factoring in payment in the form of food and housing), and the average working week lasting 34 hours.[39] This is evidently a thinly veiled disguise through which wealthy families in developed nations are economically exploiting these au pairs. What is most concerning, is the majority did not sign a written agreement prior to starting placement.[40] This becomes even more problematic when 48% state they worked different hours than agreed,[41] and 32% indicated one or more conditions of work were worse than agreed.[42] With recourse from oral contracts being extremely limited, especially when these contracts do not include essential contractual terms such as hours worked each week or conditions, it is difficult to claim extra compensation.

Whilst working conditions form the bulk of an au pair's possible (and likely) ordeal, living conditions also play an important role. 41% state they encountered a "serious problem" in placement, which includes verbal abuse, non-payment, lack of privacy, lack of freedom both physically and in contacting family and friends at home, breaching visa conditions as well as others.[43] It is concerning that there has been no increase regulation in so-called developed countries in this industry, and highlights that even with substantial economic growth, living conditions and happiness may not grow for residents.

Furthermore, the au pair program is characterised first and foremost as cultural exchange, but unfortunately one in five are unincluded in family activities outside the home,[44] which likely further detracts from the experience.

The unregulated status of the industry is also affected by a lack of knowledge on the industry and dispute resolution in regards to the above conditions. Less than 4% contacted the au pair agency or the Fair Works Ombudsman (an independent statutory agency of the Australian Government), 6% contacted the police, and the majority of source of assistance was social connections/social media.[45] Examination of these statistics in conjunction with the statistics surrounding "serious problems" highlight a serious issue: some 31% of serious problems of which the majority contain a legal element are not reported to a party with legal powers (police, their contracted au pair agency, fair work ombudsman, etc.), meaning the bulk of these issues remain undocumented and unresolved, causing

"Whilst the focus of inadequate regulation is on the detriment incurred by au pairs, this issue extends to the wellbeing of children."

further strife to both the au pair directly impacted but also future workers.

Whilst the focus of inadequate regulation is on the detriment incurred by au pairs, this issue extends to the wellbeing of children. Less than half of au pairs held a Working With Children Check (a mandated statutory requirement in all Australian states to engage in child-related work), leaving children vulnerable. Furthermore, the improper job description on the part of companies who facilitate au pair placements mischaracterise the job, leading to unqualified or unenthusiastic participants in the program. The largest au pair matching company describes the role as including only "limited childcare... where the au pair is [not] a nanny".[46] Such companies also place undue stress on au pairs to work longer hours through deceptive advertising towards families deciding on taking in an au pair, describing it as "great value... regardless of the number of children to care for."[47] In turn, this leads to unrealistic expectations from host families, leading to lower quality childcare (but also harsher working conditions for the au pairs.)

The legal framework, particularly in the United States (and the US deserves such a closer examination given it is the largest host of au pairs), is designed, whether wittingly or unwittingly, to leave oversight (if any at all) to private agencies who have a financial incentive to portray a utopian image of au pairs. Interestingly, the au pair program is classified under the Department of State under the J-1 program[48] and not the Department of Labor, as common-sense might dicate. However, there are some regulations regarding au pairs, such as providing a maximum of 45 hours of childcare per week, a minimum weekly wage of 195 dollars, and being required to attend tertiary institutions for 75 hours during the course of the program.[49] These regulations, such as a cap of 45 hours a week fit much closer to the definition of full-time work and not cultural exchange, and the General Accounting Office described the 45 hours of work as "the engine.. that carried the program.[50] However, it has been refuted in hearings that au pairs are not labourers, and require no oversight from the Department of Labor in terms of working conditions, rights, or preventing damage to American industry.[51] The lack of oversight from the appropriate governmental department, combined with the ease of exploitation generally (as discussed in above paragraphs), paint a bleak picture for au pairs in America, but also across the world.

Having painted that picture, it is self-evident that reform must take place. These reforms include splitting the Au pair program into two: one predominantly designed for cultural exchange with less than eight hours of work per week, and one of the domestic carer role which would be increasingly regulated.[52] However, this has been regarded by some as unrealistic given the low likelihood of governments adopting this recommendation, and instead focus on change in the governing body of au pairs for the US (and the adopting of greater regulation in general), as well as improved working conditions.[53]

Personally, I believe that the au pair program needs not only the obvious and well-researched changes described in the sources above, but also rebranding and shifting the public perception of the program. The notion of "cultural exchange" must cease to exist, and be replaced with the reality of domestic work. The numerous stories detailing abhorrent experiences as an au pair, none of which are included in this article in favour of empirical evidence, are often lost in the white noise of other media and regarded as one-off experiences. It is my hope that this article's reliance on empirical evidence draws greater attention to the broader issue of the state of au pairs worldwide, and the widespread nature and truth behind these testimonies. Furthermore, research into this issue is also severely limited, with few recent reports, and without research, change is unlikely to be adopted.

I do not deny that some au pair experiences are as described by agencies or by governmental institutions, and facilitate cultural exchange. Regrettably, it is not the case for many. As law professor Janie Chuang states, "navigating this fraught terrain [of the au pair industry] without the benefit of rules... requires vigilance".[54] Whether au pairs will experience better conditions is yet to be seen, but collectively we must call for change for that to occur. Vigilance, is not an act undertaken by one, but by all.

THE STUDY OF ALBRECHT DÜRER'S FOUR HORSEMEN OF THE APOCALYPSE THROUGH THE EYES OF A STUDENT OF *BEYOND CHAOS*

By Christina Juyeon Lee

In March 2020, the World Health Organisation declared the outbreak of the novel coronavirus disease (COVID-19) to be an international public health emergency.[55] Fast forward to July 2021, 28 Australian National University students took a course titled *Beyond Chaos* in order to see, think and feel differently about this pandemic. I enrolled in order to find a tool to better process this particular epoch of my life. Professor Desmond Manderson opened our class by stating that what is revealed and changed by COVID-19 is different. I immediately became hooked on the revelations that this class enlightened me about our uncertain times.

The aim of this essay is to examine Albrecht Dürer's *Four Horsemen of the Apocalypse* ('Four Horsemen') and draw connections to the lessons I learnt in the *Beyond Chaos* course. I will follow the distinct style of our course: to examine and discuss the art, with close attention to my personal reflections and observations. Thus, I acknowledge that others may find different connections to Dürer's Four Horsemen. This essay also represents my direct application of the tool of 'critique' that Wendy Brown highlighted to us. As Brown suggests, critique allows us to find something to do in the 'dark times'. [56] I am not trying to escape from the 'unbearable present',[57] but to re-examine and reinterpret Dürer's work in order to embrace the 'dark times' and reclaim it as something else. [58] To achieve this, the essay is divided into three parts: the audience, symbolism and message of Dürer. For each part, I will discuss the representation of Dürer's image during its time, its relevance today and then share the revelations I have personally encountered through *Beyond Chaos*. Notably, these lessons include that fear is the common zeitgeist of the present times, COVID-19 does discriminate, COVID-19 was *not* unprecedented and finally, that crisis represents a crossroads. I will also share how I propose to reclaim Dürer's work in our uncertain times.

