

# 'Activism' Is Not the Problem

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Reading Tarun Khaitan's critique about 'scholactivism' in constitutional studies made me feel unconvinced and uncomfortable. While his line of argument had some intuitive appeal, there also appeared to be something wrong with it. Having reread the piece, I would like to offer three observations.

1.

My first impression was that Khaitan was treating unfairly the two imagined representatives of scholactivism he used in formulating his critique, Zohrab the radical scholactivist who Khaitan admits is a strawman, and a moderate scholactivist called Mridula. For strategic reasons Zohrab presents in a journal article an argument they know to be unsound but one more likely to succeed in court. This is "because their activist motivation overrides their academic commitment to truth and knowledge". Having rejected this kind of radical scholactivism Khaitan introduces the moderate scholactivist Mridula who does not engage in intellectual dishonesty. However, they accept to produce an academic article hastily at the request of an NGO, bypassing workshops and peer review, and as a consequence overlook some unintended adverse consequences that their normative claim will trigger in the constitutional system or in another jurisdiction. Even in the best case when such adverse consequences do not emerge, Mridula's moderate scholactivism has negative effects on academia as activists become celebrated for their impact and thereby create an inherently risky role model to others. Khaitan summarizes why this is a bad thing: "an academy that incentivizes the pursuit of direct material outcomes through one's scholarship is less likely to lead to a better world than one that self-consciously tries to maintain direct activism as a potential object of a scholar's inquiry rather than her additional role."

After rereading Khaitan's essay, I realized that the reason Zohrab and Mridula are unsympathetic characters is not their activism but simply their bad scholarship. Zohrab is intellectually dishonest while Mridula acts recklessly, bowing under pressure from a non-academic 'client' and in haste accepting to delimit their analysis and to deviate from academic gold standard processes before publishing. In short, the features in the scholarship by Zohrab and Mridula that attract legitimate criticism have no logical or direct link to them being 'activist' scholars but to their compromising of academic integrity.

2.

Having thus concluded that Khaitan fails to demonstrate that activism is the reason why his two hypothetical scholactivists are unsympathetic, I need to ignore the two illustrative examples and focus on the way Khaitan defines the notion of scholactivism, independently of the two fictitious examples. There is no clear definition in his essay. The primary characteristic of scholactivism that is

repeated throughout the essay is its direct pursuit of a 'material outcome'. What is a material outcome is left undefined but what becomes clear is that the opposite to scholactivism is scholarship that is merely discursive: "scholactivism-driven research is distinguished by the existence of a motivation to directly pursue specific material outcomes (i.e., outcomes that are more than merely discursive) through one's scholarship". To me, the pursuit of a material outcome is hopelessly broad as criterion while being merely discursive is unrealistically narrow as a scientific ideal for constitutional studies, including constitutional law scholarship. The use of these labels might accept as true scholarship only philosophical writing that seeks to analyse and perfect a line of argument or a question, without questioning the outcome the line of argument delivers or without seeking to answer the question. As the anecdote goes, a philosophy paper often manages convincingly to reformulate a societally relevant question while making no effort to answer to it, while a law paper always ends with a clear answer, even if often failing to convince anybody of its correctness.

My claim and critique of Khaitan's position is that constitutional law scholars must produce actual answers to questions of legality, constitutionality or feasibility. Scholars may differ in whether or not they start their inquiry with a 'material outcome' as their hypothesis but the quality of work by both 'activist' and 'non-activist' scholars is to be assessed on the basis of the outcome and their academic integrity. There is nothing wrong about pursuing a 'material outcome' of, for instance, demonstrating that an existing executive practice is unconstitutional, in proposing a constitution-based solution to ending ongoing illegality, in mapping available procedural avenues of introducing judicial review of constitutionality in a country that lacks it, or in providing constitutional justification for improved implementation of positive human rights obligations derived from international treaties the country has ratified (in respect of an issue, a right or a category of persons).

If scholactivism is defined as scholarship entailing the pursuit of a material outcome, I believe the label cannot have any normative consequence. We either pursue some outcome or we don't, but our scholarship is to be judged by its quality, including a commitment to academic integrity.

3.

As was mentioned in the example of Mridula, one aspect of Khaitan's critique of scholactivism is that its adherents tend to become 'celebrated', this somehow corrupting academia. I contest the empirical validity of this claim. While some activists may experience that kind of a consequence, such moments of fame often relate to non-academic fora, while in academia activists may often be frowned upon or ostracized. Where 'impact' is assessed positively in for instance promotion or funding decisions, it at best rewards equally activist and non-activist (i.e., conformist) scholars who for instance are heard by Parliament or cited by courts.

My final comment relates to Khaitan's normative preference of slow-paced scholarship that includes presenting drafts at workshops and publishing only in (best) peer-reviewed journals. Yes, these mechanisms are often conducive to high-quality outcomes. But they should not be thought of as a straitjacket for research

that passes the normative test of full academic integrity. Academic freedom entails that scholarly outputs must be assessed for the substantive contributions they make. Workshop conveners and journal editors exercise significant power as academic gatekeepers. Their decisions should not be seen as the standard for research contributions or academic integrity by other academics who may or may not subject themselves to their authority.

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