

On scholactivism in constitutional studies: Sceptical thoughts

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Transforming Thought into Action to Defend the Values of Public Law.

Theme for the tenure of the new ICON•S Presidents¹

1. Introduction

John Rawls famously opened his argument in *A Theory of Justice* with the claim that “Justice is the first virtue of social institutions, as truth is of systems of thought.”² But what about the relationship between truth and justice, and between them and their frequent nemesis, power? It has long been accepted that “knowledge institutions” can both legitimize abusive power,³ and

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¹ Email from International Society of Public Law to members (Sept. 17, 2021) (on file with author) (announcing the core agenda of its incoming co-presidents Marta Cartabia and Richard Albert).

² JOHN RAWLS, *A THEORY OF JUSTICE* 3 (1971).

³ MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977* (COLIN GORDON et. al. trans., Pantheon Books) (1980); STEPHEN LUKES, *POWER: A RADICAL VIEW* 16–17 (2005); ANTONIO GRAMSCI, *THE PRISON NOTEBOOKS* (JOSEPH BUTTIGIEG trans., Columbia University Press) (2011). *See also* Joseph S. Nye, *Soft Power*, *FOREIGN POL’Y* 153, 166 (1990) (describing “co-optive or soft power” as *X*’s ability to get *Y* to “want what it wants”).’

check it discursively.⁴ As psychologist Kurt Lewin once remarked, there is nothing so practical as a good theory.⁵ Whether scholars like it or not, our vocation is intrinsically and unavoidably entangled with power and justice. Merely acknowledging this entanglement does not, however, address all ethical concerns about the appropriate relationship between scholarship, power, and justice.

In this editorial reflection, my foil is *scholactivism*, a combination of “scholarship” and “activism.”⁶ Whereas truth-seeking and knowledge-dissemination are constitutive of the role of a scholar, 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. Alan Bogg laments the rise of the scholactivist worldview in the legal academy, which sees ‘fussing about legal coherence, and a concern with the rules making sense in their own terms and in relation to each other ... as a distraction from the important business of social justice activism.’⁷ I believe that scholactivism is inherently contrary to the “role morality” of a scholar (i.e., the special moral obligations that attach to a scholar qua one’s role as a

⁴ Vicki C. Jackson, *Knowledge Institutions in Constitutional Democracies: Preliminary Reflections*, 7 CAN. J. COMP. & CONTEMP. L. 156 (2021). Jackson is surely right to claim that “knowledge institutions” (including media and the academy) are key to democracy because they “help provide the epistemic foundation for a successful democracy.” On horizontal and diagonal checks on power, see Tarunabh Khaitan, *Executive Aggrandizement in Established Democracies: A Crisis of Liberal Democratic Constitutionalism*, 17 INT’L J. CONST. L. 342 (2019); Anna Lührmann, Kyle L. Marquardt & Valeriya Mechkova, *Constraining Governments: New Indices of Vertical, Horizontal, and Diagonal Accountability*, 114 AM. POL. SCI. REV. 811 (2020); Liora Lazarus, *Constitutional Scholars as Constitutional Actors*, 48 FED. L. REV. 483 (2020); CAROLYN EVANS & ADRIENNE STONE, OPEN MINDS (2020).

⁵ KURT LEWIN, FIELD THEORY IN SOCIAL SCIENCE: SELECTED THEORETICAL PAPERS 169 (1952).

⁶ *Scholactivism: A Growing Movement of Scholar-Activists*, U. WORLD NEWS (03 June 2016), <https://www.universityworldnews.com/post.php?story=20160530142606345>.

⁷ Alan Bogg, *Can We Trust the Courts in Labour Law: Stranded Between Frivolity and Despair*, 38 INT’L J. COMP. LAB. L. & IND. REL. 103, 134 (2022).

scholar).⁸ Here, however, I will give some *instrumental* reasons why we should reject scholactivism: because—rather than in spite—of our concern for justice. I will argue that an individual scholar’s direct pursuit of material outcomes may not only fail to realize the specific just outcome they seek, but also that an academy with a critical mass of scholactivists is systematically less likely to contribute to justice than one whose members generally stick to their role morality as scholars more strictly. Like many role-constrained actors who best realize certain role-extraneous goals only indirectly, a scholar is more likely to contribute to a more just world by eschewing the direct pursuit of specific material outcomes. I accept that circumstances where the demands of common morality (qua person) trump role morality (qua scholar) exist, but only rarely. I will conclude by suggesting that pre-research choice of the topic of inquiry and post-publication public engagement and dissemination are a much better occupations for the activists inside us, than the pursuit of specific material impact through our scholarship.

