

Book Review

Stanley Fish, *Versions of Academic Freedom*, Chicago: University of Chicago Press, 2014, pp. 192, \$24.00 (cloth)

Reviewed by Michael Robertson

Introduction

Stanley Fish's recently published *Versions of Academic Freedom*¹ completes a trilogy of books specifically devoted to the academic enterprise. The earlier volumes in the sequence were *Professional Correctness*² and *Save the World on Your Own Time*.³ But academia is a topic to which Fish has returned repeatedly throughout his career, and to appreciate his position fully a reader must also consult parts of his other books, such as chapters 8-12 in *Doing What Comes Naturally*⁴ and chapters 1, 2, 14 and 15 of *There's No Such Thing as Free Speech, and It's a Good Thing, Too*.⁵ As well there is the chapter titled "What's sauce for one goose: The logic of academic freedom" that he contributed to *Academic Freedom and the Inclusive University*⁶ and his articles "Holocaust denial and academic freedom"⁷ and "Academic Freedom: How Odd Is That?"⁸ Finally, many of his pieces in the *Chronicle of Higher Education* and his "Opinionator" contributions to the digital edition of *The New York Times*⁹ deal with academia and academic freedom.

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1. STANLEY FISH, *VERSIONS OF ACADEMIC FREEDOM* (2014) [hereinafter FISH, *VERSIONS*].
2. STANLEY FISH, *PROFESSIONAL CORRECTNESS* (1995) [hereinafter FISH, *PROFESSIONAL*].
3. STANLEY FISH, *SAVE THE WORLD ON YOUR OWN TIME* (2008) [hereinafter FISH, *SAVE*].
4. STANLEY FISH, *DOING WHAT COMES NATURALLY* (1989) [hereinafter FISH, *DOING*].
5. STANLEY FISH, *THERE'S NO SUCH THING AS FREE SPEECH, AND IT'S A GOOD THING, TOO* (1994) [hereinafter FISH, *NO FREE SPEECH*].
6. Stanley Fish, *What's Sauce for One Goose: The Logic of Academic Freedom*, in *ACADEMIC FREEDOM AND THE INCLUSIVE UNIVERSITY* (Sharon Kahn & Dennis Pavlich, eds., 2001) [hereinafter *ACADEMIC FREEDOM*].
7. Stanley Fish, *Holocaust Denial and Academic Freedom* 35 VALPARAISO U. L. REV. 499 (2001) [hereinafter Fish, *Holocaust Denial*].
8. Stanley Fish, *Academic Freedom: How Odd Is That?*, 88 TEX. L. REV. 171 (2009) [hereinafter Fish, *How Odd?*].
9. Fish's contributions to the *N.Y. Times* are archived at *People: Stanley Fish*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/people/f/stanley_fish/index.html (last visited Nov. 29, 2015).

In short, this topic is a major theme for Fish, and should be considered as seriously as his work in English literature and literary theory, or his work in philosophy, politics, and law.¹⁰

Fish's understanding of the academic enterprise is summarized in his "three-part mantra: do your job, don't try to do someone else's job, and don't let anyone else do your job."¹¹ He believes that the academy is an institution with a distinctive job to do, and that academic freedom is nothing but the freedom that must exist in order to get that job done. On Fish's account, however, the job of the academy is much more limited than most people suppose it to be. Many of the objectives that most people suppose academics are trying to achieve turn out to be "someone else's job" on Fish's analysis, and so academics should not be trying to do them. The limited scope of the academic job means that academic freedom is similarly limited in scope. Fish therefore describes his account of academic freedom as "deflationary"; he sees it as letting the air out of a lot of the inflated claims and grandiose language that characterize the conventional accounts of academic freedom.

Fish's position identifies two dangers for the academy. One danger arises when academics are called upon to justify their work to outsiders. If the academic job is limited, and the grander glamour projects turn out to be someone else's job, what arguments can academics use to persuade non-academics (governments, parents, foundations) to fund the academy generously and then leave it alone? Another danger identified by Fish's approach arises when academics do not maintain a strong sense of their distinctive job, and do not act forcefully to defend their role as the people uniquely qualified to perform the job. What can happen then, Fish warns, is that outsiders invade or colonize the territory of academia and then proceed to advance very different projects or jobs. (This is the danger Fish is warning about in the last part of his mantra.) Therefore the ability successfully to justify and to defend the academic job becomes crucial, both for funding the enterprise and for keeping the barbarians outside the gates. However, the logic of Fish's analysis leaves only a few tools to perform this justificatory task. At the end of this paper I will argue for one more. I will also consider the implications of Fish's position for legal academics and legal education in particular.

Fish's Account of the Academic Job

According to Fish, "[t]he academy is the place where knowledge is advanced, where the truth about matters physical, conceptual, and social is sought. That's the job, and that's also the aspirational norm: the advancement of knowledge and the search for truth. . . . They are the 'internal goods' the 'shared pursuit'

10. See, e.g., MICHAEL ROBERTSON, STANLEY FISH ON PHILOSOPHY, POLITICS AND LAW (2014) [hereinafter ROBERTSON, STANLEY FISH]
11. FISH, *SAVE*, *supra* note 3, at 16. See also Stanley Fish, Editorial, *Why We Built the Ivory Tower*, N.Y. TIMES, (May 21, 2004), http://www.nytimes.com/2004/05/21/opinion/why-we-built-the-ivory-tower.html?_r=0 [hereinafter Fish, *Ivory Tower*].

of which holds the community together.”¹² So, “[i]f you’re not in the pursuit-of-truth business, you should not be in the university,” he concludes.¹³ This job distinguishes the academy from other institutions that have different primary jobs, such as achieving obedience to God’s commands, or making money, or wielding political power, or healing the sick, or applying the law, and so on. But this broad account of the academic job is soon qualified. It is not the truth about any conceivable matter that is to be pursued by academics; rather, it is the truth about matters that have been identified as worthy by the disciplinary traditions housed within the academy. This limits the scope of the academic job. The working life of an academic is shaped and structured by *professional* concerns; it is not a free-floating search for truths about anything under the sun. “There are many things to be true or false about, and not all of them fall within the university’s sphere,” as Fish puts it.¹⁴ For him, “the idea of teachers and students joined in an effort to determine *the truth of a disciplinary matter*—the interpretation of a poem, the causes of an event, the origins of a virus—limits both the kinds of questions that can be asked and the answers that can be appropriately given.”¹⁵

The idea of the academic as a competent member of a community of credentialed professionals is absolutely central for Fish.¹⁶ To become a member of this community, the academic undergoes a process of undergraduate, graduate, and even postgraduate training and socialization. As a result, he or she internalizes the values, methodologies, projects, and decorums of the community. Indeed, according to Fish, the academic’s very consciousness is structured and enabled by this training and socialization.¹⁷ This structuring is evident when academics pursue their respective disciplinary truths by engaging in teaching and research. When a fully embedded member of the academic community engages in research, he or she naturally does so in a manner that comports with academic standards of decorum, some of which Fish makes explicit:

Researchers should not falsify their credentials, or make things up, or fudge the evidence, or ignore data that tells against their preferred conclusions. Those who publish should acknowledge predecessors and contributors,

12. FISH, VERSIONS, *supra* note 1, at 131-32; *see also id.* at 10.

13. FISH, SAVE, *supra* note 3, at 20; *see also id.* at 119.

14. FISH, SAVE, *supra* note 3, at 34. *See also* Stanley Fish, *A Closing Argument (for Now)*, N.Y. TIMES: OPINIONATOR (Nov. 12, 2006, 10:11 PM), http://opinionator.blogs.nytimes.com/2006/11/12/one-more-time-for-a-while/?_r=0 [hereinafter Fish, *Closing Argument*] (“But (and here’s the rub) the truth you are in search of as a teacher must be an academic truth, not truth generally, or the truth about anything and everything.”).

15. FISH, SAVE, *supra* note 3, at 176 (emphasis added).

16. FISH, VERSIONS, *supra* note 1, at 10 (“College and university teachers are professionals, and as such the activities they legitimately perform are professional activities, activities in which they have a professional competence.”).

17. ROBERTSON, STANLEY FISH, *supra* note 10, at 7-15.

provide citations to their sources, and strive always to give an accurate account of the materials they present.¹⁸

When a fully embedded member of the academic community engages in teaching, he or she introduces students to existing disciplinary projects, methods, and materials, and seeks to turn them into fellow competent members of the profession.

College and university teachers can (legitimately) do two things: (1) introduce students to bodies of knowledge and traditions of inquiry that had not previously been part of their experience; and (2) equip those same students with the analytical skills—of argument, statistical modeling, laboratory procedure—that will enable them to move confidently within those traditions and to engage in independent research after a course is over.¹⁹

An academic who does not abide by these decorums can rightly be disciplined by other members of the community. Such lapses are normally instances of a failure of socialization, that needs to be corrected. But in extreme cases the academic may be expelled from the community. We shall see Fish argue that tenure and academic freedom are not designed to protect those who have turned their backs on the academic job entirely.

An academic can be induced to act in a manner inconsistent with the projects and values of the academy because he or she has imported into the academic context projects and values that belong to a completely different enterprise. As Fish would describe it, such an academic is trying to do “someone else’s job,” not the academic job. Fish’s position is interesting because he classifies as “someone else’s job” many things that others would see as legitimate parts of the academic job, and even the most important part. In New Zealand, for example, the Education Act (1989) declares that one of the characteristics of a university is accepting “a role as critic and conscience of society.”²⁰ This statute gives university academics a very special job to do that goes well beyond honing disciplinary skills and pursuing disciplinary truths. This special job requires them to become actors in the political process as it unfolds outside the university. Similarly, Fish described the goals and obligations of academic teaching in minimalist terms above, but it is very common for the mission statements of American universities to describe much grander goals. Instead of just inducting students into particular disciplinary traditions, a university education is claimed to effect a more radical transformation of the character of the student. For example,

Michigan State’s statement promises everything. The university, it announces, will produce “an effective and productive citizen” who “contributes to

18. FISH, *SAVE*, *supra* note 3, at 19.

19. FISH, *SAVE*, *supra* note 3, at 12-13, 18-19; FISH, *VERSIONS*, *supra* note 1, at 10; Stanley Fish, *Aim Low*, *CHRONICLE OF HIGHER EDUCATION*, May 16, 2003 [hereinafter Fish, *Aim Low*].

