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Semantic Violence and Legal Research: Call to an Attention based approach

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Abstract

Violence, in its broadest form, is not only an important qualification which may be associated to specific events or actions, but also a general overarching principle which can explain the entire system in its regulatory aspect. This paper would deal with violence of meaning-making, at two levels – firstly, that which is embodied in law as it exists in the world, and secondly, in writing on law in its traditional doctrinal form, what is commonly known as legal research. The central argument identifies attention as not merely one of the components of perception of truth, but that of truth creation itself. The notion of truth in law is seen as a set of guiding principles, which may form a coherent teleology by itself, or at least an itinerary of disparate non-derogable rules. Law review articles from reputed journals will be used to illustrate the case in its particulars.

An attention-based approach translates meaning-construction to feeling-production. Language itself is not rejected, but rather interpreted as a form of communication which concerns itself with semantics only in so far as it becomes eventually available in attention. In this paper, RA Barkley's framework of Attention Deficit Hyperactivity Disorder as 'executive dysfunction' is used to map this notion of truth/telos/guiding principles – in an attention deficient manner. Such an approach, for instance, would construct consistency as a series of observed/attended to occurrences as against a single umbrella principle which potentially implies the universe of all consistent events. In a particular sense, it could be seen as bridging the gap between the referent and the reference. On a general level, it is a limitation on universal categories commonly posited in moral theory and law.

The violence of a semantic approach to truth is explicit in cases such as when regimes of law presume an 'individual' to whom law would apply irrespective of identity or context. This tendency is generally traced as a direct consequence of law's 'inherent' normativity. An attention-based approach discards the making of such presumptions prior to the presentation of the referent in attention space. A related notion of temporality will also be discussed; understood as a view which entails (at the very least) two notions - that of a total time (potential), and the current time variable for a given system. A temporal view is closely associated with the prevailing view of truth as primarily a semantic function.

An appeal for linking the issue with medical literature would be made, which would also provide recourse to a study of coping mechanisms, which may then be similarly modelled on to social scientific contexts. A study of different mechanisms of attention regulation would allow for a genuine study of plurality of notions of truth. Such an approach, it is argued, would also serve purposes of providing a distinct methodology for the social sciences as well as alleviating the problem of selection of the research object.

Keywords: Violence, Epistemic, Teleological, Information, Legal Research, Temporal, Logic, Cultural, Attention Deficit, ADHD

I

Section II summarizes the notion of truth, as utilized in this study, and problematizes its application in certain types of instances. In Section III, we use the case of doctrinal-legal research, in its formulation of ‘law as integrity’ by Ronald Dworkin and in two case studies - one on the question of validity of the recently passed Citizenship Amendment Act - and another on the International Criminal Court. In Section IV, we introduce and try to bridge the notion of truth with medical literature on Attention Deficit Hyperactivity Disorder (ADHD) in an attempt to provide a methodological alternative (to a semantic notion) of ‘atten-truth’. Section V concludes the discussion.

II

What is truth? Modern day academic writing would position it as per a ‘rationality of the particulars’. An inquiry on the notion of truth within a particular discipline depends on the conditions that are respected within it, and excavated by professionals of that discipline. Then, the question becomes what are the conditions of a common space that network these areas. This can be branched into two further questions, firstly, about the conditions that could supply a unity to the space which can facilitate transmission of information, secondly, whether such a set of condition/s is required at all.

We argue here, in the affirmative to the second question, if such a set of principles is absent and the rest of the paper would aim to justify that answer, and at the same time, turning to the first question – supply a methodology for it. In doing so, we adopt a conception of truth as one

limited by our attention. There is no objective truth even within a perfectly logical system. It is always limited by the attention span of the constituents of the system. Rather than attempting to map truth on logic, we abandon it as a formal construct. As a corollary, we also pursue an idea of meaning which is similarly limited. The violence of enclosed objective truth lies in its tendency to reject validity of other claims which can have the quality of epistemic widening.

III

Legal research, as goes on in the legal academy, can refer to a broad array of approaches which could include methodologies commonly used in social sciences. Here we refer to the ‘limited’ style of research - which functions within enclosed methodological boundaries. A limited style of research would entail a study of what is ‘good’ in law and for the purpose, relevant applicable law is sought for any given case at hand. The purpose of the exercise would be to ascertain the ‘correct’ law in any given case. Correctness of a law depends on several factors which include a proper chain of authority, as sanctioned within the law itself.

So for instance, if an act is committed by an individual, which is contrary to what is permitted in a given legal system they are a subject of, the said person will attract whichever sanction is prescribed by law. A legal researcher, as described above, will attempt to fit the act or the larger fact situation within the contours of law (Indian Penal Code) which corresponds to it. For the legal researcher, it makes no sense to question the legitimacy of the law, or to know

the source of its validity. The only point to note is that it is valid. Further questions are unnecessary for the researcher, unless it is the legitimacy of a law which is the object of study (Constitutional Validity). If one were to question further, and ask questions of its legitimacy – the legal researcher and a philosopher would branch into separate paths. The legal inquiry would stop at the last legally relevant stage. This stage may be the Constitutional Document of a legal system, a separate code specifying the same, or merely established practice. The philosopher, on the other hand, would attempt to trace the normative linkage to an ultimate conception – of society, power, utility or something outside the realm law.

