

Scholactivism and Academic Self-Awareness

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When I began my academic career, I was engaged in polite conversation with a senior and well established academic over high table dinner at an Oxford college. The candles were lit, and the hall was hallowed. The location was full of the cultural artefacts of traditional scholarship. When the conversation turned to my research, I told them I was a ‘human rights lawyer’. Silence was followed by a sigh, and then the response: ‘ah, human rights, all heart no head’. I have never forgotten that night. Was I always to be branded a ‘scholactivist’ in similarly dismissive tones? I have grappled ever since with my desire to prove them wrong, and to do both heart and head in my scholarship.

Looking back, I should have realised that the comment came from someone who was unreflective about the politics of their own academic pursuits. This was a person whose power, race and position allowed them to speak a confident language (and with an accent) of tacit authority, one that took the so-called ‘neutrality’ of their scholarship for granted. They behaved as if they inhabited the central place in the scholarly universe around which we would all orbit. I knew, then, that my work as a human rights lawyer at Oxford would be cut out for me, and that I would always (in that University environment) be seeking to prove the scholarly value of my work.

Not Neutrality, but Academic Self-Awareness

Khaitan’s argument on scholactivism has sparked a robust debate, and rightfully so. It has been read by many as the same kind of criticism: that scholarly values are antithetical to passionate political conviction in our work. But I also know, as a longstanding colleague of his, that Khaitan is as much an activist as a scholar. And his caution about ‘scholactivism’ is far more complex than some perceive.

As Adrienne Stone rightly [notes](#) in this debate, Khaitan’s editorial is ‘not a plea for a “neutral” or apolitical academy’. Rather it is an intervention about the relationship between scholarly values and activist objectives. He urges caution and reflectiveness.

In 2020 I published an article – [Constitutional Scholars as Constitutional Actors](#) – which sought to unravel some of these questions. By describing constitutional scholars as constitutional actors, I sought to draw attention to the increasingly politicised role of constitutional scholars in a populist environment, and to draw a sharp line between ‘independent constitutional scholarship which may itself be supportive of claims to constitutional authority’ from ‘constitutional scholarship which has been gamed to legitimise such authority’. My solution, as I formed it, was to call for a reinforcement of scholarly independence, and to insist on an ethical vocational obligation of decisional and institutional independence. Moreover, I suggested that

we should adopt a practice of academic self-awareness which renders our own value frameworks transparent, and engages with opposing value arguments in good faith.

Right wing populism, democratic backsliding and ‘scholactivism’

Like Khaitan’s work, and despite my intentions, my own work was also understood as a call for ‘neutral scholarship’. So it may help to pause for a moment on why we are writing these pieces. In the past decade, the U.K. has seen the overwhelming influence of the populist right. It manifests most famously in the Brexit process, but also in continuous calls for a reversal of liberal constitutionalism. Notably this process is bolstered by a group of scholars, many of whom were in my own faculty at Oxford, who serve as legitimisation of government policy and spur its development. Importantly, though clearly highly effective ‘scholactivists’, these scholars would never describe themselves as such. On the contrary, they view themselves as contrarians, who draw upon a long-standing intellectual tradition of scepticism of judicial power, and as critics of a hegemonic and ‘out-of-control’ liberalism. The scholars in question are mostly housed and organised, and publicised in the press, within an outfit known as the [Judicial Power Project](#), housed within [Policy Exchange](#). This was a project labelled ‘academic’ and often referred to as non-partisan in its doings, but it was (and is) nothing of the sort. What this group succeeded in doing was to bolster and legitimise unprecedented constitutional moves by the UK government, not least the [prorogation of Parliament](#) as a means to shut down parliamentary dissent over the final withdrawal terms of the UK from the EU. The group has successfully lobbied for the end of the UK Human Rights Act, and potentially a withdrawal from the European Convention on Human Rights. I was not alone then in feeling serious concern about the close intellectual nexus between the moves of the JPP and the increasing concentration of executive power. [Many](#) in my field voiced similar [concerns](#). And of course, we were aware that very similar intellectual moves were and are being made in jurisdictions globally.

One of the reasons I was prompted (fired up even) to write ‘Constitutional Scholars as Constitutional Actors’, and I suspect this is the same for Khaitan, was a desire to put my finger on why I thought this kind of activity was at odds with scholarly values. While necessarily our arguments must apply in a general sense – both to the left and to the right of the scholarly terrain – my particular concern around how scholarly authority was being gamed to legitimise constitutional authority was most immediately applicable at the time to the UK context in which I was writing.

Today, as I write this in Vancouver, Canada, my more immediate context is the SCOTUS Dobbs decision and the role that the [Federalist Society](#) has played in bringing about this outcome. This is a society of constitutional lawyers and scholars which has engaged in a sophisticated, explicit and very well-funded anti-liberal strategy. Central to this cause is the quest of capturing scholarly theory and minds, and leading [scholars](#) play a key role in legitimating the cause to which the Federalist Society is devoted. I do not believe that the field of public and constitutional law has come close to fully accounting for the role that actors like this play, whether they are think tanks or societies. We need to follow the [money](#), we need to follow

its route to power and to understand the role the academy plays in legitimating and building these ideological (and often religious) positions. Importantly, we need to think, debate, argue even, about the way in which scholarly virtues are implicated by these pursuits. I believe Khaitan's work is an important contribution in this sense.

Positionality and 'scholactivism'

So given the context in which Khaitan, myself and many others are writing, it is striking that much of the criticism of his piece is coming from the left of academia.

[Some](#) have taken the arguments as a denial of the intrinsic relationship between law, language and power. While I don't think this is what he argued, Khaitan's position on this could have been more explicit. Just as unreflective scholactivism presents institutional risks to the academy, there are also institutional risks with its opposite: a liberal scholarly approach which believes it exists in a hermetically sealed value free domain. One question that we may also want to address therefore is the relationship between positionality and scholarship. We might seek to locate the line between acknowledging positionality as a methodological point of departure, and the potential for slipping into unscholarly partisanship. Academic self-awareness must be positioned somewhere between these poles on the spectrum. It isn't just a case of taking off an activist hat, and putting on the scholar's hat. It is that we need constantly to engage with the continuum between our own position and lived experience and what this brings to our scholarship, and with our disciplinary aspirations of truth-telling. There are fine lines between these places that a hat metaphor won't always capture. Just as the rigour of scholarship can enhance the work of a scholactivist, so the passion of activism can fuel the best kind of scholarship. It is in the tension between these two poles on the spectrum that Khaitan's contribution is so important.

*This blog post builds on a [„Letter to the Editor“](#) published with the *International Journal of Constitutional Law*.*

