

The Virtues and Vices of Scholarly Activism

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ABSTRACT: Recently, there has been vigorous debate in constitutional theory about the ethics of activism in scholarship. Sparked by responses to the work of Tarun Khaitan, scholars have begun examining the ethical constraints and concerns raised when activism in pursuit of concrete social goals meets the truth-seeking mission of scholarship. An excellent contribution to this discussion has been the intervention of Adrienne Stone. She argues that, contrary to the assumption that activism is inimical to truth-seeking in scholarship, the opposite is the case. Activism may provide insight and clarity into the interpretive exercise of legal research. Whilst this may be true, it does not dissolve or answer the many vices encouraged by melding activism and scholarship as a matter of role morality. The aim of this article is to tease out exactly what some of these vices are, and how they relate to the overall role morality of both the activist and the scholar. We agree with Stone that scholarly virtue requires a commitment to the pursuit of truth, which need not involve only detached, ivory-tower theorising. However, we argue that any such pursuit of scholarly truth must be anchored in cleaving to the habit-forming standards or virtues that the role morality of scholarship demands. This role morality of scholarship may conflict with the role morality of activism, encouraging vices that threaten the ends of scholarship. Specifically, we address the vices of cowardice, inapt anger and unjust contempt. For insight to be realised, virtue must be carefully pursued, and vice actively discouraged.

KEYWORDS: apt anger, contempt, cowardice, truth-seeking, scholar activism, vice, virtue

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I INTRODUCTION

Watch your thoughts; they become words.
Watch your words; they become actions.
Watch your actions; they become habits.
Watch your habits; they become character.
Watch your character; it becomes your destiny. — Lao-Tzu

Adrienne Stone has produced a nuanced and compelling defence of scholarly activism. We welcome the important reframing of this debate as an inquiry into the ‘role morality’ of the academic scholar. This is a crucial step towards the kind of analysis that we would favour when thinking about how a scholar ought to behave and the kind of habits they should be fostering. Much of the debate around scholarly activism – or ‘scholar activism’ – has focused on either the motivation that one should or should not have when conducting scholarly work or the consequences that flow from activist-motivated scholarship.¹

Professor Stone has rightly questioned the scope of this analysis, seeking to introduce into this discussion the distinct moral obligations that scholars *qua* scholars are under. Her argument is that scholarly activism ‘poses no special challenge to scholarly integrity’.² In fact, to Stone, an activist motivation may provide epistemic benefits to the scholarly enterprise, providing insight into moral truths that are essential for good scholarship that is attuned to the social, political and economic context within which it operates.³

We should stress at the outset that we agree with the vast majority of what Professor Stone has said in her article. Our intention in this response is not to argue that activism is inherently incompatible with scholarship or that activist-motivated scholarship is inimical to the scholarly role. Rather, it is to draw attention to what we consider to be the most salient danger that scholarly activism poses to scholarly integrity: habit formation and vice. We do not take this to pose much in the way of a challenge to Professor Stone’s argument. This is instead an attempt to widen the scope of this debate by introducing additional considerations that we think ought to be accounted for in any discussion of scholarly activism.

Scholars, like all people, are engaged in a constant process of self-constitution.⁴ We are what we do repeatedly and sustainedly. This is because this sort of repetition helps us create and inhabit certain practical identities or ‘roles’ such as parent, citizen or scholar.⁵ It is therefore particularly important to be aware of the habits one is forming and to be attuned to the danger that these habits may inhibit our ability to do scholarship well.

One can be both a scholar and an activist. Indeed, it is often difficult to identify precisely when one is operating within one ‘role’ or the other. But scholarship and activism are each distinct ways of engaging with the world and are each directed towards distinct ends. The

¹ T Khaitan ‘On Scholactivism in Constitutional Studies: Sceptical Thoughts’ (2022) 20 *International Journal of Constitutional Law* 547; L Lazarus ‘Constitutional Scholars as Constitutional Actors’ (2020) 48 *Federal Law Review* 483; J Komárek ‘Freedom and Power of European Constitutional Scholarship’ (2021) 17(3) *European Constitutional Law Review* 422–441.

² A Stone ‘A Defence of Scholarly Activism’ (2023) 13 *Constitutional Court Review* 1, 1, available at <https://doi.org/10.2989/CCR.2023.0002>

³ *Ibid* at 1.

⁴ C Korsgaard *Self-Constitution: Agency, Identity, and Integrity* (2009).

⁵ *Ibid* at 19–20.

day-to-day tasks of a research-active scholar may be quite similar to that of a professional activist or campaigner who focuses on the production of policy papers or written advocacy. It is, therefore, quite difficult to define scholarship primarily by reference to what is done. Our suggestion is that scholarship and activism are defined by reference to their ends. Indeed, because our practical identity as scholars always has a point or end,⁶ the manner in which we constitute ourselves as scholars must properly cohere with the ends of scholarship. Scholarship is properly ordered towards the pursuit of truth and the dissemination of knowledge. Activism is properly ordered towards the effective pursuit of political change and/or the prevention of change. This means that there will be times when the pursuit of scholarship and the pursuit of activism conflict. When they conflict, a choice must be made.

There is, therefore, a clear danger that scholarly activism poses to scholarly integrity: when truth and efficiency conflict, the scholar activist is tempted to choose to be effective, rather than to be truthful. In its most striking manifestation, this can result in scholars choosing to lie or equivocate when doing so is necessary to advance a political cause to which they are committed. Another example, more likely to occur, is the risk that scholars might refrain from discussing inconvenient truths within an area of inquiry for fear that they will frustrate the effective pursuit of political ends. All scholars must be alive to the temptation conveniently to lose interest in responding to challenging questions.