Dürer's Four Horsemen is the most famous piece from his series of fifteen woodcuts of the Book of Revelation, published in 1498.[59] This woodcut, depicting the scene from Revelation (6:1-8) has had a huge influence on subsequent artistic representation of this text.[60] Notably, this woodcut medium made famous by Dürer allowed later artists to more freely illustrate subjects of their choice,[61] and its affordability meant that lower and middle classes could also have access to the art market.[62] Erwin Panofsky claimed that 'like Leonardo's *Last Supper*, Dürer's Apocalypse belongs among what may be called the inescapable works of art, which no later artist could or can ignore'.[63]

There are differing views on what the Four Horsemen represent in Revelation and also in Dürer's depiction. Some interpret the white horse as the emergence of the Antichrist, black horse as starvation or famine, red horse as war, and pale horse as pestilence or death.[64] Regardless of one's interpretation, Natasha O'Hear and Anthony O'Hear claim that the Four Horsemen have become a 'potent and all-encompassing visual symbol of all things apocalyptic, a lens through which all sorts of disastrous events can be pictured'.[65] Certainly today, numerous artists and media platforms have appropriated the Horsemen for their own ends.[66]

Their mere presence in political satire, often taken out of its religious context,[67] suggests instant connotations of disasters.[68] In 1977, the Sunday Times published a political cartoon in advance of the G7 meeting, with Four Horsemen charging towards world leaders such as Jimmy Carter.[69] The Horsemen in this cartoon are almost identical to Dürer's, except that they carry labels such as 'unemployment' and 'poverty in the third world', signifying that in the face of these grave issues, the G7 meeting is simply a 'piecemeal gesture'.[70] Similarly, the Canberra Times published an opinion piece about COVID-19 in January 2021, making direct references to the Horsemen to emphasise the calamities of this pandemic.[71] The continuous use of this imagery in the media signifies their prevailing relevance to today's society. What significance does it carry in relation to *Beyond Chaos*? A closer look at the audience of Dürer's depiction allows us to make the first connection to our course.

PART I: THE AUDIENCE

Dürer transformed a non-threatening image into a rather frightening woodcut. The Horsemen, who, according to the Bible simply 'rode out'[72] and do not come into explicit contact with the humanity, emerge charging upon a crowd of helpless victims.[73] Panofsky claimed that Dürer 'did everything in his power to transform mere situations into dramatic action',[74] and inject fear, motion and danger into climatic moments.[75] Consequently, his illustration perfectly reflected the fear of the age,[76] characterised by 'apocalyptic expectations and eschatological speculations'. [77]

From 1490 to 1650, the European mentality was influenced by anticipation of the apocalypse foretold in the Book of Revelation.[78] This era was filled with wars, pestilences (such as syphilis and continuing outbursts of plague), earthquakes, false prophets and afflictions.[79] Thus, all social classes witnessed various signs of the Last Days and lived in exacerbating fear.[80] As the mood of the audience of Dürer is well reflected in his work, can it also capture the mood of the current world facing our version of the Horsemen? With sadness, I answer affirmatively.

In our first class, we shared our personal experiences of this pandemic. Through our discussions, I learnt that like myself, people are scared. Like how Dürer well understood the fears amongst his contemporaries, I was starting to grasp that fear is also the common zeitgeist of the present times. I shared about my fears around losing my loved ones. My classmates expressed their worries around social isolation, financial instability and general insecurity about the future. Various studies confirm that this fear of uncertainty is shared universally beyond our classroom walls.[81]

Our discussions also revealed that although fear is a commonly felt emotion during this pandemic, its source and gravity differs greatly depending on one's societal and geographical position. For instance, I am scared about the potential prolonged separation from my family overseas due to the strict border closures, but my classmates who live close to their relatives could not relate to me. Similarly, as someone who can fortunately work from home with the support from my employer, I could not relate to my peers who were scared about losing their jobs. Overall, studying the mood of Dürer's audience has allowed me to reflect on today's shared emotions. A further look at his use of symbolism takes us deeper into both his and our world.

The Four Horsemen, from The Apocalypse, 1498, Albrecht Dürer, German

PART II: THE SYMBOLISM

Egalitarian Nature

In contrast to the almost serene earlier illustrations, [82] in Dürer's version, we see human victims in horror as they are being trampled upon by the Horsemen.[83] Panofsky calls this presence of the humans a touch of 'trenchant realism' that Dürer's predecessors lacked.[84] Furthermore, Dürer also emphasised the 'egalitarian nature of the apocalypse'.[85] Our attention is especially drawn to the bishop (marked by his bejewelled bishop's mitre) in the bottom left-hand corner of the image.[86] It is not just commoners who are crushed by the Horsemen but a bishop too. Simply, no one is to be spared. [87] This opens up an important connection to a lesson of Beyond Chaos.

ANU has proudly claimed that 'the virus does not discriminate, and neither do we'.[88] Didier Fassin states that such a belief is a 'dangerous illusion'.[89] Likewise, *Beyond Chaos* revealed that the belief in the egalitarian nature of COVID-19 is false. In a sense, we have all been affected by this pandemic. My colleagues in Nepal, my family in Korea and my friends in Switzerland have all experienced at least one lockdown during this pandemic. Nevertheless, it is quite frustrating to see privileged public figures posting on social media that 'we are all in this together'.[90] COVID-19 has not created a degree of equality; rather it has disproportionately affected society's already marginalised groups.[91] Michelle Bachelet, UN High Commissioner for Human Rights claims that due to COVID-19, 'the poor have gotten poorer, and those suffering discrimination have endured worse discrimination'.[92]For instance, Asian communities have become targets of derogatory language due to the initial naming of COVID-19 as the 'Chinese virus'.[93] As we discussed in our 10th seminar, there are no naming practices that are politically innocent. Unfortunately, the increases in racist rhetoric have also left these communities more vulnerable to racist attacks.[94]

Furthermore, our care and work session revealed that women are also disproportionately affected by this pandemic. During the lockdown period in May 2020, hours of care work increased by six hours every day and people's homes also became a predominant site of economic activities due to work from home mandates.[95] As children were required to stay at home, care needs within households also increased, and this heavier burden fell greatly on women.[96] Globally, women perform over 75% of unpaid care work today.[97] Nancy Fraser warns that if we continue at this rate, our capacities (especially women's) to provide care will be 'stretched to the breaking

point'.[98] Furthermore, gender-based violence is increasing exponentially as many women have no choice but to be in lockdown with their abusers.[99] Haley Foster, chief executive of Women's Safety NSW (an advocacy group), has called 2020 the 'worst year for domestic violence'.[100] Ultimately, this course made me realise how naïve it is to claim that COVID-19 does not discriminate. Thus, Dürer's view of the egalitarian nature of disasters cannot be reflected in our current world.

