Facing Up: Impact-Motivated Research Endangers not only Truth, but also Justice

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All (but one) responses to my reflections on the ethics of activism as scholars in this blog symposium have been thoughtful, engaged, and charitable. For them, I am very grateful. Some contributions, like those of Stone, Jackson, Bustamante, Lazarus, and Bookman, were particularly thoughtful in as much as they extend and deepen the conversation on the ethical dilemmas of the scholarly role, rather than merely respond to my piece—I am grateful for their deepening the debate, but won't have the opportunity to comment on those additional dimensions in this rejoinder. I am also unable to respond to the *ad hominem* implications of moral and/or intellectual imbecility on my part, especially implicit in one, less charitable, response: my past record of scholarship *and* of activism (but not, I think, the kind of 'scholactivism' that is my foil here) will have to do the speaking for me. Finally, a general rejoinder of this nature will necessarily miss out many of the nuances in the more thoughtful responses: I apologise for that and hope for a deeper engagement on another forum.

One more general take before I dive deeper. I have been struck by the irony that most of the more robust criticisms of my piece came from scholars who self-identify as left-wing or progressive, and saw it as an attack on progressive scholarship. The irony lies in the fact that not only do I myself self-identify as a progressive, but also in the fact that in the original lecture this piece was based on, Cass Sunstein's libertarian recommendations for Eastern Europe were one of my real-world examples of the problematic sort of scholactivism. The lecture was the first stab at working through some ethical dilemmas in my acceptance speech for being awarded the Letten Prize, which 'aims to raise public awareness of how research can be used to solve global human development challenges'.

While developing this lecture into a written piece for the ICON journal, however, I opted for hypothetical examples instead because—having settled for a motivational test for scholarly ethics—I could not criticise any real-world scholar as a scholactivist (obviously due to lacking access to their motivation). As Lazarus's excellent response shows, scholactivism of the sort that I was worried about is at least as much a reactionary phenomenon as a progressive one, and more likely to further unjust causes if it becomes widespread. Thus, one should reject scholactivism (of the narrow variety that I criticise) *because* one's politics is progressive. I understand now that by writing the original piece I have unwittingly stepped on a landmine in the culture wars afflicting the academy, and the with-us-or-against-us demands in such tribal culture wars prey upon nuance and the complexity of one's internal life.

Here is how this rejoinder is organised

The actual premises of my argument are emphasised in **bold black text**.

Responses which do not engage directly with my arguments are identified in *brown italicised text and parenthesised in (round brackets) for aural accessibility*.

Responses which do engage with my argument, but are (in my view) unsuccessful, are identified in *red italicised text and parenthesised in {curly brackets}*.

Responses which do engage with my argument, and are (in my view) at least partially successful, are identified in *green italicised text and parenthesised in [square brackets]*.

Multiple colours indicate different possible interpretations of a response.

My rejoinder explanations to the responses are in un-emphasised black text.

Premise 1: Truth-seeking and knowledge-dissemination are (at least) two key objectives of scholarship.

(Role morality of scholars cannot be seen in isolation from the general moral obligations we all have as persons. (Bustamante))

I don't disagree, and it is likely that Bustamante is making this point only against Komárek and not against me. At any rate, it helps me clarify my point in contrast to Komárek's. I believe that the role morality of any profession is only legitimate if it is compatible with general moral norms. The crux of my argument is not whether morality is relevant to scholars (obviously it is), but what is the best way for scholars to be moral. In other words, it is about the means, not the end. And on means, my rule-consequentialist claim is simply that seeking material justice *directly through one's scholarship* is ultimately likely to be bad for justice (especially if you believe, like me, that what is just must also be true).

(Scholarship isn't/ cannot be/ ought not to be:

- *Apolitical (Farid & Latorre, Morijn)*
- *Value-Neutral (Morijn, Farid & Latorre, Bustamante)*
- *Disengaged, self-referential, insular, 'ivory-towerist' (Morijn, Alemanno, Farid & Latorre)*
- *Status-quoist, elitist, imperial (Farid & Latorre, Morijn)*
- *Dispassionate, motivated by reason alone (Stone))*

Nothing I say in the article claims otherwise. In fact, I bend over backwards to clarify in the piece that "*I do not call for scholars to stay out of partisan or political disputes, nor do I expect them to confine their scholarship to some chimerical "pure theory.*" I expressly state that I believe moral claims are truth claims, and accepting premise 1 does not require disavowing morality. I understand that past criticisms of activism by scholars have relied on these tropes (Weber, Fish), which are tropes explicitly disavowed in the piece. Claims that I supposedly want scholars to refuse to share their expertise with journalists are also directly contradicted by the post-research engagement that I endorse at the end of the original article. *None* of my premises imply anything that is in conflict with the claims made above. There is clearly a communication failure on my part, given how many respondents read my piece differently despite my disavowals, or refused to believe my disavowals—something I need to continue to reflect over.