This might, in isolation, be a minor threat to scholarly integrity. One has not lied or misrepresented the facts as one understands them; this is merely a choice not to focus on something one does not find particularly interesting. But there is a real danger that this small indulgence, if repeated over a sustained period of scholarly inquiry, may develop into a habit of ignoring inconvenient truths within one's scholarship. Should this occur, there is every chance that this habit will breed other habits which begin to shape the character of what the scholar is doing when they engage in their scholarly work, to the point where what they do ceases properly to be called scholarship at all. This can happen, not because the scholar is motivated by an activist mindset necessarily, but merely because their relationship with the pursuit of truth has become so complicated by concerns for the achievement of political ends that it is hard to say that truth is the guiding principle of action here at all. At that point, what is being done is simply not scholarship in any meaningful sense.

Role morality is a useful framework within which to discuss the phenomenon of scholarly activism, but it must be supplemented by an analysis of the virtues and vices of scholarly inquiry, properly understood. In particular, the concerns that activist motivation might lead to negative consequences for the achievement of activist goals should be seen as secondary to the more pressing danger that a disregard for the sacred importance of truth for the scholarly endeavour threatens to undermine the good of scholarship and thereby alters the character of the scholar, potentially to the point where one can no longer be described as a scholar at all.

Therefore, the rest of this article is divided into six parts. Part II sketches out the meaning of exactly how scholarship differs from activism. Part III defines what exactly scholar activism entails. Part IV explores the proper relationship and ordering in scholarship between motivation, means and ends. Part V discusses the vice of inapt anger in scholar activism, and Part VI the vice of unjust contempt. Part VII concludes our argument.

⁶ Ibid at 21.

II SCHOLARSHIP AND ACTIVISM

Before exploring the issue of scholar activism, some ground-clearing is warranted. Scholarship, particularly within an academic context, can be difficult to describe in a way that would be recognisable to all members of the academy. This is partially because scholars are extremely intellectually diverse and so there is nothing by way of consensus on the metaphysical or metaethical presumptions that must be shared to speak coherently about anything, let alone scholarship.⁷ As such, we must put our stake in the contested ground of reality. This article presupposes several contentious claims, and we will not be defending them from first principles:⁸

1. There are such things as truth and knowledge.
2. There are moral truths, virtues and vices.
3. We can gain access to these truths through reason and discursive knowledge dissemination.
4. There is such a thing as scholarship. It has its own character. You can be a good scholar or a bad scholar. Scholarship has its own internal morality.
5. There is such a thing as activism. It has its own character. You can be a good activist or a bad activist. Activism has its own internal morality.

Much of this mirrors what Professor Stone takes to be the core definition of scholarship. To her, scholars pursue academic inquiry ‘as a central vocational purpose’ in the context that accords with academic freedom.⁹ This focus on vocation is insightful and mirrors Stone’s conclusion that ‘the central obligation of scholars is to pursue and disseminate knowledge through academic inquiry’ and ‘to act in ways that are *consistent* with the role of scholar’.¹⁰ But, being vocational, scholarship is not simply a role that one slips into from time to time. It is a way of constituting oneself as oriented towards the pursuit of particular human goods: truth and knowledge.¹¹

Scholarship is concerned primarily with first-order questions of truth and knowledge. For academic freedom to be valuable, it must be tied to something good, certainly for the individual engaging in it, but more importantly, if it is to receive heightened support and protection within law, for the community as a whole. That good is the unity of truth seeking and knowledge dissemination. Their pursuit is what defines the academic endeavour. This is the primary virtue of scholarship.

Activism on the other hand is a more pragmatic art. Its primary focus is second-order, socially oriented prudence. Activists must first have settled the first-order moral, social and political questions necessary for them to identify the object of their activism before they can engage in it. Only then can an activist start to work towards implementation, change or resistance. Stone is entirely correct that activism refers to ‘activity undertaken to achieve a result of some kind, usually a social and political outcome’.¹² But activism is more than this.

⁷ However, such metaphysical or meta-ethical disagreement is due in large part to the abstract level of disagreement on these questions. MH Kramer *Moral Realism as a Moral Doctrine* (2008) 3.

⁸ Although, it would be inappropriate for us to close ourselves off from the possibility that these presumptions are false.

⁹ Stone (note 2 above) at 2. See also C Evans & A Stone *Open Minds: Academic Freedom and Freedom of Speech in Australia* (2021) 85–90.

¹⁰ Stone (note 2 above) at 2.

¹¹ On basic human goods, see J Finnis *Natural Law and Natural Rights* (1980).

¹² Stone (note 2 above) at 4.

It is not just activity to bring about (or prevent) social or political change. If that were the case, then all social actors are activists. Stone is right that activism typically involves strong, vigorous action or campaigning,¹³ and it is here where the missing element can be more clearly articulated. To us, activism necessitates something in the realm of having strongly held political or moral views akin to ideology. It is here where the virtues and vices of activism can be found: the fervour needed to motivate vigorous, sometimes even extreme political action and the risk of ideological blindness. This is of particular concern for scholars whose guiding aim should be truth.

III SCHOLAR ACTIVISM

Professor Stone begins her discussion of scholarly activism by cautioning against the danger that terms like scholar activism, much like ‘judicial activism’, become ‘not a description but a denunciation’.¹⁴ In doing so, she draws an interesting parallel to ‘judicial activism’. There is, of course, a vitally important distinction between judicial and scholarly activism: judges should never be activists; scholars may be. In response to the charge of judicial activism, appropriate responses do not include a defence of judges seeking to bring about or prevent social change due to ideologically motivated reasoning. Scholars may, like judges, deny that what they are doing amounts to activism, question whether morally engaged work is best described as activism, or even challenge the activist motivations of those who describe their work as activism. But the scholar can also accept that what they are doing is activism and defend it on the basis that there is nothing wrong with a scholar who is also an activist. A judge cannot do that. Judicial activism is a contradiction in terms. To adjudicate is to judge impartially.¹⁵

Scholars are also expected to be in some sense impartial. They are not held to the same standard as judges, but there is nevertheless a danger that selective emphasis may lead a scholar to do bad scholarship, even if it might be good activism.