Unprecedented Nature

Moreover, like the bishop, O'Hear and O'Hear points out that the woman at the front of the image can also be perceived as an important symbolism.[101] She has her sewing tools still tied to her waist and it appears that she has just come from her sewing. Through her presence, O'Hear and O'Hear claim that Dürer intended to convey the unprecedented nature of the apocalypse – that no one can predict its arrival.[102] Is COVID-19 actually 'unprecedented' as politicians have repeatedly claimed? [103] Contrary to Dürer's illustration of unprecedented calamities, this course has opened my eyes that although COVID-19 is a novel virus, the story of pandemics is 'not novel'.[104]

In particular, when examining Egon Schiele's *The Family* (1918) and the 17th century plague quarantine instructions that mirror many of our current measures[105] I strangely found comfort in learning that the humanity has already dealt with the consequences of infectious diseases.[106] Certainly, 'history may not repeat itself, but it rhymes'.[107] During the plague in 1348, the poet Petrarch naïvely wrote to his brother 'oh happy people of the future, who have not known these miseries and perchance will class our testimony with the fables'.[108] Despite the reoccurrence of pandemics, like Petrarch, I write hopefully that our future generations will only have to study pandemics of the past, and not have to ever experience one.

Additionally, not only did I find comfort in learning about the past pandemics, but I also found myself questioning, when will we finally learn? On the second day of our class, I encountered David Waltner-Toews' claim that the 'wisdom of the pandemics' will eventually come to us if we gather 'all of our knowledge from multiple perspectives and actively engage in conversations'.[109] On the last day of the course, I found hope that Waltner-Toews' vision will one day eventuate as I experienced our interdisciplinary class, the live discussions and everyone's attentive ears. My only wish now is that these conversations will live on beyond the end date of this course. I echo Fassin's words that, 'one should never let a good crisis go to waste'.[110]

PART III: THE MESSAGE

Through the use of these powerful symbols, what overall message did Dürer's wish to convey to his audience? To understand his message, we must first attend to the etymology of the Greek word 'apocalypse', found in the title of his work. Originally 'apocalypse' meant to unveil things not previously seen: a *revelation*.[111] Through his piece, Dürer wished to send a wakeup call to his audience, inspired by what was unveiled in the final book of the Bible.[112] In the Book of Revelation, the Four Horsemen is a 'revelation of Jesus Christ given to John the Apostle on the island of Patmos at a time when all seemed lost for the Church'.[113] It is a message that no matter what kind of calamities arrive (death, famine, war or plague), there will be a 'healing of the nations' for those who believe in Jesus Christ.[114] Thus, Dürer created his woodcut to not only instill a sense of fear amongst his audience in the 15th century, but to also evoke a religious response from them: to repent and believe before catastrophic events sent by the divine arrive.

What message can it send to the audience of today? Today some may interpret Dürer's piece as the 'remainder of any prophecies of doomsday that belong to another time',[115] and some will accept it for its theological significance. We do not know whether we are living in the Last Days as believed by the people of the 15th century. However, *Beyond Chaos* made me realise that things that were previously ignored or simply unseen are now being unveiled by COVID-19. At the beginning of this essay, I foreshadowed that I would reclaim Dürer's piece as something other than a depiction of the 'dark times'. I suggest that we should embrace and reclaim the Horsemen as 'figures looming on a horizon of change'.[116] In that sense, Dürer's woodcut can be timeless to anyone going through any kind of crisis. After all, the Book of Revelation is about hope as it signals a beginning for those who believe. Therefore, unlike the helpless people illustrated by Dürer, we can prepare ourselves to embrace grand changes when they arrive.

FINAL REVELATION

Looking deeply into the audience, symbolism and message of Dürer's Four Horsemen has allowed me to share the different revelations that *Beyond Chaos* has unveiled to me of this pandemic. It was also an opportunity to compare Dürer's world to our society, especially from my perspective. Firstly, both the people of Dürer's time and today share the common emotion of fear during uncertain times. Moreover, COVID-19 affects people disproportionately unlike Dürer's belief in the egalitarian nature of disasters and finally, this pandemic is not unprecedented. By examining Dürer's work, we were not only introduced to the audience and the zeitgeist of his time, but it also allowed us to reflect on the current pandemic.

In line with the title of our final class, the last question to be answered is, *what now? what next?* I enrolled in this class because I wanted to find a tool to navigate through this pandemic. I found it when Professor Manderson illustrated how a crisis represents a crossroads. That is the greatest revelation offered to me by this course. A crisis is a moment of immense vulnerability, but also a moment where everything can change depending on the choices we make. The students of *Beyond Chaos* have been reminded of a powerful tool that we all carry: the power to make choices facing our version of the Four Horsemen. We can either sit defeated like Schiele in *The Family* waiting for the final doom to arrive or we can embrace Nietzsche's *amor fati* and persist.

Finally, Dürer insisted that the chief requirement of a good artist is to 'pour out new things which had never before been in the mind of any other man'.[117] As designers and pioneers of our own futures, we are at a crossroads. I urge people to reflect on the choices we can make to liberate people from their fears around uncertain futures, to give support and attention to those that are disproportionately affected by COVID-19, to continue active discussions so the wisdom of pandemics can eventually arrive and above all, to be hopeful. As Brown claims, 'dark times are episodic and finite'.[118]

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OBLIGATIONS TO THE CLIENT: THE LIMITATIONS OF THE ADVERSARIAL SYSTEM IN ATTAINING ENVIRONMENTAL JUSTICE

By Neha Kalele

Though the legal system is frequently hailed as being amongst the fundamental means of de jure reform, the issue of environmental justice exemplifies the strict ethical framework that constricts the role of lawyers and can ultimately limit the success of such reform. The severity of the environmental challenge means that lawyer neutrality and traditional notions of legal ethics are no longer acceptable, and the consequences of inaction for individuals, the environment, and the rule of law will be inexcusably injurious.

I. OBLIGATIONS TO THE CLIENT: THE LIMITATIONS OF THE ADVERSARIAL SYSTEM IN ATTAINING ENVIRONMENTAL JUSTICE

A central tenet of the Australian adversarial system requires that lawyers act in their clients' best interests.[119] The legal and fiduciary obligations lawyers owe to clients, second only to their duty to the court, is one that forms the basis of the lawyer-client relationship and allows for faith in the conduct of solicitors. This adversarial focus relegates questions of morality and environmental injustice to a position within which they are mere consequence of lawyers acting in the client's best interests.

The effectiveness of such a partisan approach is apparent and somewhat unsurprising considering the contractual nature of the lawyer-client relationship. However, increasingly, this form of zealous advocacy has faced criticism for its failure to reflect the social impact of the legal profession. This theoretical conception of the adversarial system being a sparring match between two equally placed lawyers with clients of similar standing rarely forms the reality in issues of environmental advocacy. Legal clinics and public interest offices, such as the Environmental Defender's Office, typically face resource barriers associated with representing individuals or activist groups that are unable to provide the same funds that major corporations or lobby groups possess.