Before I identify the risks inherent in scholactivism, a few definitions and caveats are in order. First, when speaking of “truth” and “knowledge,” I do not exclude doctrinal or normative legal scholarship. *Truth* concerns reality itself. Propositions that have truth value—i.e. those that may be true, false, partially true, true in most cases, etc.—belong to a variety of domains: they may be empirical (e.g., “Democracies never go to war with each other”), moral (e.g., “Screening human embryos for sex selection is wrong”), conceptual (e.g., “The only distinction between a religion and a cult is that the former has a critical mass of adherents”), doctrinal (e.g., “Under the rules of our association, election of the chairperson must be conducted by secret ballot”), hybrid (e.g., “The best moral reading of the right to property in our Constitution implies a positive duty on the state to secure for everyone the ownership of property of a threshold, constitutionally adequate, value”), and so on. Although philosophers disagree over the necessary and sufficient conditions that characterize *knowledge*, there is broad agreement that the truth of a proposition is a precondition for its knowability.⁹ Thus, a scholar’s role morality qua their role as a scholar

⁸ On role morality generally, see Judith Andre, *Role Morality as a Complex Instance of General Morality*, 28 AM. PHIL. Q. 73 (1991); on its exploration in the context of professional lawyering, see DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 104–5 (1989).

⁹ Jonathan Jenkins Ichikawa & Matthias Steup, *The Analysis of Knowledge*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2018).

specifies two pursuits: discovering truth and disseminating knowledge (the latter includes providing explanations that give reasons to others to justifiably accept their truth claims).

Unlike Weber's, Fish's, or more recently Komárek's—my argument does *not* demand value neutrality in scholarship or pedagogy.¹⁰ 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.”¹¹ I am not a moral relativist obsessed with exaggerated how-do-we-know epistemic worries either.¹² But a scholar's engagement with morality must be, well, *scholarly*. This entails a concern **with** what morality demands, investigated through appropriate disciplinary tools (e.g., of moral philosophy), based on a thorough knowledge of extant scholarly literature on the issue, in constant engagement **with** peers who disagree, **and** an abiding attitude of revisability in light of new evidence or irrefutable arguments. Sometimes, therefore, all that may separate a normative scholar from a scholactivist is the absence of an activist *motive* to pursue a direct, non-discursive outcome in a proximate case through one's scholarship. I will show that it is nonetheless undesirable and counterproductive for scholars to have this motivation when doing their research, even when the activist motive is made subject to the overriding motive of truth-seeking and knowledge-dissemination. My concern with the dangers of scholactivism, however, should not be confused with a call for anything-goes moral relativism or some elusive value neutrality.

Second, I accept that every human activity—including scholarship—is permeated by power. Indeed, power within the academy, and its role in recruitment, agenda-setting, funding, conference invitations, and so on, has been a frequent subject of academic investigation. I reject scholactivism not because I think the academy should be indifferent to power and justice, but

¹⁰ MAX WEBER, H. H. GERTH & WRIGHT MILLS, FROM MAX WEBER: ESSAYS IN SOCIOLOGY 129–56 (2013); STANLEY FISH, SAVE THE WORLD ON YOUR OWN TIME (2008); Jan Komárek, *Freedom and Power of European Constitutional Scholarship*, 17 EUR. CONST. L. REV. 422 (2021).

¹¹ Paolo Sandro, *Constitutional Democracy and The Sound of (Academic) Silence*, VERFASSUNGSBLOG (Dec. 21, 2021), <https://verfassungsblog.de/constitutional-democracy-and-the-sound-of-academic-silence/>.

¹² See, for example, the Rawlsian distinction between the good and the right.

because scholactivism will make us more susceptible to abusive power, and therefore less likely to contribute to a just world.