Once again, it is important to stress that because scholarship and activism are directed towards distinct ends, and because those ends might sometimes conflict, someone attempting to do both scholarship and activism must be alive to the risk that they may prioritise politics over truth. This is not to say that scholars cannot take a view, even a politically or morally contentious view. The requirement to be impartial is not a requirement to be neutral. It is a call towards fairness in the pursuit of truth, a call away from bias or prejudice.

Compare this to the role of the barrister, who must be partisan by definition. It would be wrong for a barrister or advocate not to de-emphasise authorities which are threatening to their client’s interests and to over-emphasise authorities which are supportive.¹⁶ But this is a separate way of thinking and acting compared to what is expected of an expert witness who,

¹³ Ibid at 3.

¹⁴ Ibid. See also T Josev *The Campaign against the Courts: A History of the Judicial Activism Debate* (2017) 1.

¹⁵ Note that we do not use judicial activism to describe morally engaged adjudication or as a pejorative against non-positivist judges. Here we mean the misuse of the judicial role to pursue activist ends rather than to adjudicate a case impartially and fairly. See J Gardner ‘How To Be a Good Judge’ (2010) 32 *London Review of Books* 13; A Tomkins ‘The Role of the Courts in the Political Constitution’ (2010) 60 *University of Toronto Law Journal* 1; A Kavanagh ‘The Role of Courts in the Joint Enterprise of Governing’ in NW Barber, R Ekins & P Yowell (eds) *Lord Sumption and the Limits of the Law* (2016). See also C Nemeth ‘Judges and Judicial Process in the Jurisprudence of St Thomas Aquinas’ (2001) 40 *The Catholic Lawyer* 401.

¹⁶ There is a duty on barristers and advocates not to misrepresent the law to courts and this will include a duty to mention adverse authorities. In this sense, barristers and advocates are more constrained than activists but freer

whilst they may be called by one party, nevertheless has a duty to discuss all evidence relevant to the issue and to afford it appropriate weight. When they do not do this, they fail to live up to the internal standard expected of an expert witness. The same is true of judges who may have their own view, preferences, or sympathies, but must nevertheless adjudicate on the basis of a correct understanding of the law, one which does not ignore or give undue weight to relevant authorities, even if it is counter to the judge's own preferences. This will sometimes include recognition of one's place within an institutional framework directed towards the provision of justice within a community. An individual judge cannot overturn binding precedent from a higher court, even if they are convinced that it is incorrect.

Scholars are not so tightly bound by this obligation. They are permitted to hold a view that they think is correct and for whose truth they can advocate, free from the institutional constraints that judges are under. Genuine academic freedom is an institutional framework of support for scholars, permitting them to advance unpopular views. It does not – or at least should not – restrain the ability of scholars to argue for what they think is true. In the context of scholarship, truth is an unqualified good and the temptation to lie or avoid addressing inconvenient facts or arguments a clear vice.

It might be tempting therefore to presume that an aversion to the truth or the risk of ideological blindness are also dangers for activism. But they are not. If it stands in the path of achieving one's social goals, truth can be directly oppositional to the ends of activism. If one is campaigning to stop racial discrimination, focusing on the fact that, in the United States, there is a higher rate of crime among ethnic minorities is not only imprudent, but also stupid.¹⁷ It does not matter that there is a mountain of criminological research explaining that this higher crime rate has no causal connection to skin colour.¹⁸ While a scholar working on racial discrimination in the criminal justice system must address these statistics and explain how they may feed into incarceration rates, an activist will often be better served emphasising completely different issues.

At times, it may even be in the interest of activism to fudge the truth, to say that something is complicated when it is not or to say that something is simple when it is complicated. If given a brief period of time to make a political point, the good activist will not let complexity get in the way of making an effective statement. The simple, but not true, will be preferred over the true, but too complicated to explain. Crucially, while a scholar, when attempting to explain a complex area to the public, might choose to simplify something complex, they must do so in a way that does not mislead. When an activist does something similar, the goal is often and arguably ought to be that simplification does not compromise a message or cause. These will often mean the same thing, but they might sometimes conflict. When they do, the scholar must choose truth; the activist may choose to stay on message.

Activists know what they want. They might think deeply about how best to achieve their goals, and there might be trenchant disagreement about what tactics should be adopted. But this is second-order work. Activists are in the realm of prudence, not truth. If successful activism can coexist with being truthful all of the time, then that is ideal for the activist. But sometimes the demands of truth may conflict with the demands of good activism. In such

than judges. It is expected of barristers and advocates to present the best argument for their client, ensuring that the relevant law is framed in a way that is favourable to their case.

¹⁷ See straw man example from Khaitan (note 1 above) at 550–551.

¹⁸ *Ibid.*

cases, a choice must be made, and it will, at times, be desirable or even necessary for the activist to choose efficiency over truth. A good activist pursuing just and noble ends should exercise a degree of judgement in how they approach knowledge dissemination and truth claims. They may even be justified in lying, presenting a complicated picture as actually quite simple. When done in order to achieve a social or political outcome, this is a virtue of good activism because it is both prudent and effective. But it can be a vice for scholarship – one that scholars must be particularly attuned to when their scholarship takes an activist turn.