Another consequence of this systematic imbalance is its tendency to promote the use of underhanded tactics that frustrate the spirit of the law and regard potential moral consequences with willful complacency.[120] The use of an "attack dog" strategy by Adani's contracted firm AJ & Co Lawyers that has included attempting to bankrupt an Indigenous opponent and essentially waging "war" on protesters is indicative of such consequences.[121] Whilst lawyers in such cases face some societal repercussions, such conduct is often justified by lawyers' "role-morality" that excuses them from general moral conceptions of environmental protection. Indeed, such a notion allows lawyers to 'bring about with impunity the sort of consequences which they or others would clearly regard as immoral or unjust were the context not that of legal representation'.[122]

If the purpose of law is to provide a method for redressing wrongs, the extension of this to detrimental environmental negligence or misconduct seems only practical. Yet, the fairness of trial and the ability of each individual to have access to competent representation is a central tenet of law that protects even the worst criminals. Altering this proposition has the potential to diminish faith in the justice system if they fear it is merely representative of the moral views of individual solicitors. However, the zealously adversarial system's inability to support fundamental environmental change further erodes faith in the capacity of the law, and lawyers should seek to mediate these conflicting interests in their conduct.

If the purpose of law is to provide a method for redressing wrongs, the extension of this to detrimental environmental negligence or misconduct seems only practical.

II. DUTY TO THE COURT: THE FAILINGS OF THE JUSTICE SYSTEM ON ISSUES OF ENVIRONMENTAL ADVOCACY

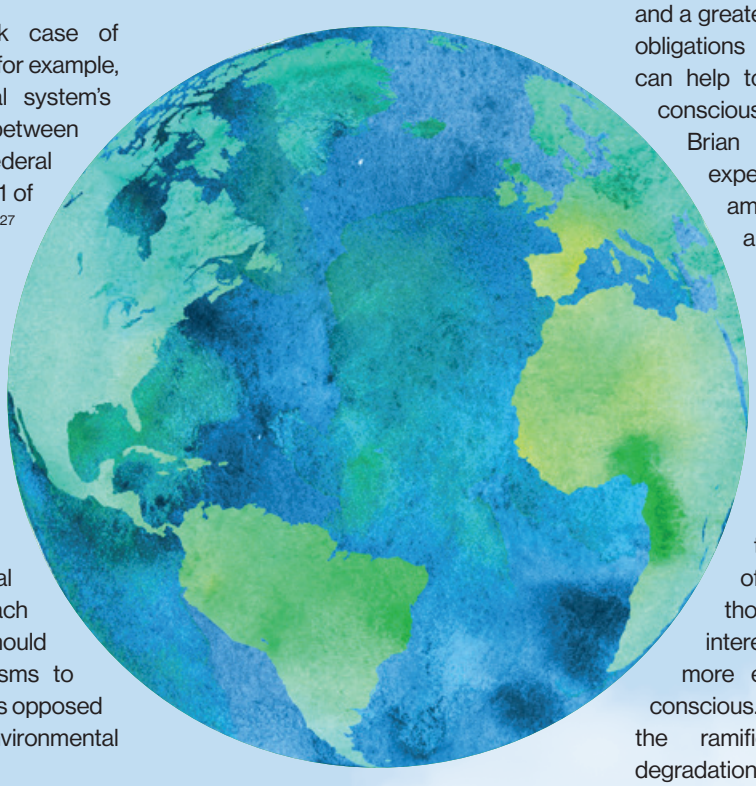
With the argument that lawyers should simply act in their clients' best interests largely failing in the face of the growing existential threat of climate change and environmental degradation, an approach prioritising justice is proposed as a viable alternative. Within this 'responsible lawyer'[123] characterisation, as instruments of the judicial system lawyers have a duty to advise in a manner that is consistent with the spirit of the law.[124] This reflects the notion that lawyers' paramount duty is to the court.[125] However, though this approach places emphasis on the

administration of justice, it does not advocate for lawyers to actively strive to redress environmental or social injustice. In essence, the role of lawyers is limited to ensuring environmental guidelines and regulations are upheld, and excludes considerations of the morality of such guidelines or the prospect of reform.

In this view, the landmark case of *Commonwealth v Tasmania*,[126] for example, merely reflected the judicial system's resolution of the friction between the authority of state and federal governments under section 51 of the *Australian Constitution*,[127] in regard to the "external affairs" power. Far from being a case of moral activism, environmental justice was a mere consequence of the upholding of the law by the High Court. Similarly, the existence of courts such as the NSW Land and Environment Court provide avenues for environmental justice and this approach emphasises that lawyers should use these existing mechanisms to resolve perceived injustices, as opposed to promoting broader environmental change.

Though this approach holds merit as it places emphasis upon the attainment and administration of justice as opposed to individual client interest, enforcing legal interpretations that are merely consistent with the course of justice may no longer be justifiable, when the issue is that of environmental destruction. This view is gaining popularity, with legal activists arguing that '[l]awyer "neutrality" in its traditional form is not achievable when "business as usual" is leading us toward the extinction of life on earth'.[128] As such, in representing the law to clients, lawyers' moral obligation to climate justice should be a strong consideration.

Though the responsible lawyer approach presents a step towards justice, placing faith back in the hands of the court and moving away from the zero-sum adversarial approach, incorporation of moral considerations by those with influence in the legal system is required to address environmental degradation.



III. UNDERSTANDING THE ROLE OF INDIVIDUAL MORALITY IN ENVIRONMENTAL JUSTICE

A more applicable approach to the issue of environmental injustice is one that diverges from the codified ethical duties of lawyers to clients and courts, and instead advocates that individual morality and interpersonal connections inform lawyers' responses. This individual 'ethics of care'[129] model can, however, both work in favour of and against the proposition that lawyers have a duty to act morally to address environmental injustice, largely depending on the individual context.

In favour of lawyer activism, a day-to-day incorporation of this model could feasibly include discussions about moral considerations as a part of the holistic provision of legal advice. Whilst such discussions are unlikely to fundamentally alter the conduct of large mining bodies, openness about societal consequences and a greater emphasis on environmental obligations and sustainable practices can help to foster an environmentally-conscious mindset. In fact, Chief Justice Brian Preston argues from his experience that; 'most clients were amenable to such persuasion and were prepared to modify their behaviour to lessen the environmental and social impacts of their projects and activities'.[130]

Furthermore, the emphasis on non-adversarial problem-solving[131] means the role of lawyers can become one that influences the conduct of legal relationships between those with diametrically opposed interests in a manner that is more environmentally and socially conscious. For example, acknowledging the ramifications of environmental degradation on Indigenous and vulnerable communities can help inform the action taken. The Jabiluka mining case is such an example within which the health of the Indigenous community was a key consideration strengthening environmental concerns. Lawyers in this case sought to make the site a Heritage Listed Site, limiting the possibility of mining and thus, using non-adversarial means to address environmental injustice.[132]

Yet, an emphasis upon the relational framework could realistically also lead to reluctance to act against polluting companies, particularly where lawyers hold personal connections to mining lobbies or harbour sympathies to the job losses that may result from the constriction of industrial practices.