Third, I admire activists who seek to make the world a better place, and nothing I say here criticizes activism that scholars undertake by means other than their scholarship.¹³ If anything, I believe effective activism requires a highly specialized set of professional skills and judgment, qualities which only very few of us are ever likely to acquire alongside our day jobs as scholars. No doubt, individuals wear multiple hats: a scholar is also a person, a citizen, a friend, a neighbor. We are often called upon, and may even have a duty, to engage actively in the world around us—by writing letters to newspapers, by marching in the streets, by giving interviews, by campaigning for law reform, by advising the legislature and non-governmental organizations, even by building capacity within the academy by supporting early career scholars from underrepresented groups or increasing open access to scholarship. Some of these engagements will legitimately draw upon or otherwise relate to our scholarly work. A scholar need not disengage with the world they live in.

Finally, the claims in this editorial reflection concern the contours of scholarly research ethics. It has some implications for academic freedom and pedagogy, but I will leave their elaboration for another day. Moreover, nothing I say here is an invitation to regulate or prohibit scholactivism, whether by universities or by law. These reflections are only meant to sharpen our own sense of our professional ethics.

2. Radical scholactivism (aka the strawman)

Most colleagues will agree that the suppression of a piece of evidence that could adversely affect the interests of one's funders or undermine a celebrated theory by one's influential supervisor is unscholarly. Similarly, a "research" project whose hypothesis the "researcher" is irrefutably committed to confirming *even before the research has begun* is either not worth pursuing (because the conclusion is known) or simply not real scholarship.

Another strawman example, whose consideration will help clarify a more difficult case in the next section, is a hypothetical radical scholactivist Zohrab: an equality-law expert in a

¹³ The other form of scholarly activism I am sceptical of is the role of a "missionary" teacher in the classroom, but my thoughts on this must wait for another occasion.

jurisdiction in which the legal liability for indirect discrimination has been controversially declared unconstitutional by a lower court, on the ground that its distributive consequences were akin to constitutionally impermissible affirmative action. An appeal lay pending before the Supreme Court. Zohrab is deeply committed to the idea that the state should regulate not only direct discrimination but also indirect discrimination. Their research into various aspects of indirect discrimination liability leads them to conclude that (i) the prohibition of indirect discrimination is a form of distributive justice, albeit realized through a strict-liability-based enforcement model more commonly used for corrective justice issues,¹⁴ and (ii) this form of pursuing distributive justice is constitutionally permitted. However, Zohrab also knows that most of the sitting judges are unsympathetic to the constitutional validity of distributive justice measures and are therefore likely to find the provision unconstitutional if they are persuaded of (i). To avoid that outcome, Zohrab writes a paper on the case, underemphasizing the distributive justice aspect of the liability by failing to report on the provision's structural features, legislative history, and tribunal cases that clearly point to it. Zohrab also cherry-picks examples from domestic and foreign jurisdictions to argue instead that indirect discrimination liability is based entirely on corrective justice principles. The published piece therefore defends an argument Zohrab believes to be unsound, but one more likely to succeed in court. Such a strategic move would be unexceptional for an advocate presenting the best case on behalf of her client in court. But Zohrab acted like an advocate *through* their scholarship. Zohrab is a *radical* scholactivist because their activist motivation overrides their academic commitment to truth and knowledge.

The obvious cost of Zohrab's scholactivism is incurred by the body of human knowledge. Of course, scholars make mistakes. The gradual accretion of human knowledge is based on the perpetual process of new scholarship identifying and correcting mistakes in existing scholarship, and building upon it. But the publication of a claim the author believes to be (even partly) false is incompatible with our defining role as seekers of knowledge. Because Zohrab clearly acted fraudulently, it is easy to condemn their scholactivism as wrong. Even though most colleagues who identify as scholactivists are unlikely to identify with Zohrab, this strawman example is useful in investigating our intuitions about a scholar's role morality: while intellectual dishonesty

¹⁴ For such an argument, see HUGH COLLINS & TARUNABH KHAITAN, FOUNDATIONS OF INDIRECT DISCRIMINATION LAW 197–222 (2018).

may be excusable in some contexts and for some roles (such as the role of an advocate), it is thoroughly incompatible with the role morality of a scholar.