This all being said, it is not our intention to argue that scholars should never do activist work or that a scholar who does not do activist work is somehow more pure or virtuous than those who do. Scholarly activism can be seen as an attempt to combat a particular vice of scholarship: apathy. Throughout this debate on the merits of scholarly activism, there is often an undercurrent of criticism from those who defend scholarly activism of those scholars who choose to detach themselves from the world.¹⁹ The ivory tower is not somewhere that many academics look to as a place of pride. It is now associated with privilege and a lack of compassion for the problems facing our world.²⁰ If scholar activism is becoming a term of derision, a similar attitude exists, directed towards scholars who refuse to engage in activism or who think they can remain morally, politically or socially neutral in their work.²¹

Here we can see a separate vice that can affect scholars *qua* scholars: cowardice. Academic freedom exists to protect scholars from censorship or punishment resulting from their research. Where this is genuinely protected, scholars may nevertheless avoid writing or speaking about politically contentious topics, even when it falls squarely within their scope of research, out of fear of the social or political consequences of doing so. This must be recognised as something that is as much of an issue for scholars as scholarly activism is. Regardless of whether one approaches this issue through the lens of virtue, duty or consequences, the failure of a scholar to engage in a topic they are expert in which is crying out for scholarly analysis is serious. The virtues of good scholarship can be best seen in areas where scholarship can play a vital role of combatting misinformation or threading a careful path through a thorny issue while taking opposing views seriously. A scholar may, at the end of this, form a view one way or another. But, the application of scholarly methods, directed towards truth and knowledge dissemination, can serve an important public good. Failure to do this work out of fear of social consequences is understandable. But it is also cowardly.

IV MOTIVATION, MEANS AND ENDS

The result of this dissatisfaction with scholarly apathy is an encouragement and defence of scholarly activism; what Stone describes as ‘activism engaged in by a scholar *as a scholar*’.²² This is presented by some as the unique contribution that scholars – particularly constitutional scholars – can make to the cause of social justice. Indeed, to some, constitutional scholars, whether they like it or not, are constitutional actors, playing an increasingly politicised role in

¹⁹ B Stockdill & M Danico ‘The Ivory Tower Paradox: Higher Education as a Site of Oppression and Resistance’ in B Stockdill & M Danico (eds) *Transforming the Ivory Tower* (2012) 1.

²⁰ A Alemanno ‘Why Academic Ivory Towerism Can’t Be the Answer’ *Verfassungsblog* (31 August 2022), available at <https://verfassungsblog.de/why-academic-ivory-towerism-cant-be-the-answer/>.

²¹ Stockdill & Danico (note 19 above).

²² Stone (note 2 above) at 4.

an increasingly politicised environment.²³ To others, ‘academic ivory towerism’ is an attempt to absolve academics of their responsibility towards society.²⁴ Scholars, on this view, have duties of action. Considering the issues facing society, scholars such as Alberto Alemanno argue that—

to escape this call for responsibility in the name of academic purity appears complacent at best, and irresponsible at worst. Ultimately, with knowledge comes responsibility, and that exists not only vis-à-vis academia but also society.²⁵

Alemanno is approaching this primarily from a consequentialist perspective: there are duties of action to prevent morally iniquitous outcomes that an engaged scholar is uniquely placed to meet. But there is also an element of virtue ethic at play here that is worth our attention. Alemanno is correct to identify some of the issues here with apathy, pride and an obsession with purity. These are not concerns with consequences, although an excess of scholarly vice may produce bad outcomes. Rather, they are examples of the underlying issue of scholars who fail to display good character and appropriate recognition that they are social actors as much as they are institutional knowledge generators.

For this reason, we have a minor issue with Stone’s description of scholarly activism as activism engaged in by a scholar as a scholar ‘through the medium of scholarship’.²⁶ This may be nothing more than a passing description of the actions that scholars tend to engage in, and for that reason, we do not see this as a particularly serious point of departure. Nevertheless, it could be read to support the claim that scholarship is *just* a medium; a means to whatever end the scholar sees fit to direct it.

Framed in this manner, scholarship is a way of doing things but need not be ordered or directed towards any specific end. On this view, the ends in question are supplied by the scholar and so can be activist in nature, such that scholarship becomes a specific means of advancing political ends. In our view, this is a perversion of scholarship. It moves beyond the idea that scholarship directed towards its proper end of truth and knowledge dissemination might nevertheless have beneficial activist outcomes. When the end that scholarly activity is directed towards no longer has the discovery and dissemination of truth and knowledge as a constitutive element of its own success as scholarship, it ceases to be genuine scholarship.²⁷ Scholarly means directed towards activist ends, without the constraining end of truth or knowledge undermine the point of scholarship. What is produced from this may well be good, thorough work. It may even all be true. But it was not written to reflect truth; it just so happens to be true. Whatever this is, it is not scholarship, in our view.

It is crucially important to stress at this point that ordering and motivation are not synonymous. One may be motivated by activist reasoning to engage in scholarship that is directed towards truth and displays the virtues of a good scholar without contradiction. The issue here is not what motivates a scholar, nor even the fact that they, in engaging in scholarship, hope to influence the world for the better. Rather, it is in the danger that they might cease to pursue truth and knowledge in their quest for impact. For this reason, we reject Khaitan’s argument, even though we find it to be an extremely helpful addition to the existing

²³ Lazarus (note 1 above).

²⁴ Alemanno (note 20 above).

²⁵ Ibid.

²⁶ Stone (note 2 above) at 4.

²⁷ This draws upon central case methodology tied to purpose. J Finnis *Natural Law and Natural Rights* (1980) 1.

debate.²⁸ Khaitan's argument is rule-consequentialist: approaching scholarship in a morally engaged manner but without the express motivation of bringing about social change is better for society overall. This is because there is a danger that activist-motivated scholarship will be seen for what it is and may then diminish public respect for academia, thereby reducing the positive influence that scholarship can provide.