{The hypothetical of the radical scholactivist (Zohrab) makes "a blanket assumption without marshalling empirical evidence" and "is a reminder of the age-old colonial construction of 'native mendacity' by colonial administrators who were producers of knowledge par excellence." (Farid & Latorre)}

I found this to be a baffling response, and a fundamental mischaracterisation of my point, one which fails to appreciate (a) that hypotheticals are standard modes of philosophical argumentation and do not seek to make any empirical claims, (b) that the purpose of portraying an ethically easy case (Zohrab's) first is only to bring the dilemma involved in the ethically harder case (Mridula's). This is is also standard argumentative practice in philosophical argumentation. To put the most generous construction on the response that I can think of, was it the choice of name (Zohrab) in the hypothetical that somehow suggested I was repeating some colonial tropes? If so, that is just something I do with hypotheticals—use names that are different from the overworked and tired names philosophers normally use for such purposes (such as Johns and Freds): you can meet 'Rahel' and 'Estha' in my book on discrimination law, 'Ifemelu' in a chapter in indirect discrimination, 'Farrah' in a newspaper article…

(There's no one universal) {'role morality' for scholars (Alemanno)}

If this is intended as a denial of premise 1, this response is fundamentally wrong—premise 1 identifies, I believe, two functions that are *constitutive* of a scholar.

More plausibly, if this response is meant to suggest that subject to premise 1, there are multiple different ways of being a scholar, then I don't disagree.

Premise 2: While the role of constitutional scholars is unavoidably performative to some extent, the two objectives of truth-seeking and knowledge-dissemination apply to them as much as other scholars.

{The notion of truth-seeking does not make sense in constitutional scholarship.}

None of the responses on the blog explicitly make this claim, but it seems to have been an underlying presumption in at least some of the responses (not to mention umpteen twitter responses). To the extent that constitutional scholarship is a broad field that includes social scientific inquiries (e.g. which family of jurisdictions are most likely to be cited as relevant comparative law, etc), this claim would clearly be false for the field as such. It is most likely intended as a claim concerning constitutional law scholarship that engages in interpretive questions (eg Does the right to property include a universal right to access to a minimum level of property by all persons in jurisdiction X?).

Even for this limited (if overwhelmingly popular) set of research questions in constitutional studies, the claim that there is no such thing as truth-value to interpretive assertions is untenable. If you grant that although not determinative, the text being interpreted sets some limits on what meanings it could possibly carry, you have already rejected as false all but a very small set of possible interpretive answers to any question in constitutional law. The fact that a question of constitutional interpretation could have more than one plausible answer does not mean that it can be given any meaning whatsoever. Even the very use of the term 'plausible' here invokes the limits of meaning-giving as well as moral limits like 'reasonableness'—admittedly fuzzy, but not limitlessly so. Therefore, just like moral questions, interpretive questions are also subject to being evaluated based on their truth (plausibility, reasonableness etc) or falsehood. If they did not, it would be impossible to ever criticise a court for deciding a question wrongly. This is why, in the original piece, I had explicitly stated that "*when speaking of 'truth' and 'knowledge', I do not exclude doctrinal or normative legal scholarship*."

Premise 3: A motivation to seek direct, proximate, material (rather than merely discursive) impact through one's scholarship (i.e. 'scholactivism') carries the risk of undermining truth- seeking and/or being counter-productive to the goal of advancing justice.

("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 etc" (Scheinin))

I don't disagree. If I did, I would be condemning all normative work (including most of my own scholarship). What Scheinin speaks of here is—in my view—simply discursive impact ('*demonstrating* that an existing executive practice is unconstitutional' etc). The motivation I am concerned is one that seems a *direct material impact*: the difference between material and discursive impact is admittedly fuzzy, but not non-existent. This fuzziness is especially less problematic because the line-drawing I am calling for is internal and motivational, rather than external and judgmental. It is best navigated by asking oneself a question in terms of agency: "*who/what* (do I hope) will bring about the material change?" If the answer gives primary agency to *the ideas* I am expounding, then my motivation is only to seek discursive change (and therefore do not attract my criticism). On the other hand, if there is an "I" in my question to the self, the agency I have in mind is that of myself as a scholar—*this* self-invested motivation is, to my mind, what carries the risks I identify. This is an important point because of the underpinning value of scholarly *humility*: see my response to Mayer below on why activists are better equipped than scholars (generally) to seek material change.