The holistic nature of this approach does signify that lawyers can advocate for the environment in the course of their duties. However, the case-by-case approach of such lawyering suggests that this advocacy occurs only to the extent that it aligns with their and their clients' personal relationships and moral background. Such a largely passive and individualist approach, whilst a step away from the rigidity of the legal ethics models presented earlier, is perhaps insufficient to match the severity of the consequences of climate inaction.

IV. MORAL OBLIGATIONS TO SOCIETY: THE ROLE OF LAWYERS IN PROGRESSING ENVIRONMENTAL ACTIVISM

The pervasiveness of the issue of environmental injustice and the societal desire for climate advocacy has led to pressure on the judicial system to reform environmental law to better reflect these moral values.

The earlier frameworks suggest that the role of lawyers in addressing environmental injustice is subordinate to their duty to clients, the court, and their relationships, respectively. Yet, as legal philosopher John Rawls argued, 'the law defines the basic structure within which the pursuit of all other activities takes place'[133] and as such, has inherent obligations to the society it serves. Given that the professional legal duties of lawyers operate within the context of these social values, the moral obligations that lawyers possess can be viewed as paramount.[134]

Furthermore, given the societal implications of lawyers' actions, 'simply taking on the role of advocate should not absolve the lawyer of the personal responsibility ... associated with the outcome of the lawyer's actions on behalf of a client'.[135] This criticism of the role-morality model suggests that, in advocating for outcomes that are unjust or immoral, lawyers are equally culpable for environmental injustice conducted by corporations. The inherently social consequences of the legal profession means that lawyers cannot justifiably neglect the moral standards of the very society it affects.

Furthermore, the promotion of moral activism within the general conduct of lawyers is particularly important in supporting communities impacted by climate change or environmental degradation. The activist role of lawyers extends to representing marginalised communities or those without access to justice who are disproportionately impacted by environmental degradation. This fulfills not only moral obligations, but is reflective of the role of lawyers in bolstering the administration of justice through the effective representation of society within the judicial system.

One of the most apparent instances of moral activism within the context of environmental justice is through the Environmental Defenders Office (EDO). The landmark Rocky Hill case, for example, introduced the capacity for lawyers to push courts to consider climate change as a reasonable and independent issue in itself, outside the confines of land planning law, or other such processes.[136] The existence of public interest lawyering is emblematic of the potential for moral activism to exist within the legal sphere. Offices such as the EDO implicitly reconcile their clients' and societal interests in a manner that meets both legal and moral obligations. In fact, some go so far as to advocate for the enshrinement of "Green Ethics" within the legal profession, suggesting that the 'time has come to remedy the conspicuous omission of environmental protection from the list of lawyers' ethical duties'.[137]

Yet, it is necessary to recognise that there are limitations on the capacity for moral activism to exist within lawyers' legal duties. The entitlement of all to representation is fundamental, and further, attempting to alter the conduct of mining corporations or lobby groups may inhibit lawyers' capacity to act in their best interests, creating dissatisfaction and injustice in the rule of law.

Fundamentally, the existential threat of climate inaction renders the role of lawyers of growing importance and suggests that whilst lawyers must not frustrate the spirit of the law or neglect their key ethical duties, they must also avoid inhibiting environmental reform and environmental considerations must become a fundamental part of legal advocacy.

"Fundamentally, the existential threat of climate inaction renders the role of lawyers of growing importance"

V. CONCLUSION

It is undeniable that lawyers will have a role in influencing the future of environmental justice. The severity of the climate crisis, and its diverse and pervasive consequences, suggest that lawyers should seek to use their influence for the betterment of both the justice system, to more equitably represent clients, and for the advancement of the environmental cause that will fundamentally influence the future of the rule of law.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GOVERNING NEWSPACE: NON-STATE ACTORS AND UNCERTAINTIES IN SPACE LAW

By Kriti Mahajan

Non-state actors continue to complicate all aspects of international law, and space law is no exception. Since 2016, approximately 75 per cent [138]of the global space economy comprises commercial revenue, while only one quarter is a result of government budgets.[139] International space law was established in the time of the "Cold War Space Race" between nations, but now it must adapt to ensure that non-state actors are also kept so that outer space remains the "province of all [hu]mankind," as the Outer Space Treaty[140] (OST) – the constitution of space - intended.

There is a need for states to govern this new era of "NewSpace" actors registered under their jurisdiction to supplement the state-centric space treaties.

BENEFITS OF NEWSPACE

There are many benefits to private entities entering the space sector, including efficiency, an increased capacity for risk-taking and technological development, such as when SpaceX created a reusable rocket - revolutionising space launches from one time use, debris creating rockets. Commercial actors also have their own incentives to invest and lend their expertise to the space industry, as in the case of space tourism which is largely pursued by the big space companies.

Given these benefits, it is good to consider corporate-led space exploration, but space governance should not be left up to them.

RISKS IMPOSED BY NEWSPACE

As in many public sectors, large private actors can leverage their power and status as major employers to exert pressure over law enforcement. This is already very costly when it comes to space law. One example of this is SpaceX's plan to "colonise" Mars, where Elon Musk claims "no Earth-based government has authority."[141] This is legally wrong as international law definitely does apply to celestial bodies (in fact, the OST mentions this in its title!). But, if a private entity is to break space law, it becomes challenging to enforce. So, in effect, Earth law may get left behind when activities are conducted on Mars. Governments need to police NewSpace actors registered in their jurisdiction to make it clear that if anyone were to make, for example, a broad ownership claim over a planet as Elon did, that it will not be tolerated.

HOW CURRENT SPACE LAW APPLIES TO THE 'ELONS' OF PRIVATE SPACE EXPLORATION

Under the Registration Convention[142] all objects launched into space must be registered to a launching state (though there are many issues with the timeliness of compliance). Moreover, the Liability Convention[143] provides that launching state/s are liable for damage caused in space. In this way, even though corporations are not explicitly mentioned in the OST, space law can and does apply to them. Article VI of the Liability Convention even specifically states that where the launching state (and by extension the private actor) are "not in conformity with international law," they will not be granted exoneration from absolute liability. In addition, major space-faring states have their own domestic legislation that is easier to enforce on private actors. This is the main way NewSpace actors can be brought in line with international space law.

AUSTRALIA'S ROLE IN NEWSPACE

As far as governance goes, each state needs a centralised strategy on how to deal with space-faring non-state actors. Australia can take advantage of this need by developing a central space policy that is strict in adhering to international law but clear in its legislation so as to attract good business for our region while making us world leaders on the space governance stage. The Space (Launches and Returns) Act 2018 (Cth) makes a good start on this as it is in line with the five major UN space treaties and refers explicitly to them.

