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ESSAYS

Peter Barton Hutt
Philip N. Meyer

GENERAL ARTICLES

Richard A. Danner
Daniel Keating
James E. Moliterno
Michael A. Oberst
Theodore Eisenberg and Kevin M. Clermont
Stephen J. Shapiro

RESPONSE

Michael Sean Quinn

BOOK REVIEWS

Susan Bandes
Martha Chamallas and Peter M. Shane
George W. Dent, Jr.
Louis Fisher
Richard L. Hasen
Michael H. Hoeflich
Calvin William Sharpe

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“Scholarly Ethics”: A Response

Michael Sean Quinn

Ronald K. L. Collins recently suggested that there is such a thing as the ethics of scholarship.¹ No doubt he is right. All human conduct involving others is enmeshed in the web of morality. The following seem to be some principles of scholarly ethics, and I have tried to list them in descending order of importance.

1. Don't lie in your books and papers. (Plagiarism is a form of lying.)
2. Don't fabricate evidence or authority. (P-2 is really a consequence of P-1.)
3. Don't knowingly characterize your evidence as stronger or something other than it is. (This is another specification of P-1.)
4. Don't knowingly commit (or invite) logical fallacies.
5. Exercise substantial effort to get things right in research and in composition.
6. Don't invent obscure and unnecessary terms in order to look erudite.
7. Don't intentionally write a paper of, say, 2X pages where X pages would do.
8. Don't multiply footnotes beyond necessity. (P-8 is probably a consequence of P-7.)

P-7 may be not a principle of scholarly ethics but a principle of scholarly etiquette and environmental ethics. Similarly, P-8 may be a problem in scholarly aesthetics. I'm not sure. Both P-7 and P-8 seem to be consequences of the general principle *Don't waste people's time*, and that may be a weak moral principle.

Collins argues that the ethics of scholarship includes at least one other principle:

9. If you receive monetary support from a source which has a material interest in your topic, you must disclose it in the work.

(I'm not sure where he would place it in my hierarchy.) At the same time, Collins does not believe the following is a principle of scholarly ethics:

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1. A Letter on Scholarly Ethics, 45 J. Legal Educ. 139 (1995).

10. If you have a bias or prejudice with respect to some relevant component of your topic, you must explicitly disclose it in the work.

I find it very difficult to understand why P-9 is a principle of scholarly ethics, while P-10 is not. More significantly, it seems to me that P-9 suffers from five severe deficiencies.

First, Collins's argument for the principle is based upon a logical fallacy. He deduces P-9 from what he suggests is a definition of scholarship: "Scholarship is, by dictionary definition, supposed to be an activity *within* the academy, funded by the academy, and done for the general educational benefit of all."² Before a dictionary is so much as examined, we know this definition is inadequate. Works of scholarship can be produced outside the academy. The phrase "private scholar" is not self-contradictory. So the term *scholarship* is not wedded to the term *academy*. Moreover, leading dictionaries do not support Collins's proposed definition.³

Thus, Collins has committed a logical fallacy himself. It is sometimes called the Fallacy of Persuasive Definition.⁴ It is committed when the premise in an argument is portrayed as a dictionary (received) definition, when it is really a stipulation. This fallacy is an instance of a more general type, sometimes called the Fallacy of Equivocation.⁵ The equivocation is between the covert stipulation and the received meaning.

Second, Collins argues that scholarship supported by an interested entity creates the possibility that legal authority will be manufactured. He is not worried about P-2. Rather, he is concerned about a company's funding a scholar and then using the scholar's work as authority in a legal argument. What might anyone have done wrong here, from an ethical point of view? Surely, the scholar would have done absolutely nothing wrong. The idea is that an interested-donor/litigant is manufacturing law review-type authority in order to make its legal briefs more impressive. The remedies for this interesting—and very expensive gambit—come in the form of critical analysis and, if necessary, the discovery process in the litigation, not in insisting that scholars make some sort of disclosure.

How serious is this problem? No corporate litigant I know of has ever tried it. The danger of undermining one's own credibility with courts is simply too great. Running that risk is very imprudent. Also, Model Rule 3.3(a)(2) requires lawyers to maintain a high level of candor toward tribunals. Perhaps a lawyer who knowingly presents to a court a meritless, bought-and-paid-for citation—not as the locus of a perhaps worthy argument, but as authority—violates this canon of legal ethics.

Third, Collins's requirement of disclosure is also a slippery slope. Manufacturers of tobacco are, these days, a disfavored set of interests. Suppose,

2. *Id.* at 140.

3. I have checked a number of dictionaries, and I have not found Collins's submission. Among those I checked were *Webster's Third New International Dictionary*, the *OED*, its shorter version, and Samuel Johnson's *Dictionary of the English Language*.