20. Education Act 1989, s.162(4)(a)(v) (N.Z.).

society intellectually, through analytical abilities and in the insightful use of knowledge; socially, through an understanding and appreciation of the world and for [sic] individual group beliefs and traditions; ethically, through sensitivity and faithfulness to examined values; and politically through the use of reason in affairs of state.”²¹

Fish also finds this ambitious job of character enhancement endorsed in books like *Educating Citizens: Preparing America’s Undergraduates for Lives of Moral and Civic Responsibility*,²² *Education’s End: Why our Colleges and Universities Have Given Up on the Meaning of Life*,²³ and in a declaration issued by the presidents of nearly 500 American universities “on the Civic Responsibility of Higher Education.” It called for colleges and universities to take responsibility for helping students “realize the values and skills of our democratic society.”²⁴

But for Fish, none of these grand and ambitious jobs is the academic job, and university academics should not be attempting to perform them (for reasons I will get to in the next section). The non-academic job whose pernicious effects within the academy most disturb Fish is partisan politics. In both teaching and research, Fish insists, it is imperative that an academic professional should refuse to engage in advocacy of substantive political or moral positions.²⁵ “The only advocacy that should go on in the classroom is the advocacy of . . . the intellectual virtues, ‘thoroughness, perseverance, intellectual honesty,’ all components of the cardinal academic virtue of being ‘conscientious in the pursuit of truth.’”²⁶ Instead of engaging in political advocacy, the duty of the academic is to “academicize” any topic under investigation.

The imperative of academicizing says that when you bring a topic into a classroom, detach it from its real-world context, where votes are taken or policies urged or rallies organized, and insert it into an academic context where inquiries into its structure, history, significance and value are conducted by

21. FISH, SAVE, *supra* note 3, at 12. See generally *id.* at 10-17, 54; Stanley Fish, *Tip to Professors: Just Do Your Job*, N.Y. TIMES: OPINIONATOR (Oct. 22, 2006, 10:39 PM), <http://opinionator.blogs.nytimes.com/2006/10/22/tip-to-professors-just-do-your-job/> [hereinafter Fish, *Tip to Professors*] (“Of course, before you can do your job, you have to know what it is. And you will not be helped by your college’s mission statement, which will lead you to think that your job is to cure every ill the world has ever known—not only illiteracy, bad writing and cultural ignorance, which are at least in the ballpark, but poverty, racism, ageism, sexism, war, exploitation, colonialism, discrimination, intolerance, pollution and bad character. (The list could be much longer.)”).
22. Fish, *Aim Low*, *supra* note 19.
23. Stanley Fish, *Will the Humanities Save Us?*, N.Y. TIMES: OPINIONATOR (Jan. 6, 2008, 5:31 PM), <http://opinionator.blogs.nytimes.com/2008/01/06/will-the-humanities-save-us/>, [hereinafter Fish, *Will Humanities Save Us?*].
24. Fish, *Ivory Tower*, *supra* note 11.
25. In FISH, PROFESSIONAL, *supra* note 2, he develops this position at length with respect to literary studies in particular.
26. FISH, SAVE, *supra* note 3, at 20.

means of the traditional methods (textual, archival, statistical, experimental) of humanities, social science, and physical science scholarship.²⁷

For example:

Even in courses where the materials are politically and ideologically charged, the questions that arise are academic, not political. A classroom discussion of Herbert Marcuse and Leo Strauss, for example, does not (or at least should not) have the goal of determining whether the socialist or the conservative philosopher is right about how the body politic should be organized. Rather, the (academic) goal would be to describe the positions of the two theorists, compare them, note their place in the history of political thought, trace the influences that produced them and chart their own influence on subsequent thinkers in the tradition. And a discussion of this kind could be led and guided by an instructor of any political persuasion whatsoever, and it would make no difference given that the point of the exercise was not to decide a political question but to analyze it.²⁸

Fish acknowledges “the objection that in many courses, especially courses given at law school or by political science departments, the materials being studied are fraught with political, social, ethical, moral, and religious implications.” But he insists that the imperative to academicize does not rule out such topics from the classroom.²⁹ It mandates only that any topic be subjected to the correct kind of analysis, and that this analysis not include answering the question of whether or not a moral or political claim is true.

I am not urging a restriction on content—any ideology, agenda, even crusade is an appropriate object of study. . . . If an idea or a policy is presented as a candidate for allegiance . . . then the classroom has been appropriated for partisan purposes. But if an idea or policy is subjected to a certain kind of interrogation—what is its history? how has it changed over time? who are its prominent proponents? what are the arguments for and against it? with what other policies is it usually packaged?—then its partisan thrust will have been blunted, for it will have become an object of analysis rather than an object of affection.³⁰

27. FISH, *VERSIONS*, *supra* note 1, at 31. On “academicizing” See also FISH, *SAVE*, *supra* note 3, at 27; Fish, *Ivory Tower*, *supra* note 11; Stanley Fish, *Always Academicize: My Response to the Responses*, N.Y. TIMES: OPINIONATOR (Nov. 5, 2006, 10:00 PM), <http://opinionator.blogs.nytimes.com/2006/11/05/always-academicize-my-response-to-the-responses/> [hereinafter Fish, *Always Academicize*].
28. Stanley Fish, *More Colorado Follies*, N.Y. TIMES: OPINIONATOR (May 25, 2008, 7:59 PM), <http://opinionator.blogs.nytimes.com/2008/05/25/more-colorado-follies/>.
29. FISH, *SAVE*, *supra* note 3, at 15. See also Stanley Fish, *Conspiracy Theories 101*, N.Y. TIMES: OPINIONATOR (July 23, 2006), <http://www.nytimes.com/2006/07/23/opinion/23fish.html?pagewanted=all> [hereinafter Fish, *Conspiracy Theories*]; Fish, *Always Academicize*, *supra* note 27.
30. FISH, *SAVE*, *supra* note 3, 24-25. See also Fish, *Tip to Professors*, *supra* note 21.

Objections to Fish's Account of the Academic Job

The most basic objection to Fish's account of the academic job is that he has failed to describe accurately what most academics actually do. Naomi Riley's book *The Faculty Lounges . . . and Other Reasons Why You Won't Get the College Education You Paid For* describes how very few of the academics working in the 4000 degree-granting colleges and universities in the United States are engaged in pursuing new truths and advancing knowledge. In his New York Times piece on her book, Fish notes her point that

“a significant portion of [the] additional degrees that colleges have added in the past few decades have been in vocational areas,” and those areas “simply do not engage students in a search for ultimate truths,” but instead have pre-stipulated goals. “Do we need,” she asks, “to guarantee the academic freedom of professors engaged in teaching and studying ‘Transportation and Materials Moving,’ a field in which more than five thousand degrees were awarded in 2006?”³¹

Security and protective services and business statistics are other examples Riley provides of the types of courses that fall within her critique.

The thrust of Riley's argument is that because many academics in colleges and universities are not doing the true academic job, it follows that they should not enjoy the tenure and academic freedom that the true academic job requires. Fish's response is that if many academics in colleges and universities are not doing the true academic job, and are doing someone else's job instead, then they should either stop doing that non-academic job or leave the academy and do it elsewhere. “I say, and have been saying for years, that colleges and universities should stop moving in those directions—toward relevance, bottom-line contributions and social justice—and go back to a future in which academic inquiry is its own justification.”³² Purely vocational courses like “Transportation and Materials Moving” should be taught in a vocational institution, such as a polytechnic or community college, rather than a university.

Another objection is that Fish's imperative to “academicize” is empty because it is psychologically impossible. Nobody, not even committed academics, can compartmentalize their strong moral and political and religious beliefs, and put them to one side while they engage in academic practices.³³ Fish's response is that human beings compartmentalize and contextualize in this way all the time.³⁴ “We understand . . . that proper behavior at the opera differs from

31. Stanley Fish, *Vocationalism, Academic Freedom and Tenure*, N.Y. TIMES: OPINIONATOR (July 11, 2011, 8:30 PM), <http://opinionator.blogs.nytimes.com/2011/07/11/vocationalism-academic-freedom-and-tenure/>.

32. *Id.*

33. FISH, *SAVE*, *supra* note 3, at 23.

34. See Stanley Fish, *Should Our Lives Be Unified?*, N.Y. TIMES: OPINIONATOR (Feb. 18, 2007, 8:27 PM), <http://opinionator.blogs.nytimes.com/2007/02/18/the-myth-of-the-unified-life/>.

proper behavior at a ball game . . . We refrain . . . from inserting our religious beliefs or our private obsessions into every situation or conversation no matter what its content.”³⁵ He is not saying that we can detach ourselves from all of our deep commitments; he is saying that the deep commitments that grip us at any one time are context-specific and enterprise-specific. This is why he rejects the claim that “one’s ethical obligations remain the same no matter where one is or what one is doing or what one is being paid to do.”³⁶ Consequently, it can be

part of a teacher’s job to set personal conviction aside for the hour or two when a class is in session and allow the techniques and protocols of academic research full sway. This restraint should not be too difficult to exercise. After all, we require and expect it of judges, referees and reporters. And while its exercise may not always be total, it is both important and possible to make the effort.³⁷

He reports that he performs this compartmentalization without difficulty in his own classroom practice:

I adhere to the distinction between pedagogy and political advocacy, and I do so effortlessly. I just go in every day and subject the materials to an academic interrogation, an interrogation concerned with the structure of arguments and the place of those arguments in a tradition of intellectual inquiry. Those traditions are complex and richly layered, and attending to them seriously takes all one’s energy. It never even occurs to me to turn the discussion into an occasion for pronouncing on the political questions of the day, and because the parameters of the discussion are so clearly set and so clearly academic, my students know better than to introduce such questions. Set it up right and you won’t go wrong.³⁸

And other academics achieve this compartmentalization too. Fish describes Noam Chomsky’s 2013 John Dewey lectures, given under the auspices of Columbia University’s philosophy department, as a “master class” in which the jobs of academic interrogation and political advocacy were kept separate, even by someone who has well-known strong political views.³⁹ On Fish’s analysis it is perfectly acceptable for someone like Chomsky to have strong personal political views, as long as he does not bring them into his lectures on

35. FISH, *SAVE*, *supra* note 3, at 23-24.

36. Fish, *Always Academicize*, *supra* note 27.

37. Fish, *Conspiracy Theories 101*, *supra* note 29.

38. Stanley Fish, *Politics and the Classroom: One More Try*, N.Y. TIMES: OPINIONATOR (June 8, 2008, 6:57 PM), <http://opinionator.blogs.nytimes.com/2008/06/08/politics-and-the-classroom-one-more-try/> [hereinafter Fish, *Politics and the Classroom*].

