

Jurisprudential Discussions Based on Insufficient Knowledge

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In order for our Swedish speaking readers to fully enjoy Professor Heuman's unique and inimitable literary style and so that all our readers may get a glimpse of the special world that is the SCCL lunchroom, Professor Heuman's text is published in Swedish and in English (editor's note).

1. Conversation strategies in the Centre's lunchroom

Twenty-five years have passed since the Stockholm Centre of Commercial Law began its research. Despite the fact that lunchroom activities have played an important role, the site-specific activities have not been the subject of systematic and scientific studies. There is an urgent need to address this shortcoming. In this essay, the high-quality activities of the lunchroom and the Centre shall be subject to serious review, even if certain aspects of the discussion are presented in a somewhat ironic way.

The lunchroom activities consist largely of conversations that can be deep or characterised by a remarkable superficiality. There is a need to clarify and develop underlying conversation strategies. These techniques have been significant for psychologists and workplace supervisors, and their research shows similarities and agreement on many points. However, the research in the area of the law has a different focus and often relates to the methodology in the application of the law, not people's organisational coordination problems. For lawyers, it is law and precedent, and not employees' complaints to managers and supervisors, that matter.

The lawyers' conversations in the Centre's lunchroom are often characterised by discussions initiated by a single person. While the Centre's research-

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ers have certainly met before in many controversial debates, new topics lead the researchers into brand new discussions. These, in turn, can foster jurisprudential creativity in the long run. When these conversations are had for the very first time, one cannot expect an eight-minute chat to result in any worldwide paradigm shifts or even any significant results. This would require that the Centre's researchers return to previous discussions time and again. Long-term attendance is therefore an important part of the Centre's activities.

A Centre researcher who has just started a conversation does not know how the discussions about his or her topic will develop over the next few minutes and the next few months. He or she may quickly choose a topic without knowing whether a longer conversation could lead to important results. Other legal scholars might think, a few moments later, that "we absolutely should not discuss what Johan said." There is thus a risk that opposition will arise as soon as the moderator raises the subject. In the context of non-legal conversation research, emphasis is placed on initially being cautious and starting by talking about the weather and other soft-start, non-controversial topics. There is a difference of opinion as to whether the transition from commenting on the weather to discussing problems associated with joint possession should be speedy and without warning, resulting in most of the participants not understanding that the new topic's methodology will lead to solutions under the law of pledges that are frighteningly at odds with the principle of consignment.

Concepts are tools that enhance the academic quality. Two key concepts in conversation research are as follows. Listen to the speaker and immediately take over the leading role in the conversation when the first speaker lowers their voice, unaware that he or she has created an opportunity for other talkers to entry into the debate and thus for a radical change of topic, e.g. from *res judicata* to supermarket pricing.

Another concept shows how an opening speaker can be rendered powerless through opportunity conversations. The concept entails a first-time speaker refraining from touching on legal issues concerning proof and consequences and, instead, speaking vaguely about possibilities without raising issues of feasibility. If a speaker is criticised by means of another person's objective argumentation, the vagueness serves the purpose of providing an opportunity to take a new and opposite position.

2. The convenience of lunchtime conversations

There used to be a massively huge teak table in the lunchroom. The teak chairs were wide and heavy and apparently stable. The chairs eventually developed treacherous cracks, proving they were brittle and unable to tolerate even moderate loads. The Centre's furnishing strategy shifted one dark November evening when a foreign legal philosopher spun around and, wishing to speak, proceeded to fall backwards and slide towards the patio door. One might say it was an unexpected and surprising change of position. A few weeks later, the Centre's board decided to change its furnishing strategy and purchase tables and chairs with slender steel tubes with an outstanding, load-bearing design. Garden aesthetics took a back seat to safety. Both the chairs and the table could be easily moved. The new furniture allowed more researchers to crowd around the lunch table. They came closer to each other, both spatially and intellectually. As a result, more and more legal experts became involved in conversations that were not yet subject to any authorisation requirement. There was a strong need to coordinate and guide the conversations.

A small number of the Centre's researchers believe that the purpose of lunchtime conversations is to provide intellectual rest after prolonged analytical pressures. However, most researchers are in favour of continuing legal activities during lunch. The conversations can be conducted in two ways. If there aren't many participants, the debate can be limited to two people. Other researchers listen intently for a while but wait impatiently for an opportunity to steer the conversation to a completely different legal topic, such as court fees or municipal due process. If there are between 10 and 13 participants, a number of discussion groups can be created without any authorisation procedure. It is then possible for each participant to quickly change the subject. The risk with this system is that many people won't be able to fully absorb the messages, analyses, and critique. The conversation needs to be managed yet no participant has been tasked to do so. The debate topics change rapidly.