4. Irving M. Copi, *Introduction to Logic*, 7th ed., 140 (New York, 1986).

5. *Id.* at 110.

hypothetically, that the tobacco industry makes contributions to law professors to support scholarship in areas it cares about: products liability, mass torts, assumption of the risk, and so forth. It is unlikely that tobacco merchants and manufacturers would give money to scholars directly; it is more likely that the money would come through some sort of foundation. Perhaps that foundation would have an innocent-sounding name: say, The Fund for Civil Justice. It is unlikely FCJ would advertise itself as annexed to the tobacco industry. Is Collins arguing that the contribution from the foundation be disclosed, or is he going further and arguing that the ultimate source of the money must be disclosed? What affirmative duties might a scholar have to determine the ultimate source of money? Collins does not say.

In addition, interested entities do not generally try to "buy" specific scholarly conclusions. They do not, even implicitly, try to get scholars to assert specified propositions for money. Instead, interested entities may go to scholars regarded as right-thinking types and offer to support their inquiries—no questions asked, no restrictions suggested. If such scholars come to conclusions which are aligned with the interests that have been supporting them, and if these inferences do not result purely from evidence and logic, it is as a result of P-10, not P-9.

Fourth, Collins's position invites readers to commit a logical fallacy. The natural reaction of the hurried reader is to follow his own prejudices. If a reader discovers that a scholar has been supported by an interest group of which he does not approve, the reader may pay no attention to the scholarship at all. In doing this, the reader, without inquiry, evaluates the scholar's conclusions on the basis of the scholar's place in the world, rather than his evidence and arguments. This is a version of the Ad Hominem Fallacy.⁶ That fallacy has two forms. In one of them, the fallacy is committed by abusing the proponent of an argument: "Anyone who says that is a pig." This gambit is called the Ad Hominem (Abusive) Fallacy. The other version, called the Ad Hominem (Circumstantial) Fallacy, dismisses the arguer's position on the grounds of the arguer's position in the world: "Ah! She says that merely because she is a white woman."

Consider again the tobacco industry. One of the claims against cigarette manufacturers is that cigarettes are addictive, and known to be so for years and years, but no warnings were issued. Suppose the cigarette industry funded careful research designed to figure out the nature of addiction, the meaning of "addiction," and whether cigarettes are addicting. Many people would put down, without further inquiry, any such study that carried a full source-of-funds disclosure. They would say: "This stuff is bound to be tricky crap. Look who sponsored it." Such persons would commit both ad hominem fallacies at once. Is this rational? Does it further the search for truth?

Collins's suggestion of required disclosure would in effect increase the incidence of the commission of fallacies by readers. It would, therefore, retard the flow of ideas and encourage intellectual laziness. How, then, does P-9 fit

6. *Id.* at 88-89; see Douglas N. Walton, *Arguer's Position: A Pragmatic Study of Ad Hominem Attack, Criticism, Refutation, and Fallacy* (Westport, Conn., 1985).

with P-4? Are they not in tension? Surely the following is a principle of scholarly ethics:

11. Do not encourage (intellectual) sloth.

How does P-9 fit with P-11? When these questions are asked, one wonders if a disclosure requirement properly resonates with the spirit of the First Amendment and the principles of liberalism à la John Stuart Mill.⁷

Collins's argument for mandatory full disclosure of financial support is, in part, based on the practice of the American Law Institute. The ALI requires certain of its participants to make such disclosures, on the basis that the "Institute's reputation will suffer if an accusation is made with any colorable basis that Institute texts were shaped to aid the interests of the Institute's Director or Reporters."⁸ This argument implies nothing with respect to whether an individual scholar needs, from the moral point of view, to make full disclosure. The issue for the ALI is to preserve the institution's reputation in the hurly-burly of law politics. That is purely a prudential argument based upon the ALI's natural desire to further its own interests. There does not appear to be a moral component to it.

Fifth, and finally, Collins's position misconceives the nature of scholarship. In general, scholarship is not designed to recommend conclusions to readers on the basis of the authority of the person of the writer. Indeed, an appeal to authority is, in many contexts, fallacious.⁹ The real function of scholarship is to generate conclusions based on evidence and reliable inference. Outside funding may make objectivity suspect, as Collins suggests, but what really undermines objectivity is weak evidence, gappy argument, overheated rhetoric, and faulty formulation.

In short, Collins's call for mandatory full disclosure is beset by a series of epistemological deficiencies. There is nobility in Collins's view nevertheless. The spirit of his argument appears to be that the following is a principle of scholarly ethics:

12. Lay your cards on the table.

Alas, while this principle resonates with fair dealing, good faith, and square shooting, and even though it certainly has substantial hortatory value, its content—even in outline—is quite obscure. Indeed, one can think of many forms of scholarship in which it is not obligatory to conform to P-12—playful deconstructionism, for example—and one can even imagine situations where it might be obligatory not to conform to P-12, as, for example, in an authoritarian political order where it is necessary to write in code.¹⁰

7. Cf. *McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511 (1995).

8. Policy Statement and Procedures on Conflicts of Interest (July 22, 1994), *quoted in* Collins, *supra* note 1, at 141.

9. Copi, *supra* note 4, at 94. (Most writers of logic texts call this *argumentum ad verecundiam*.) See generally Charles W. Collier, Intellectual Authority and Institutional Authority, 42 J. Legal Educ. 151 (1992).

10. See generally Leo Strauss, *Persecution and the Art of Writing* (Glencoe, 1952).