39. Stanley Fish, *Scholarship and Politics: The Case of Noam Chomsky*, N.Y. TIMES (Dec. 9, 2013), http://www.nytimes.com/2013/12/10/opinion/fish-scholarship-and-politics-the-case-of-noam-chomsky.html?_r=0 [hereinafter Fish, *Scholarship and Politics*].

philosophy or linguistics or even politics. Academics should pursue personal political goals on their own time, not “on the university’s or state’s dime.”⁴⁰

I am not counseling moral and political abstinence across the board, only in those contexts—like the classroom—where the taking of positions on the war in Iraq or assisted suicide or the conduct of foreign policy is extraneous to or subversive of the activity being performed.⁴¹

A third objection probes the role of truth in Fish’s analysis. Fish says that the academic job is to pursue truth, but how can he then say that it would be wrong for a political theorist to investigate whether Marcuse’s or Strauss’s position on how the body politic should be organized is more true? Fish notes the similar objection that “if we compare Mill and Marx, the question is not just why did they think what they did but which of them came closer to the truth . . . about the way governments should be organized or [the] truth about how people should comport themselves, politically and morally.”⁴² His response to such challenges is to apply the general point he made earlier: “There are many things to be true or false about, and not all of them fall within the university’s sphere.”⁴³ He is not denying that political and moral truths are important; he is just denying that it is the job of academics to ascertain these truths as opposed to other truths.⁴⁴

Consequently it would be inaccurate to say that Fish wants academics to be neutral on political and moral questions while they are doing their jobs. “With respect to political judgments, what I’m asking for is not neutrality, but hands off. Don’t tip-toe around partisan issues; exclude them outright. That’s not neutrality; it’s total avoidance.”⁴⁵ Nor does Fish see neutrality as an academic virtue when it comes to the truths that it *is* the job of academics to ascertain. Here academics should not shrink from taking a strong stand; rather, they should make an affirmative judgment and defend it to the best of their ability. So in response to the question “Are faculty allowed to call it as they see it?” Fish replies: “If it is an academic question (what are the pro and con arguments for assisted suicide and where in the history of morality and philosophy do they come from?), faculty should indeed call it as they see it. If the question is a partisan political one (is assisted suicide right or wrong), faculty should stay away from it like the plague.”⁴⁶

40. FISH, *SAVE*, *supra* note 3, at 26.

41. Fish, *Always Academicize*, *supra* note 27.

42. Fish, *Politics and the Classroom*, *supra* note 38. See also FISH, *VERSIONS*, *supra* note 1, at 133.

43. FISH, *SAVE*, *supra* note 3, at 34. See also FISH, *VERSIONS*, *supra* note 1, at 133-34.

44. Fish, *Politics and the Classroom*, *supra* note 38; Stanley Fish, *Stop Me Before I Write More*, N.Y. TIMES: OPINIONATOR (June 15, 2008, 7:02 PM), <http://opinionator.blogs.nytimes.com/2008/06/15/stop-me-before-i-write-more/> [hereinafter Fish, *Stop Me*].

45. Stanley Fish, *Buttons: The Sequel*, N.Y. TIMES: OPINIONATOR (Oct. 19, 2008, 9:00 PM), <http://opinionator.blogs.nytimes.com/2008/10/19/buttons-the-sequel/>.

46. *Id.* See also Fish, *Closing Argument*, *supra* note 14; Fish, *Stop Me*, *supra* note 44.

A deeper challenge to the role of truth in Fish's analysis can be based on Fish's own commitment to anti-foundationalism. Critics of anti-foundationalism say that because it holds that reality is socially constructed, it is compelled to hold that there is no objective truth, and that all truths are relative. Given this epistemology, how can an anti-foundationalist like Fish say that "truth is the pre-eminent *academic* value, and adherence to it is exactly the opposite of moral relativism"?⁴⁷ In response to challenges such as those from John Searle and Thomas Haskell, Fish repeats in *Versions of Academic Freedom* his long-defended position that anti-foundationalism has no relativistic consequences at all.⁴⁸ Explaining this position fully here would take me too far afield, but in essence Fish holds that objective truth is untroubled by whatever epistemologists get up to. In contexts outside philosophy seminars, both foundationalists and anti-foundationalists quite properly ascertain what is objectively true by employing the approved techniques developed by historically contingent traditions. Even in the context of doing philosophy, Fish would argue that those who think that what these human traditions deliver is epistemologically inferior or suspect have been seduced by the impossible desire to experience reality as God does, rather than as limited and embedded human beings have to.⁴⁹

A fourth objection to Fish's account of the academic job takes issue with his separation of the academy and politics. The challenge advanced here is that "politics is everywhere," and so it is impossible to avoid it in the academy. Everything is said to be political "because in any form of social activity there are always alternative courses of action—different ways of doing things—and those differences will, more often than not, reflect opposing ideas of what is important and valuable."⁵⁰ Fish agrees with this "politics is everywhere" claim, but he describes it as "both true and trivial."⁵¹ He accepts that disagreement is pervasive, and because he does not believe that disagreement can ever be authoritatively resolved (as liberals hope) by appealing to neutral principles or universal reason,⁵² he concludes that politics, understood broadly as "the realm in which competing agendas, reflecting opposing views of the way things should be, fight it out," is indeed everywhere. "Defined that generally, the realm of the political is in fact coincident with the entire realm of human behavior, and no activity escapes it."⁵³

Fish is therefore happy to acknowledge many ways in which the academy inevitably involves politics in this broad sense, but he insists that this admission does not preclude him from separating partisan politics from the academic job.

47. FISH, *SAVE*, *supra* note 3, at 38.

48. FISH, *VERSIONS*, *supra* note 1, at 25-29, 55-56.

49. ROBERTSON, STANLEY FISH, *supra* note 10, at 16-47.

50. Fish, *Stop Me*, *supra* note 44.

51. *Id.*

52. ROBERTSON, STANLEY FISH, *supra* note 10, at 81-108.

53. Fish, *Closing Argument*, *supra* note 14.

This is because while politics is inescapable in life, politics will always take an *institution-specific form*. Politics may be everywhere, but it is not everywhere the same. “[T]he Tip O’Neill mantra—all politics is local—should remind us that the content of the general category ‘political’ will vary with the local context of performance.”⁵⁴ That is, the particular matters in dispute and the decorums governing the conduct of the dispute will vary with social and institutional context. Politics in the broad and abstract sense precipitates out into many different kinds of limited and particular politics in human life. It follows that the issues and decorums that characterize politics in one context cannot simply be inserted into a very different context. “[T]he fact that politics marks every context of human action doesn’t mean that it is legitimate to import the politics appropriate to one context into another which, while no less political, will be home to quite different politics.”⁵⁵

Fish applies this lesson to partisan politics and academic politics. Academic politics is concerned with disagreements over matters such as which interpretation of a canonical text is correct, the courses that should be taught within a department, the allocation of resources between departments, the best form of departmental leadership, and so on. These matters do not figure at all in partisan politics, which is concerned with disagreements over which public policy should be advanced through legislation, who should be elected, who should be made a judge, who should be able to vote, etc. Nor do the acceptable ways of deciding disagreements in partisan politics, such as using attack ads, leaking information about an opponent’s private life, and forming political action committees, translate over to the academic political context. Fish’s point is that academic politics and partisan politics are two very different things, and cannot be combined simply because they are both instances of “politics” when that term is understood in a highly abstract and general way. To the contrary, any effort to combine them is confused because it fails to appreciate that the academic job and the partisan political job are completely different. “My point is not that academics should refrain from being political in an absolute sense—that is impossible—but that they should engage in politics appropriate to the enterprise they signed onto.”⁵⁶

Probably the most natural objection to Fish’s account of the academic job is that it is too narrow. His professionalization of the academy limits researchers to only those matters that the existing disciplinary traditions judge to be important, but this constriction of the academic job is said to be improper for epistemological and moral reasons. The epistemological objection is that narrow professional categories are blinkers that prevent academics from gaining a full understanding of their subject matter. If the blinkers were thrown away entirely, or if the categories developed by different disciplines were all combined, then we could at last achieve comprehensive knowledge

54. Fish, *Stop Me*, *supra* note 44.

55. FISH, *SAVE*, *supra* note 3, at 172. See generally 172-74; FISH, *VERSIONS*, *supra* note 1, 29-30; Fish, *Closing Argument*, *supra* note 14.

56. Fish, *Ivory Tower*, *supra* note 11.

of what we are interested in. Fish finds this objection being advanced by those advocating “anti-professionalism,”⁵⁷ “interdisciplinarity,”⁵⁸ and “cultural studies.”⁵⁹ By whatever name it is called, Fish declares it to be the expression of an impossible desire. His position is that human beings can exist only embedded in local contexts, and so the bias and partiality (or blinkers) that come with such embeddedness are inescapable. It is not possible for humans to step outside all local contexts to achieve a transcendent perspective, nor is it possible to combine all local contexts into one master context. Any being that could achieve an apprehension of reality that is not a limited, local viewpoint would have to be a god, not a human being. Socially developed categories, whether professional or not, are therefore a precondition of our experience of the world, not an impediment to a true experience of the world.⁶⁰

So, for example, he identifies one manifestation of anti-professionalism as the desire for “public intellectuals” who can speak directly to the public about intellectual matters without having to use the abstruse categories and incomprehensible jargon of university academics.⁶¹ But Fish argues that the “public intellectual” is not an intellectual who has escaped the constraints of academic professional categories to communicate a less blinkered viewpoint to the public. Instead the public intellectual has just exchanged the categories and constraints of one embedded context for another.