(What about Prof Sadurski's work? (Jackson))

Not only do I have enormous respect for Prof Sadurski, at least one of my own works seeks to show (far less effectively) in the Indian context what he has done in the Polish one. I have no idea whether Prof

Sadurski had the relevant motivation I am concerned about or not when explaining the attacks on Polish democracy. As I have tried to explain here, the presence or absence of the relevant motivation cannot be deduced from the nature of the work, but is only known to the scholar herself. If he did have the relevant motivation, does his case fall within the exceptional circumstance that I explicitly acknowledge? Perhaps, but I cannot presume to know enough about his context to give an answer one way or the other.

("an inquiry into a scholar's motives is an illegitimate criterion to evaluate an academic work... If you don't like what I write, then rebut my arguments and show where I went wrong, instead of questioning my motives." (Bustamante)

"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" (Scheinin)

"a scholar who chooses these shortcuts opens herself up to the risk of producing scholarship that is less effective: a lower-quality journal is less likely to be cited; a rushed, unread article is less likely to be published" (Bookman)

"an assumption that Scholactivists are necessarily poor scholars'" (Farid & Latorre))

My project in the original piece was not to evaluate any academic work, but to discuss an *internal* dilemma concerning scholarly ethics: "how should I, as a scholar with activist impulses, approach my vocation." To the extent that my true motivations are really only transparent to myself (at least potentially so, perhaps after some introspection on my part), the project does not aim to give a test for what counts as 'good scholarship'. Rather, the introspective goal is to find out what kind of *attitude* to scholarship—if widespread and celebrated within an academy—may be risky (for both truth **and** justice).

("even if it were (initially) written at the request of the European Alliance To Save Labour Rights from Free Movement, is it non-scholarly per se?" (Morijn))

Obviously not *per se* (see response to Bustamante, Bookman & Scheinin above). The motivation identified above makes a project of scholarship *risky*, rather than intrinsically unscholarly. Plus, I don't have to have the relevant motivation even if a paper was (initially) begun at the request of an activist group—the relevant question for me is not why I choose a research topic, but *how* I execute the research.

{Activists do not necessarily have a competitive advantage in effectively achieving impact compared to scholars. (Mayer)}

Admittedly, not all activists are more effective than scholars. But, in general, a *good* activist (practitioner/politician) is likely to be more effective at achieving the impact she desires than a *good* scholar. To be fair to Mayer, I only state, rather than defend this claim in the paper, and do not have the space here to defend it either. But a defence will look something like this: activism is a skilled job (like scholarship), with its own internal morality. This internal morality of (good) activism includes consultation with all affected interests and making all-things-considered practical judgments. Sure, many activists fail to do this, and some scholars may well be able to do this. But the manner in which the two vocations are designed make it more likely that activists are—*generally speaking*—better able (than scholars) to consult the constituencies they seek to serve, and (therefore) better able to identify unintended consequences.

["Would not an attempt to anticipate the future practical consequences of an article one is thinking about writing, perhaps even abandoning the plan if these consequences are intolerable, not make one into an activist of the sort Professor Khaitan condemns?" (Sirota)]

This criticism bites, at least to an extent. Abandoning a scholarly project whose findings may have an impact counter-productive to one's conception of justice is indeed comparable to the motivation I am worried about. I do think there are two possible points of departure though, that I will mention without further exploration: first, acts of commission and those of omission may have different weights for scholarly ethics. Second, the ethics of conducting a project may be different from the ethics of deciding *whether* to publish it. To be clear, I am not endorsing these claims, I haven't thought about them deeply enough to accept

or deny them yet. If this objection succeeds, it expands the scope of my criticism, rather than counter it.

{The system of peer review process is flawed. (Sirota)}

Like any human institution, of course it is flawed. As procedural checks towards ensuring scholarly integrity go, the system of peer review is the best we have come up with so far. I hasten to add, just as democracy or a relationship can be 'done' well or badly (albeit never perfectly), peer review mechanisms can be applied well or poorly too.