We do not necessarily disagree with this argument but would place much greater emphasis not on motivation but orientation, directedness and ordering. The relationship between means and ends is constitutive in the Fullerian and Korsgaardian sense: means inform ends and ends inform means.²⁹ Motive is in many ways relevant but not determinative. Motive can, of course, influence the means or ends of scholarship. But it is a mindset, not a form of action or an end to which action may be directed. It matters not what the motive is for engaging in scholarship but whether the scholarship itself is directed towards truth or towards impact. One could engage in scholarship with the motivation of bringing about social change whilst nevertheless understanding scholarship as ordered towards truth such that what one does while one does scholarship is to pursue truth. One can do this for all sorts of reasons, informed by a wide array of motives. The desire to bring about social change can, of course, be one of them. The difference between motive and ordering is that motivation explains why one does what one does. Ordering or directing one's conduct towards an end affects what one does when one does it. Activism can be a motive for good scholarship, but if it becomes an end of scholarship, it may begin to affect how the scholar acts when doing scholarship, potentially undermining the proper end of scholarship, which is truth, not social change.

Activism and scholarship are judged against different standards. Good scholarship may have no discernible or direct impact on the social or political sphere and still be good scholarship if it is contributing to the discovery of truth and the dissemination of knowledge. Activism may be founded upon lies and deception and may still be excellent activism. Indeed, a good activist knows when to fudge the truth, even if it may be imprudent to lie openly.

The virtues of scholarship are informed by the kind of thing a scholar is. The virtues of activism are informed by the kind of thing an activist is. Given that these virtues are distinct, the danger of scholar activism is that embracing the virtues of one at the expense of the other makes you either a bad scholar or a bad activist. This tension may only reveal itself when truth and efficacy conflict, but it is something that all scholars whose work may have a social impact should be alive to. What is more, this is not simply about the morality of what one does in discrete instances. This is about the habits one forms when doing so. It is the building of one's character such that it aligns with and augments the role morality of what one is trying to be that matters. The role or practical identities we occupy affect our practical reasoning by being a source of reasons for our decision-making, especially when we are tempted to choose some alternative course of action.³⁰ As roles are underpinned by a value that we must pursue for its own sake, they often call on us to reject instrumental, pragmatic considerations that threaten the value.³¹ Consider when you wish to skew or slant data for a higher cause and your

²⁸ Khaitan (note 1 above).

²⁹ L Fuller 'Means and Ends' in K Winston *The Principles of Social Order: Selected Essays of Lon L Fuller* (revised ed, 2001); M Foran 'The Rule of Good Law: Form, Substance and Fundamental Rights' (2019) 78 *The Cambridge Law Journal* 570, 585–589.

³⁰ Korsgaard (note 4 above) at 21–22.

³¹ *Ibid.*

conscience (or a good colleague) reminds you ‘But you are a scientist!’ Consider further, when you want to leave your six-year-old son alone at night for a night out with friends and are reminded ‘But you are his father!’ Developing unscholarly vices threatens the very role itself, even if those vices may be virtues of activism. The same is true of activist vices that may be virtues for a scholar.

Thus, the vices of scholar activism are not simply a consequence of the possible coincidental conflict in the ends of scholarship and activism. Virtues of activism when sincerely and effectively pursued are prone to distort the role of the scholar, not in spite of the passion or effectiveness of activism, but *because* of it. Virtue can become vice, as Aristotle taught us, due to excess (or due to a deficiency of virtue).³² One might be tempted to reduce all of this to the banal observation that sometimes the values or ends of scholarship and activism happen to conflict. Our claim is not so simple. Rather, it is that some, if not many scholar activists, have incorrectly ordered the relationship between the virtues of truth and particular social goals in a manner that defeats the ends of scholarship.

This danger is more palpable, we argue, when one is attempting to leverage the virtues of activism in order to augment the aims of scholarship. Anger and even contempt for political opponents all serve the ends of activism well, when used with prudence. But, they pose a danger for scholars if it becomes a habit to respond to scholarly challenge with inapt anger or unjust contempt. This can occur due to excessive commitment to a particular cause or a deficiency that need not be an absence of virtue, but a distortion or corruption of it. One instance of responding to a challenge with inapt anger may not pose much of an issue for the scholar, if it is seen for what it is. But if repeated, these ways of conducting oneself within a scholarly setting may lead to character formation that makes one not just a bad scholar, but a bad person.

V APT ANGER AND ACTIVISM

Turning first to excess, Professor Stone’s incisive and subtle argument is that the anger that fuels activism may in turn help to provide scholarly insight and clarity into understanding particular forms of injustice and social disorder.³³ This is undoubtedly true. However, this statement needs a significant qualification. Insight is only possible when anger itself is *apt*.³⁴ Importantly, questions of the aptness of anger or outrage are concerned with the intrinsic reasons for being angry and not whether it is useful or ‘productive’ to be angry.³⁵ When your friend is angry with you for being late to dinner at their house, it is wrong for you to argue that they ought not to be angry because it is not useful or productive. An appropriate response is to explain yourself, addressing their reason for being angry, specifically why you were late and if your tardiness is in any way justified.³⁶ The same is true when dealing with social issues or injustice. The question is not whether anger is productive or useful, but whether it is apt. In fact, this aptness condition is what allows one to gain insight into understanding and grasping the kind of injustice concerned because it demands reasons be provided for why society or institutions are organised in a particular manner, as opposed to some other arrangement.

³² Aristotle *Nicomachean Ethics* in TH Irwin (trans, 2nd Ed, 1999) 1106a26–b28.

³³ Stone (note 2 above).

³⁴ A Srinivasan ‘The Aptness of Anger’ (2018) 26 *Journal of Political Philosophy* 123.

³⁵ *Ibid* at 127–128.

³⁶ *Ibid* at 127. Srinivasan calls this changing of focus from intrinsic reasons to instrumental reasons an ‘affective injustice’.