In short, the public intellectual is another professional, practicing another discipline and enacting a vision no more or less grand than the vision of any other professional in any other discipline. The gospel of interdisciplinarity depends on the possibility of performing acts that are more than locally intelligible and therefore more than locally consequential. There are no such acts, although, given certain political conditions, acts proceeding from some local perspective can command the field. This, however, will not be the triumph of interdisciplinarity, but the triumph of one discipline or angled project over all others.⁶²

The moral objection to Fish’s professionalization of the academy and consequent narrowing of its focus to disciplinary concerns alone is that “even if it is possible to set aside one’s political convictions when conducting a class, it would be unworthy to do so because it would be a dereliction of one’s duty as a human being concerned with the well-being of the world.”⁶³ Fish is charged with advocating “a hunkering down in the private spaces of an academic workplace detached from the world’s problems,” a stance that “forecloses

57. See, e.g., FISH, DOING, *supra* note 4, at 163-293 (chapters 8-12).

58. See, e.g., FISH, NO FREE SPEECH, *supra* note 5, at 3-50, 231-56 (chapters, 1-2, 14-15).

59. See, e.g., FISH, PROFESSIONAL, *supra* note 2, at 78-79, 104-06.

60. ROBERTSON, STANLEY FISH, *supra* note 10, at 7-47.

61. FISH, PROFESSIONAL, *supra* note 2, at 115-26.

62. *Id.* at 139. See also *id.* at 71-72.

63. FISH, SAVE, *supra* note 3, at 29.

the possibility of civic engagement and democratic action.”⁶⁴ Rather than pursuing mere disciplinary truths and distancing themselves from moral and political substance by academicizing everything, academics should be using their skills to advance larger goals such as social justice, or individual freedom. They should be working to inculcate desirable values in their students such as tolerance, or an appreciation of our Western cultural heritage.

We have already encountered one of Fish’s responses to this moral objection: Academics have to refrain from seeking political outcomes only while they are engaged in their academic jobs. On their own time they can work for increased democratic participation or a reduced role for the state as hard as they want. If an academic feels that this part-time response is inadequate, given the magnitude of the problems facing the world, then Fish advises that he or she “get out of teaching and into a line of work more likely to address directly the real world problems you want to solve.”⁶⁵ That is, if you find the academic job unsatisfying, go and do another one, but do not remain an academic if you are not prepared to do the academic job. Another response to the moral objection is that academics are not ignoring the world of values when they stick to the academic job during working hours. Instead they are advancing specifically *academic* values. “[T]he search for truth is its own value, and fidelity to it mandates the accompanying values of responsibility in pedagogy and scholarship.”⁶⁶ So he is “not saying that universities should be unprincipled, but that the principles they adhere to and enforce should be the principles appropriate to their mission and not principles that belong to other enterprises.”⁶⁷ Values and principles, like politics, are enterprise-specific for Fish, and it is a mistake to think that they can be detached from one enterprise and simply inserted into another.

But these two responses to the moral objection just nibble at its fringes. A more adequate response must face it more directly, and Fish endeavors to do this with six more arguments in which he claims that it would be wrong to do as the moral objector asks and include in the academic job any more than he has. The first three of these arguments are relatively narrow in scope. One is legalistic: An academic’s contract of employment covers only disciplinary

64. Stanley Fish, *Neoliberalism and Higher Education*, N.Y. TIMES: OPINIONATOR (Mar. 8, 2009, 10:00 PM), <http://opinionator.blogs.nytimes.com/2009/03/08/neoliberalism-and-higher-education/>.

65. Fish, *Always Academicize*, *supra* note 27.

66. Fish, *Ivory Tower*, *supra* note 11.

67. FISH, *SAVE*, *supra* note 3, at 33. See also Stanley Fish, *Take the Money and Run*, N.Y. TIMES: OPINIONATOR (Oct. 8, 2006), <http://opinionator.blogs.nytimes.com/category/stanley-fish/page/27/>. Said Fish:

Neither does the university have a moral policy, except with respect to the responsibilities of teaching and research. No cheating, no plagiarizing, no falsifying of data or fudging of evidence; you can’t harass students or show up for class unprepared, or fail to return papers or meet classes. Those (along with a great many other things) are the principles of academic morality, and the university has not only the right, but the obligation to monitor and enforce them. It has no right or obligation or competence to monitor and enforce the morality of the world.

tasks. The academic job is “defined . . . by contract and by the course catalogue rather than by a vision of democracy or world peace.”⁶⁸ Therefore if academics take up these other jobs, they “abandon the responsibilities that belong to them by contract in order to take up responsibilities that belong properly to others.”⁶⁹ The second narrow argument is tactical: Making partisan politics part of the academic job could expose the university to danger from hostile political actors. “[M]any who wished for increased public attention to their labours got it in the past few years of the right-wing backlash and found that, rather than bringing respect and influence, it brought danger and the elimination of progressive programmes.”⁷⁰ If academics want to protect their pursuit of disciplinary truths from interference by legislators and trustees and political activists, then they should stay well away from the partisan politics job.

My contention is that if every college or university instructor were to hew to this discipline . . . those who want to do our jobs for us would have no traction or point of polemical entry because politics, or religion, or ethics would enter the classroom only as objects of analysis and not as candidates for approval or rejection. The culture wars, at least in the classroom, would be over.⁷¹

Fish’s third narrow argument is empirical: There is no evidence that academics can do the job of improving the character of students.⁷² Fish doesn’t deny that a particular student’s character and subsequent conduct might be affected (for good or ill) by taking a particular course. “But these are contingent effects, and as contingent effects they cannot be designed and shouldn’t be aimed at. (It’s not a good use of your time to aim at results you have only a random chance of producing.)”⁷³ “There are just too many intervening variables, too many uncontrolled factors that mediate the relationship between what goes on in a classroom or even in a succession of classrooms and the shape of what is finally a life.”⁷⁴ Therefore his “main objection to moral and civic education in our colleges and universities is not that it is a bad idea (which it surely is), but that it’s an unworkable idea.”⁷⁵

Fish’s final trio of arguments against those who would add other jobs to his conception of the academic job all claim that these new jobs would lead to the diminishment and ultimately the destruction of the academic enterprise. Argument four is that “it is a requirement for the respectability of an enterprise

68. FISH, *VERSIONS*, *supra* note 1, at 10.

69. FISH, *SAVE*, *supra* note 3, at 14.

70. FISH, *PROFESSIONAL*, *supra* note 2, at 96.

71. FISH, *SAVE*, *supra* note 3, at 169-70.

72. Fish, *Will Humanities Save Us?*, *supra* note 23.

73. FISH, *SAVE*, *supra* note 3, at 13.

74. Fish, *Aim Low*, *supra* note 19.

75. *Id.*

that it be, or at least be able to present itself as, *distinctive*.⁷⁶ That is, an enterprise has to have a clear sense of what its special job is. But Fish believes that if the moral objector's many new jobs are added to the core academic job of advancing disciplinary truths, it will no longer be clear that the academy is distinctive. The core academic job will be subsumed and lost among the many other jobs. The academy will be transformed into just another location where people seek to advance jobs that originate outside the academy. "Narrow" is an adjective the academy should not shun but embrace, for if academic activity cannot be narrowly defined, it loses its shape and becomes indistinguishable from political rallies and partisan exhortation.⁷⁷ Argument five is that some of the moral objector's new jobs cannot simply be added to Fish's narrow job because they conflict with it. Take achieving respect for diversity, for example. Encouraging students to respect a diversity of interests, beliefs, and identities leaves no space for the narrow academic job of engaging in "the evaluation, not the celebration, of interests, beliefs and identities; after all, interests can be base, beliefs can be wrong, and identities are often irrelevant to an inquiry."⁷⁸ Similarly, achieving "intellectual diversity" among university teachers advances a political goal—more politically conservative professors on the university staff—at the expense of an academic goal.⁷⁹ On Fish's account of the academic job the political allegiances of the professors are irrelevant because those allegiances are never activated. It makes no difference whether the professors are all Republicans or all Democrats if all they do is "academicize." But if professors are openly hired on the basis of their party affiliations, it legitimates the injection of partisan party positions into their job performance, and this is antithetical to academicizing.

Fish's sixth and last argument is the deepest, and draws upon his philosophical anti-foundationalism. A foundationalist holds that Reality has its own characteristics and exists completely independently of the human observer. The job of the human observer is to apprehend these characteristics accurately, and then base any knowledge claims upon the foundation of this independent Reality. An anti-foundationalist holds that we never apprehend

76. FISH, PROFESSIONAL, *supra* note 2, at 17.

77. Stanley Fish, *Boycotting Israeli Universities, Part Two*, N.Y. TIMES: OPINIONATOR (Nov. 11, 2013), <http://www.nytimes.com/2013/11/12/opinion/fish-boycotting-israeli-universities-part-two.html>. See also FISH, SAVE, *supra* note 3, at 169 ("[A]gendas imported into the classroom from foreign venues do not enrich the pedagogical task, but overwhelm it and erode its constitutive distinctiveness."); FISH, VERSIONS, *supra* note 1, at 117 ("When Butler calls for a 'more robust conception of academic freedom,' one that does not rule out the debating of political matters with a view to deciding them, she is calling for the end of the academy as a place where a distinctive activity is performed and advocating instead for a place indistinguishable at bottom from the ballot-box, the parliamentary debate, and the street rally.").

78. FISH, SAVE, *supra* note 3, at 11.

79. See Fish's discussion of David Horowitz's Academic Bill of Rights in SAVE at 118-23; FISH, VERSIONS, *supra* note 1, at 71-73. See also Stanley Fish, *Intellectual Diversity*, CHRONICLE OF HIGHER EDUCATION, Feb. 13, 2004.