Going back a few decades, I can recall a time-based management of the conversational activity. After passing the three-minute mark on our lunchtime walk to the restaurant, there was an absolute ban on legal discussions. The boundary was determined spatially such that no legal issues could be touched upon after we had passed a large oak.

One way to limit the regulatory zeal might be to fall back on analogous applications of the law. The provision in the Distance and Off-Premises Contracts Act on the right of withdrawal can be applied by analogy, with the

only difference being that the deadline is not 14 days but, instead, the short time it takes for an agitated challenger to pursue his attack. I have noticed that some speakers are often alone in their assessments. Such a speaker often regrets what he or she has said and wants to forget their brashly conveyed opinions, which were often expressed in categorical form. This linguistically form of expression does not constitute an obstacle to the speaker exercising the right of withdrawal. The speaker's opinion can then be changed quickly without a need to observe any formalities whatsoever. This possibility of change creates an intellectual comfort that far exceeds the physical comfort of an armchair. The regretful speaker's new opinion is sometimes met with an aggressive assertion that "you didn't say anything like that before." The assailed speaker will often respond by telling a lie: "I never said that. You have to listen carefully to what I say." As a result, the discussion stalls and must be resumed some months later.

3. The value of lack of knowledge

What makes working at the Centre so rewarding is not merely the research journey and its goals and results, but also ignorance itself. Consequently, the Centre's leading position is not a result of the fact that its research is pioneering on all fronts, exceeding the intellectual products of a hundred other foreign universities. The value lies in everyone daring to put forward new ideas and proposed interpretations. One can thus ask whether the driving force is the hunger for knowledge or the yearning for carry out new analysis.

If several people are in conversation and none of them is sufficiently knowledgeable about the legal topic being discussed, they cannot gain such knowledge by maintaining that the topic is extremely interesting or by making assumptions and guesses. Moreover, the civil law theory of will provides no assistance, even if the will is strong. The desire to acquire sufficient knowledge does not create the kind of knowledge that requires reading.

Scientific interviewing techniques are not used at the Centre's lunches; instead, simpler and more effective interlocutory techniques are often used. A skilfully drafted misleading question can be answered by a lunch participant with a statement skilfully concealing its unproven character. In this way, a balance is achieved where neither of the two conflicting views needs to be proven in the continued analytical work.

4. Unintelligibility

There are older researchers who can render the intelligible unintelligible. Their jurisprudential contributions are the result of comprehensive and long-term work. Young researchers also can change an unintelligible perception, for example by using modern methods unknown to their elders. What the older and younger researchers have in common is that unintelligibility is often achieved through excessive verbiage. These perceptions of unintelligibility can entail that terse reasoning poses a threat to jurisprudence.

Another, more positive, way of perceiving unintelligibility is that it teaches us to recognise the need to read passages slowly and several times. With intellectual effort, the unintelligibility can thus be transformed into intelligibility of what is, at first blush, a complicated jurisprudential question. On numerous occasions in recent decades, authors of works of fiction and poets have been drawn into unintelligibility debates in which critics claim that their works are unintelligible. However, jurisprudence is quite different from ordinary authorship and poetry. Poetry and the Police Act do not share an interpretative foundation. Although the readers have substantial latitude for their interpretations of various texts, one cannot waive the requirement that laws and judicial opinions must be intelligible to the reader without long and tiring analysis.

Participants in a conversation who are in an exciting phase of development will sometimes describe the topic as intelligible one day and unintelligible the next. In these contexts, we speak of intermittent intelligibility. This can lead to difficulties if a number of researchers harbour different views of what constitutes intermittent unintelligibility.

During the Centre's discussions, a researcher can confess that since yesterday, he has rejected a previously accepted doctrine and embraced another, previously unintelligible view. At the same time, a few hours later, he can launch a fierce attack on another researcher who has changed his or her position too "frivolously". These incompatible prerequisites for changes are explained by the fact that different paradigm shifts are subject to different threshold levels.

5. Soporific reporting of research

Lunch participants need to consider carefully whether spontaneous conversations are superior to other good modes of communication. Swedish litigation

is based on the principle of orality, which is intended to prevent soporific verbatim recitations from long written submissions. There are researchers who have mastered the ability to put listeners to sleep in lectures and at conferences, quickly and for long periods of time, without medication. This method of communication is not used at the Centre's lunches.