3. Moderate scholactivism (the harder case, but still wrong)

But what about scholactivism that does not condone intellectual dishonesty? Most colleagues who embrace scholactivism, unlike Zohrab, are likely to be moderate in their scholactivism, i.e., they will be committed to always prioritizing the twin objectives of truth-telling and knowledge-dissemination if they come into conflict with their activist goals, without eschewing the latter in the absence of such conflict. Moderate scholactivists may well ask me to explain the following: why is the *indirect* pursuit of justice by entering the vocation of scholarship legitimate, but the *direct* pursuit of just outcomes *through* one's research illegitimate? I will argue that while radical scholactivism is patently dishonest, moderate scholactivism is highly risky. Typically, activism (i) has shorter time and space horizons, (ii) demands an attitude of certainty, and (iii) celebrates and rewards those who bring about just outcomes. These features are in tension with the academy's need to provide time and distance for research and reflection, inculcate an attitude of skepticism, and reward truth-seekers and knowledge-creators. These tensions put even a moderate scholactivist at risk of failure as a scholar, but—more importantly—they are also likely to generate systemic weaknesses within an academy which tolerates or celebrates moderate scholactivism. Perhaps counterintuitively, these risks increase manifold when moderate scholactivists regularly *succeed* in securing their sought-after material outcomes.

To understand these individual and systemic risks, meet Mridula, a *moderate* scholactivist who, unlike Zohrab, seeks several (theoretical and practical) objectives directly through her scholarship, but maintains the primacy of the intellectual goal of knowledge creation. Mridula shares Zohrab's political commitments, understanding of judicial politics, and beliefs about the distributive dimension of indirect discrimination liability. Unlike Zohrab, she is an expert in constitutional institutions rather than equality law. She is contacted by an activist group, Equality Now, which wants to pre-empt a judicial finding of unconstitutionality by getting the Equality Act—which contains the impugned provision regulating indirect discrimination—placed in a special category of statutes in her jurisdiction which are immune

from constitutional challenges before courts.¹⁵ It asks Mridula to write an academic article recommending that parliament should act to grant such an immunity for the Equality Act. Mridula accedes and writes a paper explaining that the constitutional preconditions to trigger the immunity clause are met by the Equality Act, and that parliament should trigger the immunity clause to thwart impending judicial evisceration of the indirect discrimination provision. In contrast to Zohrab, nothing Mridula writes is incompatible with her knowledge and beliefs as a scholar with expertise on the immunity clause, nor does she omit contradictory facts or arguments. Nevertheless, her actions, motivated by a specific practical outcome, are dangerous for her role as a scholar and for the academy more broadly.

First, activism is practical: it usually requires quick responses to concrete problems in particular places. Even when the overall activist goal is decades away (say, achieving net zero carbon emissions), the incremental steps that activists seek towards such goals tend to have a special urgency. Scholarship's theoretical goals, on the other hand, demand time for reading, thinking, discussing, workshopping, getting peer reviewed, revising, and so on. While Mridula is sincere in making the interpretative claim that the special immunity was constitutionally permitted for the Equality Act, she is under pressure from Equality Now to publish well before the next elections in which the extant parliamentary supermajority required to create such an immunity could disappear. As a result, she does not workshop or revise drafts of the paper as she would normally do, and she also chooses to submit the paper to a non-peer-reviewed student-run law review known for its quick publishing decisions and for preferring practice-oriented novel claims over academic rigor. Had she subjected the paper to workshops and peer reviews, a colleague like Zohrab, with specialism in equality law, might have told her that some of the other provisions of the Equality Act—for example, the exclusion of linguistic identity from its list of protected grounds¹⁶—are in fact unconstitutional and should remain judicially reviewable. Had she taken her time, Mridula might have known that her argument, if successful, could forestall a future judicial challenge that might have improved, rather than weakened, the Equality Act.

Not only does Mridula fail to foresee the impact of her intervention over time within her own jurisdiction (4). She also fails to appreciate the potential impact her defense of the

¹⁵ This is akin to “Ninth Schedule” statutes in the Indian Constitution.