Reality directly; rather, we always apprehend it in a mediated fashion. What mediates our apprehension is a background of socially inculcated beliefs, values, categories, etc. This background *both enables and structures* our experience of the world. So if the background changes significantly, the world we experience changes too.⁸⁰ This has implications for the academic job and the objects of academic study. If we take away the existing disciplinary categories, the object of our disciplinary concern is not thereby revealed in its full glory, as the earlier epistemological objection supposed. Instead it disappears. We apprehend in its place a different object made available by the new categories and beliefs and values that have replaced the old disciplinary background (*i.e.*, the ones that the moral objector favors). “When you exchange one activity for another, you lose something, and although you might mask the loss by calling the new activity by the old name, the phenomena that come into view under the previous dispensation will have disappeared in your brave new world.”⁸¹ Because Fish the anti-foundationalist sees a move away from the narrow conception of the academic job as involving the loss of the very things that the established disciplines studied, and because Fish the academic sees value in those studies, he strongly opposes any move that would change the narrow academic job.

I am aware that the argument I am making here is a hybrid, perhaps even a monster. I combine an antifoundationalist epistemology with an insistence on maintaining a foundational structure that is, by my own admission, artificial, historically emergent and, therefore, challengeable; and I do so in the conviction that without such a foundation—supported by nothing but itself—a certain mode of experience will be lost.⁸²

Fish’s Account of Academic Freedom

As we have seen, for Fish the academic job is the pursuit of truth and the advancement of knowledge regarding matters identified as significant by existing disciplinary traditions. He then argues that academic freedom gets its content and its justification from the nature of the academic job; it is nothing but the freedom necessary to do the academic job. That job requires academics to follow their evidence and arguments wherever they lead, no matter who might be dismayed or disadvantaged by their conclusions. Therefore, if you want the academic job done, you must guarantee to academics the freedom to follow evidence and arguments to their disciplinary conclusions without being subject to pressure from non-academics such as university administrators and

80. ROBERTSON, STANLEY FISH, *supra* note 10, at 7-47.

81. FISH, PROFESSIONAL, *supra* note 2, at 69-70. *See also* FISH, SAVE, *supra* note 3, at 23, 25; FISH, VERSIONS, *supra* note 1, at 128.

82. FISH, VERSIONS, *supra* note 1, at 127. *Id.* at 63 (“The question finally is whether academic disciplines are mere placeholders for virtues and values that do not depend upon them for their definition and flourishing, or whether academic disciplines are constitutive of those virtues and values and so must be maintained in their integrity lest what they make possible is lost.”).

trustees, politicians, businessmen, parents of students, or “public opinion.” This is the minimalist, deflationary account of academic freedom that he describes and defends in *Versions of Academic Freedom* as the “It’s just a job” school.⁸³ Academic freedom can be guaranteed by an employment contract, or by a statute, as in New Zealand,⁸⁴ but on Fish’s argument these legal devices merely memorialize and reinforce a right that must already exist if the academic job exists.

You start with the idea of pursuing a line of inquiry to whatever conclusion it brings you, and then you ask for the freedom to engage in that pursuit without interference from external forces that would tie you to the agendas of another enterprise. The freedom you ask for is not added on to the project; it is constitutive of it, for you can’t follow where an inquiry takes you if obstacles are constantly put in your way. When all is said and done, academic freedom is just a fancy name for being allowed to do your job, and it is only because that job has the peculiar feature of not having a pre-stipulated goal that those who do it must be granted a degree of latitude and flexibility not granted to the practitioners of other professions, who must be responsive to the customer or to the bottom line or to the electorate or to the global economy.⁸⁵

Academic freedom is quite distinct from freedom of speech, according to Fish. The right of freedom of speech applies to everyone, whereas academic freedom applies only to those few people engaged in academic work. The right of freedom of speech protects speech without regard to its content (with some limited exceptions), but academic freedom is not indifferent to content. A lot of content can be excluded from the academic context on academic grounds, and this will not violate academic freedom.

Here we see a difference between the First Amendment and academic freedom. The First Amendment stands for the proposition that all points of view must be given a hearing and none excluded; and while academic freedom also insists that ideas should be given a hearing, it erects a barrier that must be negotiated before a particular idea is welcomed into the conversation as a legitimate participant; it must pass muster before a body of credentialed experts; and if it does not, it will be sent away without apology and without any philosophical or moral anxieties. The academy is not a democracy; it is a structure of authority, and it is in the business of excluding what it has judged to be unworthy.⁸⁶

83. FISH, *VERSIONS*, *supra* note 1, at 9-10. *See also id.*, at 20-36 (chapter 2).

84. The Education Act 1989, s. 161 (N.Z.).

85. Stanley Fish, *Academic Freedom is Not a Divine Right*, *CHRONICLE OF HIGHER EDUCATION*, Sept. 5, 2008. *See also* FISH, *SAVE*, *supra* note 3, at 80-81; FISH, *VERSIONS*, *supra* note 1, at 20, 24, 87; Stanley Fish, *An Authoritative Word on Academic Freedom*, *N.Y. TIMES: OPINIONATOR* (Nov. 23, 2008, 10:00 PM), <http://opinionator.blogs.nytimes.com/2008/11/23/an-authoritative-word-on-academic-freedom/> [hereinafter Fish, *Authoritative Word*].

86. FISH, *VERSIONS*, *supra* note 1, at 148. *See also* FISH, *NO FREE SPEECH*, *supra* note 5, at 107; Stanley Fish, *What’s Sauce for One Goose: The Logic of Academic Freedom*, in *ACADEMIC FREEDOM*, *supra* note 6, at 6, 11; Stanley Fish, *Academic Freedom in Brooklyn: Part Two*, *N.Y. TIMES: OPINIONATOR* (Feb.

While freedom of speech is an important political value in a liberal society, Fish acknowledges, it is not an important academic value.⁸⁷ A primary goal of freedom of speech is to facilitate political speech, “[b]ut in the academy, political urgings are off-limits. . . . This is particularly the case in the classroom, where any effort at political (as opposed to intellectual) persuasion is called indoctrination and is rightly rejected.”⁸⁸ Freedom of speech has a constitutional foundation in America, but academic freedom does not—it is just the prerequisite for doing one particular job.⁸⁹ Indeed Fish concludes that, apart from employment contracts, “it is not at all clear that academic freedom has any substantial presence in the law.”⁹⁰

Academic freedom, on Fish’s analysis, is a group right rather than an individual right. It is the right of a group engaged in a particular job to do that job without interference by outsiders, and to be the only ones who have the jurisdiction to regulate the doing of that job.

The professional concept of academic freedom is the product of the guild’s desire (shared with other guilds) to order its own affairs with a minimum of interference from the outside; academic freedom is the freedom, first, to pursue professional goals, and, second, to specify for itself the appropriate means of realizing those goals. The profession is jealous of its prerogatives and reluctant to yield them to other authorities, including the authority of the courts.⁹¹

It follows that academic freedom does not give to individual academics the right to act against the norms of the professional group. Instead it gives to individual academics the right to be subject *only* to the norms of the professional group, and not to the norms and demands of any non-academic constituencies. Fish adopts Robert Post’s formulation that academic freedom, as it applies to an individual, “is best understood ‘as the unimpeded application of professional norms of inquiry.’”⁹²

If academic freedom is assigned to the college or university, the scope of the individual faculty member’s freedom is limited first by the norms embodied in the particular institution’s regulations, and ultimately by the norms that are said, by tradition and disciplinary authority, to define the academic enterprise in general.⁹³

25, 2013, 9:00 PM), <http://opinionator.blogs.nytimes.com/2013/02/25/academic-freedom-in-brooklyn-part-two/> [hereinafter Fish, *Academic Freedom in Brooklyn Two*].

87. FISH, SAVE, *supra* note 3, at 20.

88. Fish, *How Odd?*, *supra* note 8, at 179.

89. Fish, *Authoritative Word*, *supra* note 85.

90. FISH, VERSIONS, *supra* note 1, at x.

91. *Id.* at x, 21; FISH, SAVE, *supra* note 3, at 80; Fish, *Academic Freedom in Brooklyn Two*, *supra* note 86.

92. FISH, VERSIONS, *supra* note 1, at 52. *See also* Fish, *How Odd?*, *supra* note 8, at 178.

93. FISH, VERSIONS, *supra* note 1, at 74.

Academic freedom therefore will not cover behavior that violates professional norms or is subversive of the university's core rationale. Fish argues that academics themselves have to be vigilant to maintain academic standards and to discipline and, if necessary, expel those members of the professional group who violate them.⁹⁴ It is this vigilance that he notes and approves of in the expulsion and exclusion of Holocaust deniers from history departments, even if they have professional qualifications. (He criticizes the attempt to justify this expulsion only on epistemological grounds instead of nakedly professional ones.)⁹⁵ But a lack of clarity in thinking about the academic job and academic freedom has, he believes, resulted in not enough of the necessary vigilance being exercised. Too often academic freedom is thought of as the right of an individual academic to do whatever he or she wants, without any constraints. Thus an academic who refuses to teach the advertised content for a course, and instead fills it with calls to engage in radical political action against the existing social order ("academic squatting") has been able to defend it as an exercise of his academic freedom.⁹⁶ Fish holds that such confused thinking about academic freedom will come at a cost. In *The Chronicle of Higher Education* he identified two costs, one external and the other internal:

The external consequence was warned against in the American Association of University Professors' 1915 General Report Of The Committee On Academic Freedom And Academic Tenure: "If this profession should prove itself unwilling to purge its ranks of the incompetent and the unworthy, or to prevent the freedom which it claims in the name of science from being used as a shelter for inefficiency, for superficiality, or for critical and intemperate partisanship, it is certain that the task will be performed by others." . . . But the internal danger is more to be feared and is more often realized. It is the danger of dysfunction and its attendant evils—unhappiness, bitterness, loss of morale, stagnation. When someone is not pulling his or her weight, the burden falls to others who, as responsible persons, will take up the slack but with a (justifiable) sense of unfairness. If this goes on for a long time as it often does, the entire operation of a department will be deformed as everyone gets into the bad habit of working around the colleague no one is willing to discipline. And the longer a "rogue" faculty member "gets away with it," the more difficult it will be to turn around a situation to which all have contributed.⁹⁷

The limited nature of academic freedom on Fish's analysis has other consequences that are worth noting briefly. Academic freedom gives academics no right to participate in the governance of the university, nor to criticize the

94. Fish, *Authoritative Word*, *supra* note 85. See also FISH, VERSIONS, *supra* note 1, at 126 ("If members of the academy wish to continue doing what they have been trained to do—turn the lens of disinterested inquiry on the objects of its attention—it is up to them to monitor the conditions that ensure the health of their practice.").