6. Turning a deaf ear

In purely spatial terms, in many intellectual contexts, people seek out other people who share their ethos. At the same time, they avoid conversations with debaters whom they perceive as controlling, domineering, clueless, or generally intolerable. In this context, this is known as the avoidance principle. Participants in a discussion can be divided into groups based on their fundamental opinions about the law. Everyone knows where to sit. "I don't want to sit next to Halvar, it's exhausting to hear him spread his jurisprudential gospel in a Gotland accent. I almost always sit far away from him, on the corner where Fredrik and Evelina always sit." It's embarrassing when a temporary visiting researcher is completely unaware that he has taken the wrong seat.

In order to increase the jurisprudential level of quality in the lunchroom, the Centre's director might decide on varying seating arrangements. Moveable silver plaques embossed with each researcher's first name could then be purchased, provided that the university's procurement regulations do not create long-term and absolute obstacles. This proposed new system would increase the frequency of differences of opinion and open criticism, which is desirable in most academic contexts.

Voluntary and ordered breakdowns into groups are somewhat different than turning a deaf ear. A critic's feigned silence can be more effective than a professor emeritus' attempts to avoid participation by turning his back on a group of younger debaters.

7. Monologue, dialogue, and internal monologue

I will now address three conversational concepts with philosophical implications. A distinction is made between monologues, dialogues, and internal monologues. Ordinary monologues are presented by a single person. At lunchtime, they may consist of a few lines delivered in a significantly raised voice. A dialogue entails that there are two or more people speak-

ing. In the internal monologue, the reflections occur in solitude. One might ask whether the content of dialogues is richer than that of monologues and internal monologues. One might think that the result will be better if more people are reflecting rather than just a single person. It's not that simple. One might ask whether advance planning of a conversation will increase the intellectual exchange. Does this then require that all participants adjust their debate points based on a show of respect to the other speakers?

Of all breaches of contract, defects and delays are the most common and popular. There is a palpable risk that the researchers will linger far too long in the lunchroom and, by means of a discussion of horse law, will turn to a discussion of gambling profits and other non-legal issues. It is important for the researchers to retire to their offices in a timely fashion to allow them to conduct internal monologues in order to privately process specifically selected intellectual experiences. They should not immediately and automatically switch to reviewing attendance lists and preparing for budget meetings without asking "Didn't Bengt say something incredibly important that I have reason to ponder in solitude for several hours?" During lunch, a number of highly interesting issues may have been insufficiently analysed, sometimes due to the influence of researchers who can best be described as conversation killers.

Applying a sound methodology for analytical work conducted in seclusion, some researchers acquire new knowledge. Others lack this reflective capacity. The method that should come to mind is referred to as an "internal monologue", as developed by James Joyce in *Ulysses*. The internal monologue constitutes solitary thinking characterised by free association in the stream of consciousness. The internal monologue is a speech to yourself and differs from the various forms of semantics and logic. An author's fragment of a sentence or isolated words may be followed not only by related clauses, but also by statements that are unrelated to what was previously said. When thoughts are allowed to flow freely, there might not be a connection between the different reflections. There is no conversational partner who can stimulate, but there must be an inner voice that can speak.

Diversity can be created in the internal monologue. Solitude can, simultaneously, be something else. Addressing the simultaneous existence of several conditions can lead to new aggregations. Lengthy expressions can, like seemingly repetition, be enriching. How we describe the insignificant and trivial can suggest or illustrate what is general and common.

One might ask whether the internal monologue can be a tool or a method to increase jurisprudential creativity. The internal monologue occurs in the intellectual world of authors and actors but rarely in jurisprudence. This does not preclude the possibility of developing the literary internal monologue into something similar to a jurisprudential internal monologue. If there is no inner voice, then there is no internal monologue. The lawyer may then need to employ a technique to trigger the internal monologue. He or she may do so by searching for an opinion that is surprising, provocative, contrary, or wrong.

Molly Bloom's internal monologue in *Ulysses* reveals James Joyce's view of society's servants of justice. The important thing is not to be a solicitor but to be seen to be a solicitor. A solicitor is a big loudmouth with a baby's face and boiled eyes who has a long wrangle in bed.¹

The lunchroom researchers cannot be described in this way, even if solitary work and internal monologues are pursued covertly.

¹ James Joyce, *Ulysses*, Translation Erik Andersson, pp. 749.