¹⁶ This is akin to *Vriend v. Alberta*, 1 S.C.R. 493 (1998) (Can.).

legislature's ability to immunize specific statutes from judicial review will make in its smaller neighboring jurisdiction (*B*), where *A*'s constitutional developments are extremely influential. *A*'s courts have a history of intervening to temper what they perceive to be its multipartisan parliament's radical overreaches, which led to the immunity provision in its constitution. *B*, however, has a dominant party system and its courts are the main check on the ruling party. Had Mridula thought about the geopolitical relationship between *A* and *B*, or been made aware of her own intellectual standing among constitutional actors in *B*, she would have limited her arguments to *A*'s particular context rather than make them with the emphatic and unqualified passion of an activist. Because activism's practically oriented horizons tend to be limited in time and space, a scholactivist motivated by the pursuit of specific outcomes in particular cases is at greater risk of overlooking the potential unintended consequences of their normative claims beyond the temporally and spatially proximate issue at hand. Activists can mitigate the risks of unintended consequences because they are able to make strategically targeted outreach to limited audiences—a sort of control that scholars tend to lack over their published works.

Second, a commitment to truth requires a commitment to skepticism and revisability: a scholar must unqualifiedly and abidingly remain open to the possibility that her normative hypotheses may be disproved rather than confirmed by her research. While activists can also be open-minded, a far greater measure of certainty is required to campaign for a specific outcome in a particular, real-world, context. The default activist attitude of certainty is inherently in tension with the prized scholarly instinct of revisability. When infected with the bug of near-absolute certainty, the scholar risks failing to admit they got it wrong (when they did). They are thus diminished as a scholar.

Suppose Equality Now's campaign succeeds, not least because of Mridula's influential article and parliament having acted as she had suggested. Years down the line, *A*'s political and judicial tides turn: a new parliament amends the Equality Act to impose prohibitive fees to sue for discrimination, effectively eviscerating the law.¹⁷ But because of Mridula's successful scholactivism, the more progressive judges now lack the power to intervene. At the same time, in *B*, the dominant party amends its constitution to introduce an immunity clause similar to *A*'s, and

¹⁷ See the facts of *R (on the application of UNISON) v. Lord Chancellor*, [2017] UKSC 51 (U.K.).

uses it to immunise an unfair Election Act, which makes it easy for the ruling party to capture the electoral commission and gerrymander constituency boundaries.

As a result, Mridula's own position on the legitimacy of the immunity provision comes under pressure and sharp criticism. Despite her own doubts about the correctness of her previous claims, she finds it impossible to disown her work because the nature of her scholactivism rendered her mistake not just an intellectual one but also a moral one. Admitting to an error is thus much harder for a scholactivist than it is for a scholar. This tendency is further exacerbated not just because of the motivational difference between them, but also because when an intellectual mistake causes real injury in the world, the all-too-human temptation to deny complicity and dig one's heels in becomes overwhelming. Criticism is always hard on human beings, even if one is trained professionally to give and receive it. This renders a vocational culture premised on robust public criticism by peers inherently fragile. Yet, the health of this culture is pivotal to the academy's role in knowledge production and truth discovery. By heightening the stakes in making an error, scholactivism—even of the moderate variety— puts enormous pressure on this culture and risks eroding it permanently.

Third, a successful moderate scholactivist is forever in danger of becoming a radical scholactivist. Mridula is celebrated for her contribution soon after *A*'s parliament moved to immunise the Equality Act. She is interviewed and profiled in the press, Equality Now names her "Equality Champion of the Year." Her esteem rises, she starts getting invited to give prestigious keynotes, wins several impact-related research grants and awards, is appointed as *amici* in landmark cases, and can count leading politicians, activists, and judges as personal friends. In *A*—where double-blind peer review is still not the norm in legal journals—whatever she writes is published in leading journals. Since power begets power, this process of embeddedness within the structures of power is self-perpetuating and deepens over time. Her activist motivations strengthen at the expense of her intellectual ones. A scholactivist who is celebrated for her causal role in achieving direct material outcomes rather than her truth-telling is likely to double-down on her activism, and ultimately learn to prize the latter over the former.