The broadening of space to more than just a few nations has led to significant technological innovations, lower costs and increased access to the benefits of space capabilities such as satellite services. However, this influx of new actors could potentially exacerbate threats to the long-term sustainability of space through the disregard for international space law. Continuing to intentionally create domestic rules and norms for NewSpace actors will ensure that space law is not pushed to the side by private entities so the industry can continue to derive the benefits from commercial space activities. For NewSpace, it's time for new laws.

PLAIN LANGUAGE AND THE LAW: A DEBATE

ANONYMOUS

I INTRODUCTION

This essay presents the main benefits and disadvantages of the plain language movement. Firstly, this essay will discuss how the shift towards a more comprehensible use of legal language makes the law more accessible to those not trained in the traditional legal sphere, and that it enhances the effectiveness of the legal system. Secondly, this essay will discuss the main challenges of the plain language movement, notably the difficulties of distilling legal complexity, the inherent limitations of language that give rise to uncertainty, and issues surrounding the intended goal of the movement. This essay concludes that greater accessibility and engagement with the law by ordinary citizens ultimately outweighs the disadvantages of the plain language movement. It is also noted that while legal jargon is *sometimes* inevitable, there must be a healthy coexistence between legal clarity and linguistic clarity.

II ADVANTAGES OF THE SHIFT AWAY FROM LEGAL JARGON

A Accessibility to the Law

The plain language movement addresses issues of access to justice – by simplifying language it improves access to the law for 'ordinary citizens' and those who cannot afford a lawyer. Critics of legislative drafting, such as Kelly, support the plain language movement as a shift away from the problem of 'incomprehensible' legislation.[144] For example, in the context of contract, insurance, or consumer law, plain language and clear expression allows consumers and employees to better understand their rights and obligations[145] From this perspective, plain language is not only an ethical choice; it is also a social justice issue because of its potential to interact with human rights[146] In a 1991 study, Adler found that 43% of laypeople interviewed considered the phrase 'without prejudice' to indicate impartiality or that accepting the offer would not create a binding agreement[147] Adler notes that this misapprehension would detrimentally affect their rights[148] As noted in the Law Reform Commission of Victoria on Plain English and the Law, legislation should not only be drafted for lawyers or judges, but for the people affected by the law (ordinary citizens) and those who administer it.[149] In Australia, the High Court now provides a summary of reasons following a judgment of the Full Court of the High Court, and judges on the Federal Court provide summaries of complex or lengthy judgments or judgments that invoke issues of significant public interest[150] This supports the notion that the law should be made more readily accessible, and more comprehensible, where it affects people's rights. As such, reducing legal jargon renders the law more immediately accessible to those affected by it, and in turn, can increase people's engagement with the law.

Furthermore, the plain language movement challenges the notion that accessing the law is reserved for the privileged elite, namely lawyers, judges or those with a legal education. From an anti-positivist legal theory perspective, Fuller's view is that citizens have a right to know the laws[151] As such, people's right to access the law is supported by the ideas of democracy, personal autonomy, and the rule of law. Justice Kirby suggests that the use of Latin words shroud the language in a 'mystery of technicality' that is unnecessary in legal judgments[152] Thus, making the law more comprehensible to ordinary citizens addresses the 'elitist' conception of the law.

B Effectiveness

The plain language movement with its focus on clarity and directness increases the efficiency and effectiveness of the legal system. Lawyers save time when documents are written in plain language because they are easier to read. Similarly, judges save time reading barristers' legal submissions when they are expressed in plain language. This is based on the argument that legal jargon obfuscates meaning. In Kathryn O'Brien's research, 23 senior Australian judges were interviewed[153] She found that the judges overwhelmingly preferred barristers' submissions to be in plain language[154] Several judges associated the use of 'overly complex and jargon-filled language with weak legal arguments'[155] This suggests that shifting away from legal jargon enhances the efficacy of the legal system as well as the strength of legal arguments. Furthermore, there has been research to suggest that legal concepts can be effectively expressed in plain language, therefore illustrating that plain language legislation is not inherently prone to obscurity and litigation[156] For example, when Australia's corporations legislation transitioned from traditional language drafting to plain meaning, it did not produce a significant increase in litigation.[157] As such, plain language is just as effective, or more effective, at conveying meaning in the context of legislation, legal submissions and legal judgments.

III DISADVANTAGES OF SHIFTING AWAY FROM LEGAL JARGON

A Distilling complexity

Complex ideas and expressions are sometimes inevitable, and distilling complexity or removing legal jargon can compromise subtlety and precision. As discussed by Assy, there is a distinction between legal clarity (precision) and linguistic clarity (simplicity).[158] Assy argues that precision should not be undermined by simplicity, as they are often competing and incompatible objectives.[159] From this perspective, it is idealistic to assume that removing legal jargon allows the same degree of legal clarity (precision).[160] Furthermore, regardless of the choice of words, there will always be a divide between the meaning of words within a legal context and the meaning of words within a contemporary English context. This flows from the idea that law is a specialised field, and legal language is 'underpinned by a body of theories, doctrines, principles, and rules'.[161] As such, understanding and using the law effectively requires specialised training, and therefore removing legal jargon would compromise the precision and meaning of these words, without improving the ability of the average citizen to use the law effectively without legal assistance.[162]

B Intended Audience and Inherent Limitations

Plain language can give rise to sources of doubt due to the inherent limitations of language to convey meaning.[163] For example, one of the first Victorian Acts drafted using the plain language method, Planning and Environment Act, required determining the meaning of the phrase 'failure to comply'. [164] This more generic phrase replaced the earlier expression of 'omission defect failure irregularity of informality'.[165] While the phrase 'failure to comply' is stated in much plainer English, it nevertheless gave rise to sources of doubt in the courts as to its meaning.[166] Additionally, there is doubt as to the intended goals of the plain language movement.[167] As discussed by Barnes, while the plain language movement tries to set unitary aims, they are sometimes abstract or vague.[168] Does the movement intend to make the law intelligible to the average citizen? Does it intend to make the law intelligible to persons specifically affected? Does it intend to make the law simpler for lawyers and judges? These questions require an examination of the intended audience.

Legal documents and legal judgments are predominantly read by judges, lawyers, government officials or former or current law students. [169] As argued by Hunt, ordinary citizens do not have a desire or interest to read legislation.[170] This assumption can also be extended to legal judgments, and weakens the argument that plain language improves access to justice. Due to the complexity of the law, there will always be a divide between the legal understanding of an average citizen and someone specialising in the law. As with any specialisation, it is extremely difficult to eliminate this divide. Therefore, to achieve equal access to justice, an intermediary (i.e., lawyer) is almost always preferred over self-representation, especially for those with a non-legal background.