This becomes problematic when we consider the normative enclosure of different disciplines. The insularity of all of those disciplines, compounded with the fact that all of those follow a different normative structure (and conception of truth) implies firstly, seclusion of the norms themselves. For instance, integrity is an important norm in law but has no identity outside purely descriptive disciplines. If we examine legal research at the level of the first step, a similar problem of multiplicity of ‘truths’ and ensuing indeterminacy and arbitrariness is encountered. This leads to populating of the discourse with versions which are equally valid with an equally rightful claim to discursive space.

Hence, we argue for an alternate conception as a means of study, and drop the attempt to force the legitimacy to an ultimate notion of truth AND instead relate this truth to attention span. As the othered variable in the binary with truth. This linkage of truth to attention span could be represented in an illustration where, equally valid contentions are adjudicated as per their relation in attention space. Validity, which was earlier the sole criterion becomes merely a favourable condition (neither sufficient nor necessary). Among the several contentions vying for attention space, those that appeal are selected for consideration. Attention spaces may be defined as per our convenience, depending on the scope of the content under consideration. It may range from a single individual to the entire public (in cases where the subject matter demands so). By this exercise, we expect patterns to emerge which are able to measure and co-incide better with causation in the outside world. Some questions which would flow from this shift could be : Where does the attention diver to? What is the appeal of this contention? What is the time variable associated with this and how stimulating in attention it is. To illustrate the point, we present a case study on the recently passed Citizenship Amendment Act, 2019 (CAA).

The question of legality of the CAA is at the heart of political discourse. But the question itself is incapable of being reduced to a single answer. From the point of view of a legal researcher, the first choice presents itself when the issue of whether there will infact be a constitutional challenge in court is involved. In absence of that question, there cannot be an answer to the contingent question of its constitutionality. Considering we assume a hypothetical situation where it is actually so, the legal researcher would have the choice of doing research with fidelity either to integrity (as construed by him) or to a client. The research will follow different paths and conclude different in either end. Further assuming it is integrity that is the central notion, the different premises that may be starting points along the axis of ‘aims’ or ‘goals’ could be – a. Constitutionality b. Humanitarianism c. Personal Liberty While b. and c. may be considered as not falling within a strictly legal formulation (although it may be argued to be), even a. has several different sites of excavation to start with, few of which are i. Division on the basis of religion ii. Equality iii. Socio Economic Betterment iv. Federalism. Even if we were to narrow it further with a hierarchy of constitutional norms, we will end up with further choices. Which is why, realist schools of legal theory reject any attempt at finality or objectivity.

Purity of legal research may be maintained by choosing any of the starting points, the only condition being that the chain that follows from it should have integrity or be 'good' in law. So, the regular legal method would produce a set of multiple logico-legal chains which are completely consistent with each other. Two of these chains have exactly opposite conclusions. The rest of the work is now in the realm of selection. It is here that we apply the limiting criteria of attention span or 'atten-truth' as a method of regulating the same. Which chain would get a preference over others – which chain appeals in a certain way – which chain has relative longevity over others.

IV

A recourse to medical literature may prove extremely valuable as a bridge to eventual mapping of 'atten-truth'. More particularly, we attempt to relate our discussion to Russell Barkley's 'Unified Theory of Attention Deficit Hyperactivity Disorder'. By and large, Barkley has been the first to explain ADHD within the purview of a single concept, that of executive function. Executive function (EF) is understood in Barkley's terms as being identical to what has been identified as self-regulation. ADHD, in turn is understood as a disorder of self-regulation. The suggested solutions involve controlling the environment so as to enhance the sense of self control. Closely attached to it is the lack of a sense of time management. This may be compensated by breaking down activities into smaller chunks and setting individual time limits for those. Studies on ADHD have spanned a wide range of participants and extensive subject matter.

Conceived as impairment of executive function, an attention deficit may be analogically extended to functioning of the public discursive space. This public space can and would include academic space (as being qualitative non-distinct from it). What is an absence of a master criteria of selection at the level of the network, a phenomenon (WC) that we discussed at the level of selection of applicable law, or that of an applicable premise, is, in the context of Attention deficit, an inability to regulate attention. The attention space, in all three cases, the legal, the academic-social and the psychological, does not have a set criteria or order of appearance which conforms to the internal rationality of any its constituents. An inability to manage time in ADHD is virtually unextrapolatable in the context of academic discourse due to an absence of a single 'objective' or 'goal' variable, whereas in legal research discourse, it may be noticed in the self-specified aims that law/legal research seeks to achieve, which may also be empirically verified. The said analogy can be further utilised to link solutions to the problem to coping mechanisms observed in persons with an attention deficit. Some ideas, that of a 'unifying emotion' as a means of overcoming the limitation of an impaired working memory – may be represented as dominant discursive tendencies in the field of atten-truth. Stimulation seeking is another property which may be assessed in any of those. Patterns in ADHD based thought processes may be used as theoretic structures in foundation/premise and academic discourses. Further, linguistic syntax mapping of ADHD may supply constructs to measure discourse in other areas.

Concluding Remarks

We attempted to discuss the violence of the notion of truth as it exists within smaller technical-discursive fields and see how it reflects on their work and content production. The lack of a regulating mechanism for equally valid propositions or claims is a problem faced across areas. The conception of ‘atten-truth’ is a means to account for part of the absence of regulation – in that it would give predictability to an otherwise arbitrary looking process. Beyond this, we also made a general call to understand ADHD as not only psychological, but also a property of several levels of public discourse which lack regulation. A larger research agenda, preferably within a number of sub-disciplines would have a potent harvest.