95. Fish, *Holocaust Denial*, *supra* note 7, at, 505, 512, 520-21.

96. See Fish's discussion of Denis Rancourt in FISH, VERSIONS, *supra* note 1, at 104-09.

97. Stanley Fish, *Discipline and Punish*, CHRONICLE OF HIGHER EDUCATION, Nov. 15, 2002.

university administration (“intramural criticism”), because these things are not necessary to do the academic job.⁹⁸ Students have no academic freedom, because they are not professionals engaged in the academic job. “The only freedom students rightly have is the freedom to vote with their feet if they don’t like the syllabus in a particular course,” and the only right they have is “the right to competent and responsible instruction.”⁹⁹ Extracurricular events do not involve academic freedom issues, because such events are, by definition, outside the teaching and researching that constitutes the academic job. So there are no academic freedom issues raised when a controversial person is invited onto the campus to give a graduation address or public lecture or to receive an honorary degree. Nor are academic freedom issues raised if this person is subsequently un-invited. The only issue Fish sees here relates to the wisdom of the people doing the inviting and uninviting, because the image and reputation of the university can be harmed by their actions.¹⁰⁰ Similarly he does not see academic freedom issues being raised by what is published or denied publication in student newspapers.¹⁰¹

The rest of this book is devoted to describing and dispatching four competing schools of academic freedom. The first of these is the “For the common good” school, “in which professional values are subordinated to the higher values of democracy or justice or freedom; that is, to the common good.”¹⁰² In other words, academic freedom does not aim simply to advance the academic enterprise; it has the broader goal of benefiting society. The section in the New Zealand Education Act (1989) that said that a university must accept “a role as critic and conscience of society”¹⁰³ is an expression of this conception of academic freedom. The next is the “Academic exceptionalism or uncommon beings” school.¹⁰⁴ This position augments the “For the common good” school by claiming that academics have special qualities that enable them to act for the common good, and this entitles them to special rights that are guaranteed under the heading of academic freedom. The “Academic freedom as critique” school does see academic freedom operating within the academy, but in a negative way. Rather than being used to advance the academic enterprise,

98. FISH, VERSIONS, *supra* note 1, at 92-96; Fish, *How Odd?*, *supra* note 8, at 181-82.

99. Stanley Fish, *Politics by Any Other Name*, N.Y. TIMES: OPINIONATOR (May 2, 2006, 9:33 PM), http://opinionator.blogs.nytimes.com/2006/05/02/politics-by-any-other-name/?_r=0.

100. FISH, SAVE, *supra* note 3, at 72-78; Stanley Fish, *There’s No Business Like Show Business*, N.Y. TIMES: OPINIONATOR (Oct. 15, 2006, 10:27 PM), <http://opinionator.blogs.nytimes.com/2006/10/15/theres-no-business-like-show-business/>; Stanley Fish, *The Kushner Flap: Much Ado About Nothing*, N.Y. TIMES: OPINIONATOR (May 8, 2011, 9:30 PM), <http://opinionator.blogs.nytimes.com/2011/05/08/the-kushner-flap-much-ado-about-nothing/>.

101. FISH, SAVE, *supra* note 3, at 89-90.

102. FISH, VERSIONS, *supra* note 1, at 11, 37-49 (chapter 3).

103. Education Act 1989, s.162(4)(a)(v) (N.Z.).

104. FISH, VERSIONS, *supra* note 1, at 11-12, 74-103 (chapter 5).

academic freedom should be used to deconstruct the presuppositions of the academic enterprise.

One should not rest complacently in the norms and standards presupposed by the current academy's practices; one should instead interrogate those norms and make them the objects of critical scrutiny rather than the baseline parameters within which critical scrutiny is performed. Academic freedom is understood by this school as a protection for dissent and the scope of dissent must extend to the very distinctions and boundaries the academy presently enforces.¹⁰⁵

Finally the "Academic freedom as revolution" school takes the activity of deep negative critique developed by the previous school and directs it at society as a whole, rather than just at particular academic disciplines. For the members of this school, society does not merely need to have an external critic and conscience prodding it to do better now and again. Instead the job of the academic is to expose the defective ideological assumptions that underpin our unjust society and that foster oppression and exploitation. But simply describing this state of affairs is not enough; the academic must act forcefully to change it, and must seek to encourage the students to do likewise. Academic freedom, according to this school, protects the ability of the academic to engage in this radical and critical political work.¹⁰⁶

As I have shown in the previous section, Fish has developed six general arguments against the position that the academic job should be expanded beyond the core disciplinary task he described. All of these arguments could be used to challenge the rival schools on academic freedom, because all four of these schools originate in more expansive conceptions of the academic job.¹⁰⁷ In *Versions of Academic Freedom* he also adopts the strategy of identifying and critiquing particular people who have sought to advance one of these rival schools of academic freedom either in their writing or by their actions. (For example, Robert Post, Judith Butler, and Denis Rancourt.) His conclusion is that all of his opponents fail to give adequate weight to the word "academic" in the term "academic freedom." Instead of seeing academic freedom as the freedom to carry out a distinctively academic practice without interference from outsiders, they all see it as a freedom to do something more than participate in a disciplinary tradition.

"To me, academic freedom has always meant the right to insist that academic freedom be more than academic." [Howard Zinn.] This declaration has the virtue of illustrating just how the transformation of academic freedom from a doctrine insulating the academy from politics into a doctrine that demands

105. FISH, *VERSIONS*, *supra* note 1, at 12-13, 50-73 (chapter 4).

106. FISH, *VERSIONS*, *supra* note 1, at 13-15, 104-28 (chapter 6).

107. *See, e.g., id.* at 127 ("A capacious definition of academic freedom, urged in the name of social justice and human solidarity, undermines both academic freedom and the very idea of academic life.").

of academics blatantly political actions is managed. What you do is diminish (finally to nothing) the limiting force of the adjective “academic” and at the same time put all the emphasis on freedom (which should be re-written FREEDOM) until the academy loses its distinctive status and becomes just one more location of a universal moral/political struggle.¹⁰⁸

Justifying the Academic Job

Fish’s deflationary description of the academic job and academic freedom achieves clarity, but this comes at a cost. Academic freedom is declared to be necessary to get the academic job done, but why does the narrow academic job Fish describes need to be done at all? If the academic job involved elevating the character of students, or improving democratic functioning, or achieving social justice, or providing employment or useful goods and services, then it would not be difficult to justify to non-academics. But if the correct description of the academic job makes reference to none of these things, why should anyone other than those already embedded in a disciplinary practice care about it? It is to Fish’s credit that he goes down the deflationary road right to the end and grasps this nettle firmly and without evasion:

Who is going to pay for the purified academic enterprise that I celebrate in these pages? . . . How do you sell to legislators, governors, trustees, donors, newspapers, etc., an academy that marches to its own drummer, an academy that asks of the subjects that petition for entry only that they be interesting, an academy unconcerned with the public yield of its activities, an academy that puts at the center of its operations the asking of questions for their own sake? How, that is, do you justify the enterprise? . . . The only honest thing to do when someone from the outside asks “what use is this venture anyway?” is to answer “none whatsoever,” if by “use” is meant (as it always will be) of use to those with no investment in the obsessions internal to the profession.¹⁰⁹

Not only does Fish grasp this nettle, he waves it about enthusiastically:

And here we come to the heart of the matter, the justification of liberal education. You know the questions: Will it benefit the economy? Will it fashion an informed citizenry? Will it advance the cause of justice? Will it advance anything? Once again the answer is no, no, no, and no.¹¹⁰

If the point of liberal arts education is what I say it is—to lay out the history and structure of political and ethical dilemmas without saying yes or no to any

108. Stanley Fish, *Academic Freedom Against Itself: Boycotting Israeli Universities*, N.Y. TIMES: OPINIONATOR (Oct. 28, 2013, 7:00 PM), <http://opinionator.blogs.nytimes.com/2013/10/28/academic-freedom-against-itself-boycotting-israeli-universities/>. See also FISH, VERSIONS, *supra* note 1, at 109.

109. FISH, SAVE, *supra* note 3, at 153-54. See also FISH, VERSIONS, *supra* note 1, at 127.

110. FISH, SAVE, *supra* note 3, at 55.

of the proposed courses of action—what is the yield that justifies the enormous expenditure of funds and energies? Beats me!¹¹¹

What can you say to the tax-payer who asks, “What good does a program in Byzantine art do me?” Nothing.¹¹²

Fish is aware that this nettle will probably appear pleasing to nobody but him. (In *Versions of Academic Freedom* he says of the “It’s just a job” school that it “may have only one member and you’re reading him now.”¹¹³) Surely, it will be objected, the humanities at least teach critical thinking and analytical skills that are useful in other contexts. Sure, replies Fish, but these things can be taught in many venues; the academy is not necessary for them to flourish.

So two cheers for critical thinking, but the fact that you can learn how to do it in any number of contexts means that it cannot be claimed for the humanities as a special benefit only they can supply. Justification requires more than evidence that a consumer can get a desirable commodity in your shop, too; it requires a demonstration that you have the exclusive franchise.¹¹⁴

Fish is not saying that the academic job cannot be given any justification; he is saying that the justification can refer only to the goals and values of the academic job itself, and the pleasures experienced by academics in advancing those goals and values.