If we assume that legal documents are predominantly read by those in the legal sphere, it follows that this is the intended audience for legal documents. To this extent, the plain language movement does not improve clarity for people in the legal sphere if the words already have specialised meaning. This argument can be made by analogising with the use of jargon in the scientific community. In the legal community, words or phrases such as 'piercing the corporate veil', 'contributory negligence', 'lien' or 'time is of the essence' have specific meanings within a legal context. In the medical community, words similarly convey a specific meaning within their context. Words such as 'vasculature', 'angiogenesis' or 'malignant' could be described in plain language. Instead of using the word 'malignant', it could be replaced with 'a term for diseases in which abnormal cells divide uncontrollably and can spread to nearby tissues or other sites in the body'. However, removing this medical jargon would not increase clarity of scientific literature, as they are well-established and well-understood words within the community. In the legal sphere, some words that are considered jargon have context-specific meaning, and by their nature, require specialised knowledge to understand. Therefore, eliminating jargon would not necessarily increase legal clarity.

Lastly, it has been argued that the plain language movement works 'only on the margins of the bigger problems of communication and justice'.[171] Arguably, the root cause of the problem is not the drafting of legislation or the writing of judgments but rather the dissemination and communication of the law to the public as well as other social factors.[172] For example, plain language may not improve access to justice for people from culturally and linguistically diverse backgrounds.[173] Despite these challenges, the movement nevertheless 'cuts the prohibitive costs of justice' and should therefore be viewed as providing some form of social benefit.[174] Thus, while the plain language movement does not eliminate issues of accessibility and access to justice, it stills represents progress.

IV CONCLUSION

This essay presents the competing arguments for, and against, the plain language movement. Disadvantages of the plain language movement include the difficulty of distilling legal language into simple terms while trying to maintain complexity, and the inherent limitations of language. Despite these challenges, the shift towards a more comprehensible use of legal language renders the law more accessible and less intimidating to those not trained in the traditional legal sphere. Additionally, it enhances the effectiveness of the legal system by making legal writing clearer and easier to read for lawyers, judges, and policymakers. This represents a positive shift, even if some degree of legal jargon is sometimes inevitable. Thus, the advantages of the plain language movement ultimately outweigh its disadvantages.

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IN DISSENT: 'THE TAIL WOULD WAG THE DOG' – JUSTICE GAGELER IN *MONDELEZ*

By Callum Florance

For many law students, dissent is irrelevant. This is because the majority position is likely the only thing that you will have time cite in an exam (unless you have thoroughly prepared). The 'In Dissent' series explores some of the buried opinions that may or may not have some useful conclusions (fodder for future ratio decidendi). In the case of Gageler J in Mondelez[175] this conclusion goes to the heart of statutory interpretation: when is it appropriate to consider extrinsic materials whilst undertaking statutory interpretation, including the legislation's explanatory memorandum.

FACTS: TO SHIFT OR NOT TO SHIFT?

Mondelez engages in food manufacturing operations. Mondelez signed an enterprise agreement that includes as parties Mondelez, the Australian Manufacturing Workers Union ('AMWU'), and two full-time workers at plants operated by Mondelez. The enterprise agreement stated, 'that ordinary hours of work are 36 hours per week and that shift lengths may be eight or 12 hours'.[176] The two full-time workers worked 'three shifts per week' in '12-hour shifts' to reach 'these ordinary hours'.[177] The enterprise agreement also stated that 'Personal/ Carer's Leave' distinguishes between employees who do and do not undertake 12-hour shifts[178] The two full-time workers were taking their 'paid personal/carer's leave' for a number of their allocated 12-hour shifts, and 'Mondelez deduct[ed] 12 hours from their accrued balance'.[179]

ISSUE: WHAT IS A 'DAY', ANYWAY?

The main issue in Mondelez concerned the construction of '10 days' in section 96(1) of the Fair Work Act 2009 (Cth) ('the Act'). In the Full Court of the Federal Court proceedings, Mondelez (with the relevant Minister's support) sought to uphold the 'notional day' construction[180] 'consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week period'.[181] Bromberg and Rangiah JJ in those proceedings rejected the 'notional day' construction and upheld the 'working day' construction[182] 'consisting of the portion of a 24-hour period that would otherwise be allotted to working and thereby authorising an employee to be absent without loss of pay on ten working days per year'.[183] Mondelez (with the relevant Minister's support) appealed the decision to uphold the 'working day' construction.[184]

THE MAJORITY: IT'S A 'NOTIONAL DAY'

Keifel CJ, Nettle and Gordon JJ in Mondelez upheld the 'notional day' construction.[185] The Act The majority in Mondelez spend a great deal of their analysis considering the coherence of the 'notional day' construction with the Explanatory Memorandum to the Fair Work Bill 2008 (Cth),[186] including where they considered the legislative history of the Act as it compared to its predecessor Workplace Relations Act and the Explanatory Memorandum to the Workplace Relations Amendment (Work Choices) Bill 2005.[187]

The majority's issue with the 'working day' construction was that it was not consistent the stated purposes of the Act, which included 'fairness, flexibility, certainty and stability'.[188] The operation of the 'working day' construction was said to be 'unfair' and 'would lead to inequalities between employees with different work patterns',[189] because '[a]n employee whose hours are spread over fewer days with longer shifts would be entitled to more paid personal/carer's leave than an employee working the same number of hours per week spread over more days'.[190] This would operate so that 'an employee working 36 ordinary hours in a week in three shifts of 12 hours [like the two full-time employees]... would be entitled to ten 12-hour days of paid person/carer's leave per annum, or 120 hours, whereas an employee working 36 ordinary hours

in a week in five days of 7.2 hours would be entitled to ten 7.2-hour days of paid personal/carer's leave per annum, or 72 hours'.[191] The majority also found that '[t]he unfairness and uncertainty created would be that employees who take the same number of hours of paid personal/carer's leave, but who are working shifts of different hours, will have different portions of the day deducted from their accrued leave'.[192]

Edelman J in *Mondelez* effectively supports the majority's position with different reasons,[193] noting that '[t]he conclusion... which appears counter-intuitive from the ordinary meaning and impression that an ordinary reading might reach from first reading the legislation'.[194] Edelman J provides interesting *obiter* on statutory interpretation, that '[t]he duty of courts is to give effect to the meaning of statutory words as intended by Parliament. In common with how all speech acts are understood, the meaning is that which a reasonable person would understand to have been intended by the words used in their context'.[195] Further, '[c]onsistently with this approach, courts have sometimes interpreted statutory words in a manner contrary to their ordinary meaning in order to give effect to parliamentary intention',[196] and '[t]he ultimate question in every case is the meaning of the words, in all their context, as they were intended by Parliament... [with] parliamentary intention... [as] shorthand to describe the same general approach that people take to the understanding of language'.[197]

THE DISSENT: JUSTICE GAGELER

Gageler J in *Mondelez* rejected the 'notional day' construction in favour of the 'working day' construction.[198] Gageler J states that '"10 days" ... means 10 periods each of 24 hours' and that '[a] fraction of a day of leave corresponds to an unauthorised absence from the same fraction of the work that would otherwise be performed in a period of 24 hours'.[199] Gageler J summarises this position as follows:[200]

Construing "10 days" as a shorthand reference to an unspecified number of number of ordinary hours of work calculated according to an unexpressed mathematical formula overstrains the minimalist statutory text. Conjuring a formula does not advance the purpose of the conferral of the entitlement. Anomalies and inequities conjectured to arise if "10 days) means 10 periods each of 24 hours are not anomalies or inequities when the nature of the entitlement as a form of statutory income protection is properly understood.