However, apt anger has certain conditions. First, apt anger responds to a specific moral violation – a claim about how things ought to be according to a moral standard.³⁷ Second, apt anger requires not only that one be motivated by the reason to be angry, but also that this anger be proportionate to the violation.³⁸ Importantly, proportionality should not only be understood as a condition you violate only by excess, but also by underplaying the scale of an injustice. Thus, in responding to, say, the legacy of apartheid or present structural injustice, one can have a disproportionate response either by underplaying the scale of the injustice in order to dismiss the issue or by making excessive claims where one is free of all normative constraints in one's response to such injustice. Any such disproportionate response would risk a proper grasp or insight into understanding the injustice concerned. Recall that a vice can be rooted in excess or in a deficiency in virtue. Therefore, to minimise an injustice is a vice. In turn, to respond with excess anger is a vice too.

Consider debates on the ethics of waging war or responding to structural injustice. The armed struggle for liberation against apartheid is a proportionate response to the injustice of apartheid if apartheid is properly understood as a violent and ruthless crime against humanity. Equally, the alleged torture of Black recruits by the liberation movements in an effort to root out any traitors is inapt because it fails to recognise any constraints (that is, not to torture) in how one conducts an armed resistance against violent injustice.³⁹ The scholar who is rightly angered by details of the horror of apartheid who then seeks to minimise the wrongfulness and gravity of torture is possessed of inapt anger that has blinded them such that they lack any insight, either into the wrongfulness of torture or of the ethics of war. Importantly, this lack of insight would not be because of any concern for the victims of any torture (assuming that those who found themselves at the hands of the torturer were indeed guilty of being informants, as opposed to being falsely or mistakenly accused). Instead, this insight would be a concern focused on the ethical and moral standing of those who were ordered to conduct such acts of torture. The philosopher Matthew Kramer makes the point straightforwardly when considering if it can be permissible to torture someone for a higher, calamity-avoiding purpose.⁴⁰ Torture, he argues, is absolutely morally impermissible in such cases because the torturer elevates themselves to a position of godlike dominion over their victim, compromising the torturer's moral integrity.⁴¹ Notably, even in the case where torture is used to gain information to thwart a potential mass murderer, it is not the interests of the mass murderer not to be instrumentalised, but the integrity *of the torturer themselves* that renders torture morally impermissible.⁴² The same reasons apply to the use of torture to weed out traitors to the anti-apartheid struggle. Resistance to apartheid was not only noble, but a moral imperative. However, the nobility of this cause cannot allow those who resist a crime against humanity to compromise their own humanity.

³⁷ Ibid at 128.

³⁸ Ibid at 130.

³⁹ MH Kramer 'Why Torture Is Wrong' in MH Kramer (ed) *Torture and Moral Integrity: A Philosophical Enquiry* (2014) 115–118.

⁴⁰ Ibid at 196.

⁴¹ Ibid.

⁴² Ibid.

Equally, the scholar who believes apartheid was ‘not that bad’ or who minimises the effects or legacies of apartheid lacks insight into historical and structural injustice.⁴³ Such scholars working on the ethics of war, or the nature of structural injustice cannot do away with the aptness conditions of anger if we accept that anger brings insight into social phenomena. One should not uncritically see anger as a source of knowledge without also being alive to the danger that anger may blind one to the truth. For anger to be a source of knowledge, it must be apt.

However, the pragmatic concerns of activism threaten the basic conditions of complying with the requirements of apt anger. Our argument is that if you are a scholar who enjoys the protections and rights of academic freedom then you are obligated to pursue truth as best as you understand it even if this threatens your specific (righteous) activist goal. Failing to do so is not simply a matter of preference, or of weighing incommensurable goods. It is instead a failure of your role as a scholar and a betrayal of scholarly ends.

One must rightly subordinate activist ends to the requirements of apt anger if one is to gain insight from anger for scholarly purposes. The academy is not simply a vehicle to be co-opted for specific and admirable activist ends. Again, we must stress that this does not mean that the academy is some neutral ivory tower. Instead, it is a public good with specific ends that demands of its members a commitment to truth and grants academic freedom and protections for such members in the pursuit of such truth. To subordinate truth-seeking to specific activist goals is to *privatise* a public good.⁴⁴ One only avoids doing so not by lacking any activist goals, but by subordinating them to scholarly conditions of apt anger that provide insight. The scholar acts in a public capacity pursuing a public purpose unique to scholarship that an activist who pursues some other public purpose need not prioritise in the same way. Therefore, we do not argue against the coexistence of activist goals in the academy, but rather for the right ordering of such goals so that they are subordinate to, and aptly contribute to, scholarly ends. On our framework, activist scholars can make a valuable contribution to scholarly ends, and display scholarly virtue, so long as they remain scholars first and activists second when there is a conflict between truth and efficacy.

The danger here, in our view, is not that scholars act on the basis of activist motivation, or that they pursue scholarship in the hopes of bringing about activist ends. Rather, it is that, in the pursuit of those ends, the scholar ceases to pursue truth and knowledge dissemination as the ultimate ends of scholarship, subordinating them to the more pressing needs of activist pragmatism. There is nothing particularly wrong with an activist who does this, but scholars are not (primarily) activists and their character formation as scholars matters. It matters to them, and it matters to the wider academic, political and social community.

Crucially, the likelihood of a scholar subverting scholarship in this way is increased the more that they allow unobjectionable instances of activism to cloud their pursuit of truth. Our caution here is that scholarly activism is not a risk-free endeavour. It carries with it the temptation to sacrifice truth in the pursuit of efficacy, a temptation that the scholar must dutifully resist. Yet this danger remains even in contexts where the prioritisation of efficacy over truth is not wrongful, such as when a scholar chooses not to explore a particular topic that is patently relevant to their area of research, for fear that it would either frustrate activist goals they also share or that it might be too politically controversial for their liking. In these

⁴³ For a succinct and clear articulation of structural injustice that deals with questions of its scale or magnitude, see K Sankaran ‘Structural Injustice and the Tyranny of Scales’ (2021) 18 *Journal of Moral Philosophy* 445, 445–448.