Nguyen Chau Giao asks, “Dr. Fish, when was the last time you read a poem . . . that so moved you to take certain actions to improve your lot or others?” To tell the truth, I can’t remember a single time. But I can remember countless times when I’ve read a poem (like Herbert’s “Matins”) and said “Wow!” or “Isn’t that just great?” That’s more than enough in my view to justify the enterprise of humanistic study, but I cannot believe, as much as I would like to, that the world can be persuaded to subsidize my moments of aesthetic wonderment.¹¹⁵

To put the position more generally, the justification (and criticism) of any practice has to be internal. It has to use the modes of reasoning and the conceptions of evidence and the criteria of excellence that the practice already recognizes. Although I cannot expand upon it here, this is a reflection of

111. Fish, *Always Academicize*, *supra* note 27.

112. Stanley Fish, *The Crisis of the Humanities Officially Arrives*, N.Y. TIMES: OPINIONATOR (Oct. 11, 2010, 9:00 PM), http://opinionator.blogs.nytimes.com/2010/10/11/the-crisis-of-the-humanities-officially-arrives/?_r=0 [hereinafter Fish, *Crisis of Humanities*].

113. FISH, *VERSIONS*, *supra* note 1, at 9.

114. Stanley Fish, *The Uses of the Humanities, Part Two*, N.Y. TIMES: OPINIONATOR (Jan. 13, 2008, 9:30 PM), <http://opinionator.blogs.nytimes.com/2008/01/13/the-uses-of-the-humanities-part-two/> [hereinafter Fish, *Uses of Humanities Two*].

115. *Id.*

Fish's commitment to the autonomy of practices, which in turn follows from his anti-foundationalism:¹¹⁶

Each practice is answerable to the norms implicit in its own history and conventions. . . . [J]ustification can only proceed *within* that history and in relation to those conventions. . . . Justification is always internal and can only get off the ground if the value it seeks to uncover or defend is presupposed and is (surreptitiously) guiding the process at the end of which it is triumphantly revealed. Justification never starts from scratch, and can only begin if everything it seeks to demonstrate is already taken for granted.¹¹⁷

Justification (and criticism) of the academic job therefore cannot refer to the goals and values of other institutions or practices, such as democracy or religion or commerce. Fish is particularly dismissive of any attempt to understand academia by using the values and paradigms of commerce. "Higher education is just not in the same business as business," he insists.¹¹⁸ Students should not be analogized to "consumers" of what the university "produces," because unlike the consumers of cars, "the recipients of higher education do not know in advance what they need. If they did, they wouldn't need it, and what they often want, at least at the outset, is an education that will tax their energies as little as possible."¹¹⁹ Academics therefore should not pay any attention to what students want when they design and teach a course. Nor should universities disestablish traditional academic departments, such as classics, on the grounds that they attract few students, as an automobile manufacturer might stop producing a model that does not sell well.¹²⁰

[I]n the academy there is no product except knowledge, and that may take decades to develop, if it develops at all. The concept of market share is inapposite; efficiency is not a goal; and there is no inventory to put on the shelves. Instead the norms are endless deliberations, explorations that may go nowhere, problems that only five people in the world even understand, lifetime employment that is not taken away even when nothing is achieved, expensively labor-intensive practices and no bottom line. What is an outsider to make of that? Not much, because he or she will lack the internalized understanding that renders the features of the enterprise intelligible, and in the absence of that understanding, the wanderer in a strange land will see only anomalies and mistakes that should be corrected.¹²¹

116. ROBERTSON, STANLEY FISH, *supra* note 10, at 60-64.

117. FISH, PROFESSIONAL, *supra* note 2, at 112-13. See also FISH, VERSIONS, *supra* note 1, at 22-25, 132; Fish, *Scholarship and Politics*, *supra* note 39; Fish, *Crisis of Humanities*, *supra* note 112.

118. FISH, SAVE, *supra* note 3, at 108.

119. *Id.* at 159.

120. *Id.* at 158, 164-65.

121. Stanley Fish, *Wanted: Someone Who Knows Nothing About the Job*, N.Y. TIMES: OPINIONATOR (Feb. 24, 2008, 6:25 PM), <http://opinionator.blogs.nytimes.com/2008/02/24/wanted-someone-who-knows-nothing-about-the-job/>.

Fish does not see the fact that justification always has to be internal as a limitation on our ability to defend the academic job. Rather, he understands the robust refusal to consider external values and goals to be the best and most principled way to defend the academic job.

To the question “of what use are the humanities?,” the only honest answer is none whatsoever. And it is an answer that brings honor to its subject. Justification, after all, confers value on an activity from a perspective outside its performance. An activity that cannot be justified is an activity that refuses to regard itself as instrumental to some larger good. The humanities are their own good.¹²²

Trying to justify academia (or any practice) by appealing to the values of an outside practice is self-defeating. Before you begin you have already conceded to your opponent that your practice has no inherent value and makes sense only when viewed through the lens of something else:

I believe that the demand for justification should be resisted because it is always the demand that you account for what you do in someone else’s terms, be they the terms of the state, or of the economy, or of the project of democracy. “Tell me, why should I as a businessman or a governor or a preacher of the Word, value what you do?” There is no answer to this question that does not involve preferring the values of the person who asks it to yours. The moment you acquiesce to the demand for justification, you have lost the game, because even if you succeed, what you will have done is acknowledge that your efforts are instrumental to some external purpose; and if you fail, as is more likely, you leave yourself open to the conclusion that what you do is really not needed.¹²³

But this severely minimalist position cannot stand unqualified. There are two different questions in play here, as Fish acknowledges: “The person who asks you to justify what you do is not saying, ‘tell me why *you* value the activity,’ but ‘convince me that *I* should.’”¹²⁴ That is, “why do you do it?” is one question, and “why should I help you do it?” is another. Fish has argued that one can answer the first question only by referring to values, goals, and pleasures entirely internal to academic practice. As for the second question, he says that it is better not to answer it at all. But while proudly declining to defend the academic enterprise to an outsider may be justified and praiseworthy in some contexts (a dinner party, perhaps), it would be disastrous in others. In particular it would be disastrous to refuse to defend the academic project to

122. Fish, *Will Humanities Save Us?*, *supra* note 23. But note the clarification that comes in Stanley Fish, *Uses of Humanities Two*, *supra* note 114 (“Note that what we’re talking about here is the study, not the production, of humanistic texts. The question I posed in the column was not do works of literature, philosophy and history have instrumental value, but does the academic analysis of works of literature, philosophy and history have instrumental value.”).

123. Fish, *Always Academicize*, *supra* note 27. See also FISH, SAVE, *supra* note 3, at 56-57, 59, 104; FISH, VERSIONS, *supra* note 1, at 49.

124. FISH, SAVE, *supra* note 3, at 154.

those whose help the academy needs, or who have the power to harm the academic project.

Fish, the former dean, knows this well. He knows that “no form of [academic] work—including even the work of, say, natural science—stands apart from the political, social and economic concerns that underlie the structures and practices of a society.”¹²⁵ That is, the success of the academy depends upon favorable conditions existing outside the academy. Some non-academic institutions have to be prepared to fund the university, and to maintain strong inhibitions against interfering with the work of academics as they pursue their disciplinary truths. But there will always be competing views about where the government or a foundation should spend its money, and how closely it should concern itself with the activities of those who receive its money. “It is no doubt true that a web of politics surrounds and undergirds everything that goes on in higher education. Private and public sources fund colleges and universities, and they could have chosen—and some would say should have chosen—to fund something else.”¹²⁶ So if external conditions favorable to the university are achieved, this will be a political (in the broad sense) success achieved against resistance from competing viewpoints. And, as we shall see, Fish thinks academics should engage in this contest by defending the university against external viewpoints that misunderstand or denigrate the academic job.

It might seem that Fish is falling into a contradiction here. How can he say to academics that they should defend the university against attacks, and also say that “any justification of the academy is always a denigration of it”?¹²⁷ He cleverly avoids any contradiction when he identifies ways of defending the academic job to outsiders that do not have recourse to non-internal goals and values. One such method was described in *Professional Correctness*. An academic can try to get the outsider to experience firsthand the pleasures of doing the academic job. In that book Fish put on display the skills and pleasures of a literary scholar working on the first three words of Milton’s *Lycidas*, “Yet once more,”¹²⁸ and on a single line from Milton’s *Paradise Lost*, “And Devils to adore for Deities.”¹²⁹ With enormous erudition he draws out the multiple meanings and histories that sit behind these few words, in the hope that by displaying the academic job in action those attending to him will gain a sense of its merits. But later, in *Save the World on Your Own Time*, he seems to have given up on this approach:

[I]t won’t work to explain the academic world to nonacademics while standing on one foot. That is, you can’t in a short time teach people to value activities

125. Fish, *Ivory Tower*, *supra* note 11.

126. Fish, *Closing Argument*, *supra* note 14.

127. FISH, *SAVE*, *supra* note 3, at 154.

128. FISH, *PROFESSIONAL*, *supra* note 2, at 4-17.

129. FISH, *PROFESSIONAL*, *supra* note 2, at 108-14.

they have never engaged in. . . . Remember, it takes four or more years to initiate students into the pleasures of the academic life, and in many cases the effort is not successful. Why should anyone think that the lessons could be taught and accepted in twenty minutes?¹³⁰

Fish identifies a second consistent method for defending the academic job in *Save the World on Your Own Time* by applying the maxim that the best defense is a good offense. He urges academics to stop being so meek and mild in the face of attacks on the academic job. Instead of being passive victim types, academics should go on the front foot and club the challenger with the fact that he or she is not an insider, and therefore knows nothing at all about the matter under discussion. Challengers should be told to shut up and leave the academic professionals alone to get on with the job. Fish advocates

embracing the fact that few nonacademics understand what we do and why we do it, and turning it into a weapon. Instead of saying, “Let me tell you what we do so that you’ll love us,” or “Let me explain how your values are really our values too,” say, “We do what we do, we’ve been doing it for a long time, it has its own history, and until you learn it or join it, your opinions are not worth listening to.” Instead of defending classics or French literature or sociology, ask those who think they need defending what they know about them, and if the answer is “not much” . . . suggest, ever so politely, that they might want to go back to school. Instead of trying to justify your values (always a weak position), assume them and assume too your right to define and protect them. And when you are invited to explain, defend, or justify, just say no.¹³¹

He offers his own conduct as a model for what can be achieved in this manner. His side of the public debates he conducted with Dinesh D’Souza are recorded in chapters 3 to 7 of *There’s No Such Thing as Free Speech . . . and It’s a Good Thing, Too*. In those debates Fish robustly defended the university against the neoconservative attacks on it during the “culture wars.” He reports that when he was Dean of the College of Liberal Arts and Sciences at the University of Illinois at Chicago he refused to let a critique of the university by a parent or legislator or government official pass in silence.