Gageler J took issue with the calculation of an example discussed by majority,[201] as well as the majority's misuse of the explanatory memorandum to justify their preferred construction despite the explanatory memorandum not expressly working in their favour.[202]

One interesting point that Gageler J addresses concerns the use of extrinsic materials. Gageler J downplays the significance of the explanatory memorandum as a means of displacing 'the need to consider the text of a statute to ascertain its meaning'.[203] Summarising the inadequacies of explanatory memoranda, Gageler J states that 'the Commonwealth Parliament does not contemplate that explanatory memoranda might be used by officers of the Executive Government writing them, or by courts considering then, to add to or detract from the text of an enacted provision'.[204] Further, '[l]acking both the force of law and the precision of parliamentary drafting, ... an explanatory memorandum cannot be taken to be an infallible and exhaustive guide to the legal operation of a provision'.[205]

On the facts, Gageler J notes that the Bill's Explanatory Memorandum:[206]

leads me to conclude that it did not capture with precision the full implications of the single, simple rule of "10 days" proposed to be enacted in s 96(1) in its two obscure references to "76 hours" [in the Explanatory Memorandum's examples] ... The tail would wag the dog were those obscure and debatable references reverse engineered to attribute a complicated and contestable and ungrammatical meaning to the uncomplicated and grammatically meaningful text.

While Gageler J also has issues with an understanding of 'days' in the context of the nature of the entitlement as well as the inconsistency of the majority stating that the 'working day' construction is unfair when the 'notional day' construction also leads to inequity and unfairness.[207] Overall, Gageler J's dissent highlights the issue with using extrinsic materials to displace the ordinary meaning of the text when the text's meaning is uncomplicated and subsequently justifying this displacement as aligning more with the purpose of the legislation.

THE BASIS: *ACTS INTERPRETATION ACT 1901* (CTH) ('AIA') SS 15AA, 15AB

The basis of Gageler J's issue with extrinsic materials displacing the ordinary meaning of the text comes from the AIA. Section 15AA states that '[i]n interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act... is to be preferred to each other interpretation'. Section 15AB(1) concerns the use of extrinsic materials in the statutory interpretation process, where 'consideration [of extrinsic materials] may be given to that material (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context... and [its] purpose... or (b) to determine the meaning of the provision when: (i) the provision is ambiguous or obscure... or (ii) the ordinary meaning conveyed by the text of the provision taking into account its context... and [its] purpose... leads to a result that is manifestly absurd or is unreasonable'. This can include the explanatory memorandum.[208]

Gageler J's dissent highlights that the ordinary mean of 'days' did not belong in the ambiguous or obscure category, or the manifestly absurd or unreasonable result category. Even if it did, why would an equally ambiguous or obscure, or a construction that leads to an equally absurd or unreasonable result, be preferable to the ordinary meaning of the text? Section 15AB(3) concerns the consideration or weight that should be given to extrinsic materials in the statutory interpretation process, this should include regard to the 'desirability of persons being able to rely on the ordinary meaning... [of] the text... taking into account its context... and [its] purpose'.

THE TWO BIG ONES: *PROJECT BLUE SKY* AND *CIC INSURANCE*

For context, it may be useful just to rehash the two big cases on statutory interpretation: *Project Blue Sky* and *CIC Insurance*. As stated by Brennan CJ, Dawson, Toohey and Gummow JJ in *CIC Insurance*,[209] 'the *modern approach to statutory interpretation* (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses "context" in its widest sense to include such things as the existing state of the law and the mischief which... one may discern the statute was intended to remedy'.[210] However, the majority in *CIC Insurance* reinforce this notion by suggesting that 'inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which [using the modern approach to statutory construction]... is reasonably open and more closely conforms to the legislative intent'.[211] This appears to leave open the question of strictly adhering to the text as written, but highlighting that this trade-off may only be relevant where the result of the text as written is inconvenient or improbable.

As stated by McHugh, Gummow, Kirby and Hayne JJ in *Project Blue Sky,*[212] '[t]he primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute'.[213] The majority in *Project Blue Sky* justify this approach by quoting Dixon CJ in *Agalianos*:[214] 'the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed'.

THE SPANNER IN THE WORKS: *SAEED*

Gageler J notes that *Saeed*[215] places a spanner in the works for extrinsic materials. Gageler J affirms *Saeed*,[216] which notes that 'it is erroneous to look at extrinsic materials before exhausting the application of the ordinary rules of statutory construction'.[217] Gageler J also considered the position in *Saeed* that '[s] tatements as to legislative intention made in explanatory memoranda or by Ministers, however clear or emphatic, cannot overcome the need to carefully consider the words of the statute to ascertain its meaning'.[218]

POST-*MONDELEZ*

A few post-*Mondelez* cases consider Gageler J's dissent. *CFMMEU v ABCC* concerns union activity at a building site.[219] White J (also in dissent) discusses Gageler J's dissent in *Mondelez* and the *Saeed* principle that the text in its context should be examined first, before considering if extrinsic materials can be examined.[220] *CPSU v Northcott* concerns an employment issue arising from transferring an employee during a transfer of business.[221] Katzmann J takes appears to affirm Gageler J's view that 'explanatory memoranda can ordinarily be taken by the courts as reliable guides to the policy intentions underlying Government-sponsored legislation',[222] but does not highlight the subsequent caveat that 'an explanatory memorandum cannot be taken to be an infallible and exhaustive guide to the legal operation of a provision'.[223]

Future post-*Mondelez* cases should take AIA section 15AB seriously when considering displacing the ordinary meaning of the text in favour of a meaning obtained through considering extrinsic materials. If the meaning of the provision leads to somewhat absurd or unreasonable results, then any alternative constructions should be assessed and compared according to the same standards. Replacing the ordinary meaning of the text with an alternative construction, with both equally achieving the Act's purpose, prioritises an alternative construction over the ordinary meaning of the text and ranks judicial creativity above enacted legislative words. The reason why it is desirable for people to rely on the ordinary meaning of the text, considering the context of the Act and the Act's purpose, is to ensure that affected parties know their rights and obligations under pieces of legislation. To paraphrase Gageler J's dissent, the tail would wag the dog were judicially creative constructions ranked more highly than the ordinary meaning of the text.

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LAW

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