['Scholactivist' is a bad label, most likely to attach to normatively disruptive scholarship, my narrow definition notwithstanding." (Bookman)]

Fair cop. In my (partial) defence, the term isn't my own, but borrowed from literature that owns and celebrates it. It served my purpose of a shorthand that partially captured what I was after—clearly a bad choice in hindsight, especially as the real-world scholactivists I had in mind while writing the piece tend to have far-right positions (read Lazarus's excellent blog response for an explanation of the need to call out right-wing scholactivism).

Premise 4: Although some scholars may be able to avoid this conflict/undermining with due care and self-discipline, given human weaknesses, many will fail to do so.

{"To conclude that there is a conflict between the role-obligations of political activists and academics in a certain case, one must consider each apparent conflict, looking at concrete aspects therein, instead of assuming an incompatibility by default." (Bustamante)}

I am obviously making a type of rule-consequentialist argument. If many/most scholars in an academy have the relevant motivation during their research all I need for readers to grant is that the risks I identify are *heightened*, not that they necessarily come to bear. Premise 5 shows why this matters.

(The attitude of revisability can come under pressure for a host of other individual and institutional failings, not just activism. (Sirota))

Sure. I will even grant that the risk I identify is perhaps not even the most serious one. If I was writing a paper on the institutional pressures that distract the academy from performing its job, I would talk about these other risks. That wasn't my project here. The reason for my focus was not that it is practically the most risky, but (to my mind, at least) ethically the most challenging. I don't find it difficult to conclude that writing a paid piece to suit the funder is ethically wrong. I do find the line between the scholar and the activist within me a hard one to navigate. At any rate, I do hope that we are not about to demand that scholars must engage only with the practically most pressing matters and nothing else: criminal law scholars will be unable to talk of anything other than (say) murder if that were to be a norm of scholarly ethics.

Premise 5: An academy in which a critical mass of scholars routinely seek and are rewarded for seeking direct, proximate, material impact through their scholarship (irrespective of its political orientation) is systemically less likely to contribute to truth or to justice.

("I agree with Khaitan that the "celebritization" of some academics poses risks to those scholars who labor in fields of less immediate public interest. But these risks are presented not only by scholars who seek material change in the world but those who take very strong and controversial positions on a range of issues (including such 'discursive' issues as Shakespeare's identity)." (Jackson))

Again, I agree, and have the same response as to Sirota above.

Conclusion: If we really care about truth and/or justice, scholars should normally avoid seeking direct, proximate, material (rather than merely discursive) impact through their scholarship.

{"academic ivory towerism fails to take into account the individual context. No matter whether a scholar is based in the North or South of the world, in a capital or periphery, in a democracy or autocracy. No matter the interests at stake – be it private or the public interest – as well as the actual commitment behind that research output– be it idealism, personal financial return." (Alemanno)

Privileged scholars in the Global North alone have the luxury to dismiss scholactivism. (Farid & Latorre)}

If my rule-consequentialist worries have any truth to them, we should worry *more rather than less* about having the relevant motivation I castigate. When the moral stakes are higher (such as in vast areas of the Global South), one has to be even more careful about not making moral mistakes. The debate is not about whether one should be moral (by definition, we should be). It is about what is the *most effective means* in which the constitutional studies academy can contribute to a more just world. My argument may be counter-intuitive, but there it is: by seeking direct (albeit just) material impacts through your scholarship, you risk creating an academy that is less likely to serve justice. This argument has to be refuted by showing why the rule-consequentialist argument is wrong, rather than presuming moral imbecility on my part.

I will end for a plea for criticism based on what I have actually argued, rather than what you have presumed I might be arguing. To that end, here is a step-by-step rearticulation of my argument:

Premise 1:

Truth-seeking and knowledge-dissemination are (at least) two key objectives of scholarship.

Premise 2:

While the role of constitutional scholars is unavoidably performative to some extent, the two objectives of truth-seeking and knowledge-dissemination apply to them as much as other scholars.

Premise 3:

A motivation to seek direct, proximate, material (rather than merely discursive) impact through one's scholarship (i.e. 'scholactivism') *carries the risk* of undermining truth-seeking and/or being counter-productive to the goal of advancing justice.

Premise 4:

Although some scholars may be able to avoid this conflict/undermining with due care and self-discipline, given human weaknesses, many will fail to do so.

Premise 5:

An academy in which a critical mass of scholars routinely seek and are rewarded for seeking direct, proximate, material impact through their scholarship (irrespective of its political orientation) is systemically less likely to contribute to truth or to justice.

Conclusion: For rule consequentialist reasons, scholars should normally avoid seeking direct, proximate, material (rather than merely discursive) impact through their scholarship.

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