⁴⁴ A MacIntyre ‘The Privatization of Good: An Inaugural Lecture’ (1990) 52 *The Review of Politics* 344.

cases, the danger of habit formation is such that repeated instances of permissible choice within a research agenda may lead to the habit of ignoring difficult challenges or treating those who pose them with unjust contempt.

VI UNJUST CONTEMPT AND ACTIVISM

Our concern, however, does not simply end at concerns with the role of anger in activism. We are also concerned with a different kind of vice that may accompany inapt anger – the vice of unjust contempt.⁴⁵ Contempt is a fundamentally reactive attitude or moral emotion we have in response to a perceived act of disrespect or deficiency of character in another person.⁴⁶ Contempt has several necessary features that distinguish it as a distinct, moral emotion and determine if it is apt as a response to someone's lack of good character or disrespect.⁴⁷ For our purposes we need focus on only three of these aptness conditions: contempt being (i) standard-regarding, (ii) comparative, and (iii) causing a withdrawal from its object.⁴⁸ We will address each of these conditions in order to tease out some of the problems activism in scholarship presents and how, if not carefully monitored, it can lead to one inaptly holding someone else in contempt. This inapt or unjust contempt threatens any scholarly insight or ability to achieve the scholarly ends of truth seeking.

A Moral or normative standard required for apt contempt

The first condition is that contempt (like anger) must identify a proper moral standard that someone has breached or failed to meet. Uniquely, contempt is often focused on flaws of character in other people and not simply one-off, minor wrongs. Imagine Thandiswa is an academic working in equality and anti-discrimination law. She is also a committed and enthusiastic prison-abolition activist. At a faculty seminar she presents her work arguing that to achieve racial justice prisons must be abolished. A colleague of hers, Nomonde, who also works on racial justice issues begins asking some searching questions on exactly what conception of racial justice Thandiswa is working with, whether it follows that abolition is a necessary or desirable condition for racial justice, or indeed if prisons could not be reformed, rather than abolished. Thandiswa now develops a contemptuous attitude towards Nomonde, believing her to have fallen short of the proper moral standard of having a commitment to achieving racial justice. In deciding if Thandiswa's response is apt or not, we would need to assess if her conception of the requisite standard for racial justice is correct, or the only sensible conception that is morally acceptable. Likely, Thandiswa's activism has narrowed her own capacity to accept reasonable moral disagreement, making her arrogant and self-righteous in thinking she commands the only sensible conception of racial justice in criminal justice reform.

⁴⁵ M Bell 'Hard Feelings: The Moral Psychology of Contempt' (2013). See also K Moshikaro 'Unjust Contempt as the Gist of Defamation Law' (2022) 12 *Constitutional Court Review* 59.

⁴⁶ Bell (note 45 above) at 37–44. Bell draws on the famous work of PF Strawson on reactive attitudes: see PF Strawson 'Freedom and Resentment' (1962) 48 *Proceedings of the British Academy* 1, 6–7. For the role of contempt in the law of defamation, see also K Moshikaro (note 45 above) 59.

⁴⁷ Bell (note 45 above) at 37–44. Bell draws on the famous work of PF Strawson on reactive attitudes: Strawson (note 46 above) 6–7. For the role of contempt in the law of defamation see Moshikaro (note 45 above).

⁴⁸ *Ibid.*

B Contempt is comparative

The second condition (contempt is comparative) explains how Thandiswa can fall prey to the vice of arrogance and self-righteousness that inhibits insight flowing from her inapt contempt. Contempt is only apt when the contempt-holder has met the requisite moral standard themselves and can thus 'look down' on the target of contempt who has failed to meet the standard. The contempt-holder claims an authority to hold someone to the standard in question because the target is in an inferior moral position. Thandiswa is not reacting to Nomonde as an equal who has committed some lapse or error of argument. Instead, Thandiswa views Nomonde as an inferior who is either racist, or in some way a facilitator of racism. Thandiswa's judgement here inhibits her ability to pursue the truth of whether abolitionism is a *necessary* condition of racial justice not simply because she is angered or offended by Nomonde, but because Thandiswa incorrectly now regards Nomonde as a moral inferior. One does not debate or argue with one's moral inferiors. Nor does one listen closely and consider their insights. Instead, one educates and instructs one's moral inferiors.

This particular self-righteousness inhibits the pursuit of truth or insight. This is especially worrying where constitutional lawyers have to construct their arguments from various conflicting factors and principles that may be interpreted in many different ways. This does not mean there is no correct interpretation of constitutional or human rights law, but that engagement with positions contrary to one's own is part of the process of interpretation. Such engagement will be thin, or in absolute bad faith, if you see the people with whom you engage as your moral inferiors. Such people are not worthy of serious or thoughtful responses. The irony of this self-righteous attitude not only denies Thandiswa's potential audience of readers or the public of considered argument, but also deprives her as the contempt-holder of insight into her own area of research.

C Contempt and withdrawal

The third and last aptness condition for contempt requires that the contempt-holder withdraw from engaging with the target of her contempt and instead address third parties about just how reprehensible the target of her contempt really is. After all, Thandiswa cannot simply keep to herself the fact that she is working with a potential facilitator of racism and white supremacy. In fact, from Thandiswa's perspective she is obligated to share this with others to prevent the spread of such harmful opinions. A person such as Nomonde surely does not deserve a place in the academy at all, especially if she could prevent the good and noble aims of prison abolition and anti-racism with her racist questions and probing. Thandiswa must 'do the work' of anti-racism by appealing to third parties to have Nomonde rightly removed. This particular attitude of withdrawing from engagement undermines the overall truth-seeking ends of scholarship. We also see here, that by failing to correctly subordinate her activist ends to the overall truth-seeking aim of scholarship, Thandiswa has become ignorant, arrogant, and unconcerned with discovering the truth concerning such an important question of public policy and moral philosophy. The point we are making is about more than Thandiswa being an unpleasant colleague. Her vice of unjustified contempt not only impairs her insight, but through the address to third parties of contempt robs her audience of gaining insights of their own from Nomonde's questions and probing.