Even if our Mridula could steadfastly avoid these risks, too many Mridulas would nonetheless pose a systemic risk for the overall health of an academy. First, the key features of a well-functioning university—provision of protected time for research and reflection, guarantee of academic freedom, enforcement of disciplinary rigor through anonymized peer review, and

openness to criticism and refutability—are all meant to secure the conditions necessary for discovering complex, less-obvious, truths. Different disciplines have developed (and constantly interrogate) sophisticated methodologies to investigate, corroborate, or refute different types of truth claims, whether empirical, conceptual, or moral. But an academy in which scholactivism has become normalized is likely to encourage instant publications in response to concrete and proximate issues currently dominating the news cycle. This further incentivises scholars to take shortcuts, threatening to resolve the tension between activism's and scholarship's demands in favor of the former. Peers may start to judge the publishability of academic works based on its likely impact, rather than solely for its contribution to the advancement of knowledge. Funding may be reduced for projects that cannot show proximate practical impact because rigour is replaced with impact as the metric of scholarly success. The opportunity cost of undiscovered knowledge in a thoroughly (but myopically) utilitarian academy may never be known. However, its structures are likely to encourage even more scholars to become scholactivists: not all of them will have Mridula's superhuman self-discipline to avoid the risks inherent in scholactivism.

Furthermore, whether she likes it or not, a successful Mridula would be a role model for a new generation of scholactivists *because* of her *scholactivism*. Not all of them will, of course, pursue *her* impact-agenda—some may even be hostile to it and seek to have an opposite impact. But even if Mridula remains aloof to the charms of power, she is complicit in facilitating a systemic change towards an academy that is even more amenable to the dictates of power; what's worse, this amenability would be structured, legitimized, and normalized, compromising what Lazarus claims is the duty of independence on scholars.¹⁸ Thus, an academy that incentivises 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.

4. The scholar and the activist: An uneasy truce?

If I have persuaded you of the systemic, professional, and personal dangers of radical as well as moderate scholactivism, there still remains a concern of guarding against subconscious scholactivism. Many if not most of us want to do good in the world, usually directly. We may

¹⁸ Lazarus, *supra* note 3.

not always be aware of our own motivations, and the temptation of directly pursuing specific material outcomes may still infect our research projects. After all, we do not live single value lives; I certainly care about truth as well as justice. What *can* a concerned scholar do in our world (apart from good scholarship)? I can only answer the question biographically. Here is how the activist and the scholar in me have made peace. My starting point as a scholar is self-awareness: of my own moral worldview, of my duty of independence, and of the fundamental importance of methodological rigour, the refutability and revisability of academic claims, and double-blind peer review. While this does not entail a Weberian aspiration for value freedom, it does require a cultivation of value-awareness as an aspect of self-awareness. When deciding what topic to work on, I allow the activist to do most of the decision making—with the scholarly caveat that the topic should not concern itself with still-unfolding current or relatively recent events (I do, however, comment on live constitutional issues through blogs, interviews, and newspaper columns, in order to draw out relevant implications of my prior research, to disseminate my existing knowledge and expertise to a wider audience, or to put out tentative pre-research thoughts for comment, clearly identified as such). Once the broad topic is selected, the scholar takes over. Framing the question, determining the appropriate method, literature survey, evidence gathering, argumentation, writing, workshopping, revising—these are all scholarly activities that must be undertaken with a deep commitment to intellectual virtues shaped solely by the goal of knowledge-creation. Over time, I have learned that attention to disciplinary method and multiple workshops, especially with colleagues who are likely to be unsympathetic towards my claims, are indispensable in guarding against my own internal activist unduly influencing the research process. This also requires building workshopping capital by being generous towards colleagues with my own time to comment on their work.

The activist has his moment *after* publication, by focussing on engagement. He translates and disseminates the work to a wider public (through newspaper columns, interviews, podcasts, talks, conferences etc) and feeds academic learning into *relevant* policy debates and legal briefs (always in consultation with practitioners and activists, with the qualifications necessary for *pro tanto* expertise, and through regular channels of democratic politics). When the occasional impact does come about, the activist and the scholar can celebrate it together, without mutual recriminations.

5. Conclusion

Given the markedly performative nature of constitutional scholarship in relation to constitutional law and politics, the general reasons against scholactivism apply especially strongly to constitutional scholars. Our field will do well if constitutional scholars are more self-aware of the ethical dilemmas inherent in our role. A sub-field that examines the performative role of constitutional scholars as (self-conscious or unwitting) constitutional actors would be even more welcome.