One may be tempted to ask, but why *should* Thandiswa be expected to answer any of Nomonde's questions? Why should Thandiswa go through the emotional labour of explaining such an obvious moral truth and good as prison abolition and its contributions to the aims of racial justice? Alternatively, would it be so terrible if Thandiswa simply noted that these concerns are not her concerns, and she is more focused on other questions? The answer is really quite simple. Thandiswa the activist need not explain her causes to Nomonde at all. Thandiswa the activist has already done all of the thinking and reflection necessary in matters related to her cause and so can now focus on the strategic questions of how this can best be achieved. Thandiswa the scholar, however, is not exempt from probing and challenge. Thandiswa the scholar has to make herself open to questioning not as some useless ritual of academic conceit, but because the institutional role of a scholar demands that true ideas be capable of being refined to their best version. This is particularly the case where a scholar is proposing public arrangements be altered and public resources be reallocated. Therefore, the vice of unjust contempt not only renders Thandiswa incapable of discharging her scholarly responsibilities, but it also leads to the fostering of another scholarly vice – a lack of inquisitiveness.

Another important observation about our hypothetical is that it is also possible that Thandiswa views Nomonde with contempt not only because she takes umbrage at anyone questioning the goodness of prison abolition as a necessary condition for racial justice, but because she considers questions relating to first principles as 'academic' and impractical. This particular posture easily breeds contempt for the speculative, theoretical and abstract as 'useless'. Often social change follows on from insights in theory or abstraction, whether in ethics or in philosophy, theoretical physics, and other disciplines. That claim can even be debated if one wishes. The point here is that Thandiswa does not value this way of life despite calling herself a scholar. She is unconcerned as to whether these abstractions are *true*. Instead, she prioritises whether they are *useful*. Her dismissal of Nomonde (who may very well be the next Wittgenstein, Korsgaard or Wiredu) and her insights on the first principles of such issues reveals an inapt contempt and false superiority on her part that threatens the truth-seeking aims of scholarship.

It is, of course, possible that these vices can arise within scholarly inquiry where there is no activist element at all. That is a danger that all scholars must be alive to. But there is no trade-off that a scholar who is not engaged in activism faces when confronted with these vices. To this scholar, inapt anger and contempt are solely understood as vices. But to the activist scholar, they may be useful for the pursuit of activist ends. The activist scholar may recognise that one must sacrifice truth when dismissing reasonable objections from a colleague or adversary but may see the benefits for their activism in discrediting these questions and anyone who asks them. That is where the choice must be made. Unfortunately, vice formation may be such that by the time this direct conflict has occurred, the scholarly activist may not even see this as a danger for their scholarship, so convinced are they in the righteousness of their cause. While inapt anger and contempt may be ever-present dangers for scholars, they are not necessarily vices for activists, should they be effectively used in the pursuit of activist ends. The danger of scholarly activism lies in the failure properly to identify scholarly vices as vices because of their usefulness to activism and the consequent effect this has on character formation should there be a sustained pattern of conduct involving them.

Thus, denying that scholar activism may present any dangers to the ends of scholarship itself, or claiming that the ends of activism and the ends of scholarship are easily reconcilable

and need not be carefully addressed, is a false ethical position to adopt. Scholarship does not require neutrality (especially in constitutional theory). Nor does this mean that scholars must remain aloof from politically charged debates. Instead, it requires someone who purports to be a scholar not simply to be partisan, approaching scholarly inquiry with the goal of enacting social change, even if doing so involves tailoring or tempering one's arguments and research by ignoring relevant facts or counterarguments contrary to the goals one wishes to bring into being. The academy is a public good that belongs to all citizens with particular obligations and duties placed on its members to pursue their research serving the common good of all by directing scholarship towards the pursuit of truth. If truth requires acknowledging that your ideological opponents actually may have merit to their arguments, or that the law as it stands does not encompass the particular social change you would wish to see realised, then the scholar must pursue that truth-seeking mission. The person who fails to do so, gripped by their ideological fervour, or vices of inapt anger and unjust contempt, really is not much of a scholar, aside from any personality defects that flow from a sustained sense of superiority.

VII CONCLUSION

Professor Stone's intervention in the debates on scholar activism is both refreshing and original. She is correct to rely on feminist scholarship on the importance of anger and moral emotions in providing insight that actively contributes to scholarship. This scholarship is valuable precisely because it rejects the idea of the neutral, clinical and detached scholar who tinkers away in an ivory tower unconcerned with the injustices of society. We readily agree with this position. However, close attention must be paid to the conditions for when these moral emotions are apt. Drawing on our rational and insightful moral emotions does not grant licence for us to sacrifice the ends of scholarship to a particular social cause. We happily applaud those scholars who can carefully reconcile these ends by cultivating the scholarly habits that guard against the vices of activist scholarship. However, we will not wave away the many dangers and vices inherent in their particular posture. Equally, we do not wish to reify the false idol of detached scholarship. Scholarship should be directed towards truth, but that does not mean that scholars should hide from controversial topics or maintain a façade of neutrality where neutrality is not possible. Our hope is that this intervention is seen as a word of caution to fellow members of our academic community. It is not one that cautions against activist-motivated scholarship *per se*, but rather highlights the risks of engaging in scholarly work that carries with it social and political salience.