I said many nasty things about members of Congress, Illinois state representatives and senators, the governor of Illinois, the governor’s budget director, and the governor-appointed Illinois Board of Higher Education. I called these people ignorant, misinformed, demagogic, and dishonest and repeatedly suggested that when it came to colleges and universities, either they didn’t know what they were talking about or (and this is worse) they did know and were deliberately setting out to destroy public higher education.¹³²

He admits “[t]hat’s not the way senior academic administrators usually talk to their political masters, but try it; you might just like it. And it might even

130. FISH, *SAVE*, *supra* note 3, at 164.

131. *Id.* at 165-66.

132. *Id.* at 162. *See generally* 161-67; Fish, *Crisis of Humanities*, *supra* note 112.

work. God knows that the defensive please-sir-could-we-have-more posture doesn't."¹³³

Fish also briefly mentions a third mode of defense that takes a different course. Instead of refusing to justify the academy by using values and goals external to its defining job, he acknowledges that one could use such arguments as rhetorical tools without believing in them.

True, Finkin and Post . . . contend that the product of academic work is a higher social good that justifies extending to professors degrees of latitude and freedom others do not enjoy. But I think of this argument as more strategic than substantive, as an attempt to add to the weapons the academy might have at its disposal when the inevitable attacks come. "For the common good" is a good talking point and I can think of occasions when I might use it myself, although I might have to bite my tongue.¹³⁴

To the charge that this is a cynical and unprincipled way of proceeding, Fish would reply that it is completely acceptable to use in a political context arguments that you would judge to be defective in another context. If such an activity is engaged in to advance one of your deep commitments (such as the value of academic work), then it is principled and non-cynical.¹³⁵

But there is a fourth way of defending the academic job that sits between Fish's second and third methods, and thereby avoids having to use arguments that Fish would have to bite his tongue to employ. It is a method that is suggested by many of Fish's remarks, but that he himself does not take up. As we have seen, Fish emphatically rejects the claim that the goal of academic work is to improve the character of students, or achieve social justice, or develop democratic skills, or increase the gross domestic product, or inculcate an appreciation of our own and other cultures, and so on. He acknowledges that sometimes examples of disciplinary work might achieve some of these goals, but such effects are always only contingent, accidental, and cannot be planned. For this reason he dismisses them.

I'm not saying that there is no connection at all between the successful practice of ethical, social, and political virtues and the courses of instruction listed in the college catalogue; it's always possible that something you come across or something a teacher says might strike a chord that sets you on a life path you might not otherwise have chosen. But these are contingent effects, and as contingent effects they cannot be designed and shouldn't be aimed at.¹³⁶

133. Stanley Fish, *The Crisis of the Humanities II*, N.Y. TIMES: OPINIONATOR (Oct. 18, 2010, 8:30 PM), <http://opinionator.blogs.nytimes.com/2010/10/18/crisis-of-the-humanities-ii/> [hereinafter Fish, *Crisis of Humanities Two*].

134. Stanley Fish, *How Odd?*, *supra* note 8, at 183.

135. ROBERTSON, STANLEY FISH, *supra* note 10, at 162-65.

136. FISH, *SAVE*, *supra* note 3, at 13. *See also* FISH, *VERSIONS*, *supra* note 1, at 48, 131; Fish, *Crisis of Humanities Two*, *supra* note 133. ("The mistake is to think that the line of justification should go from the pleasure many derive from plays, poems, novels, films, etc., to a persuasive account

Fish is very strict about what can be used to justify the academic enterprise. For him it has to be “internal” in a very strong sense. It has to be a benefit that the academic job aims to produce deliberately, and it has to be a distinctive benefit that only the academy produces. (Remember his “two cheers for critical thinking” earlier.¹³⁷)

However, I think that Fish’s powerful deflationary thrust has caused him to dismiss too quickly possible defenses of academic work that refer to its wider benefits without making those wider benefits the *goal* of academic work. For example, Fish argued that “[h]igher education is not valuable because of the benefits some nonacademics might see in it; that’s like valuing the theater or art because they bring people into the inner city.”¹³⁸ But surely it can sometimes be very useful to point out that theaters bring people into the inner city if one’s goal is to get non-theater people (such as a city council) to contribute money to establish a theater downtown. Similarly, just because any wider social benefits of academic work are collateral (and possibly random) effects of work done to achieve completely different goals, that does not mean that these effects, if there are enough of them, cannot be used to justify the academic enterprise to outsiders for whom such effects are significant. This is a position that Larry Alexander has advanced:

Fish is correct that academic work need not be intended to produce goods extrinsic to disciplinary knowledge. . . . Nonetheless, good academic work, even if not guided by extrinsic goals, does produce things of immense benefit to the world beyond the academy. . . . Indeed, if the academy did not serve these external goals, even if indirectly as byproducts of academic work, there would be no reason for the rest of society to support the academic enterprise. . . . [O]ne can serve a goal without being guided by it; and in the case of academic disciplines, one can best produce these extrinsic goods if one is not guided by the aim of producing them. The argument is an indirect consequentialist one, but it is nevertheless consequentialist. And Fish should embrace it. In the end, his salary depends on others’ belief in it.¹³⁹

This line of defense is not based on grandiloquent claims about the benefits of academic work of the kind that Fish wants to deflate. It is not claimed that academic work aims to produce anything besides the achievement of disciplinary truths. The defense is based only on empirical evidence of some unintended, non-academic benefits that can be causally connected to academic work. The fact that these collateral benefits can sometimes be produced by non-academic institutions as well does not undermine their usefulness in defending the university, I would argue, contrary to Fish’s more restrictive

of how academic work enhances or even produces that pleasure. It may or may not, but if it does, that’s an accidental benefit.”).

137. Fish, *Uses of Humanities Two*, *supra* note 114.

138. FISH, *VERSIONS*, *supra* note 1, at 130.

139. Lawrence Alexander, *Fish on Academic Freedom: A Merited Assault on Nonsense, but Perhaps a Bridge Too Far*, 9 FLA. INT’L U. L. REV. 1, 8 (2013).

view. Nor need it be the case that all types of academic work will produce such collateral benefits, or that such benefits will be produced regularly. But if empirical investigation can identify enough such benefits, and they are sufficiently widely spread among a variety of disciplines, they will be valuable ammunition to use against those who seek to dismiss and undermine the work of universities. However, if it were then argued that random, contingent social benefits from academic work were not good enough, and that academics should be aiming to produce such benefits regularly and in volume, the correct response would be “No. Not only is that not our job, it is fundamentally antithetical to our job.”

Would it not be a deflection from the academic focus of scholars to constantly be looking outside their disciplines for any beneficial unintended consequences of their work? Quite possibly. Gathering such evidence is a different job from the academic job, and therefore it should be done by a different kind of professional. In *Professional Correctness* Fish makes the valuable suggestion that universities hire aggressive public relations people to do work like this.

I don't mean the damage-control types found in most university public-relations offices, who are even more timid than their bosses and spend much of their time keeping things *out* of the news. . . . No, I mean publicity-seeking types who are always thinking of ways to grab huge hunks of newspaper space or air time and fill it with celebrations of the university. . . . The public justification of academic practices is too important a task to be left to academics; for after all—and this has been my message from the beginning—when there's a job to be done, and you want it done correctly, call in a professional.¹⁴⁰

If this suggestion were followed, then the next time you were asked to justify or defend academia, you could say “No thanks. That's someone else's job.”

How Does Fish's Analysis Apply to Legal Education?

We have seen Fish insist that the academic job is seeking truth and advancing knowledge, but law schools are pragmatically concerned with teaching practical skills and equipping students for employment outside the academic environment. So are law schools too vocational to belong in a university, according to Fish's argument? Are they just offering fancier and more expensive versions of courses like “Transportation and Materials Moving”? Fish recommended that purely vocational courses like this should not be taught at a university, and he acknowledged that this exclusion could apply to some professional schools too:

If this is, in fact, what transpires in a particular professional school—if students are taught methods and techniques in the absence of any inquiry into their sources, validity, and philosophical underpinnings—that professional school

140. FISH, PROFESSIONAL, *supra* note 2, at 126.

is not the location of any intellectual activity and is ‘academic’ only in the sense that it is physically housed in a university.¹⁴¹

However, Fish believes that law can very easily be “academicized” in the fashion required to be a legitimate university discipline:

One can, however, make the case that the practice of law is more than a technical/strategic exercise in which doctrines, precedents, rules and tests are marshaled in the service of a client’s cause. The marshaling takes place within an enterprise that is purposive. That is, law is more than an aggregation of discrete tactics and procedures; it is an enterprise informed by a vision of how the state can and cannot employ the legalized violence of which it is the sole proprietor. That vision will come into view in the wake of a set of inquiries. What obligations do citizens owe one another? How far can the state go in enforcing those obligations? What restrictions on what the state can do to (and for) its citizens should be in place? How do legal cultures differ with respect to these issues?¹⁴²

In other words, it is possible both to teach law as a practice and also to subject law to academic analysis.

Not only does Fish argue that law can be academicized, he also believes that it should be academicized. The evidence for this is that he has devoted a lot of time and energy to doing just that, both in his writing and in his teaching at law schools such as Duke and Cardozo. He is particularly interested in subjecting to academic analysis freedom of speech,¹⁴³ freedom of religion,¹⁴⁴ and contract law.¹⁴⁵ He thus joins in the efforts of other legal academics who write books and articles in which they seek not simply to describe the current state of a part of the law, but also to explain how this current state developed out of past states; how political and social and economic forces impacted on the development of the law; how the law intersects with debates in philosophy and hermeneutics and political theory; how the current state of the law is likely to change in the future, and so on. As well as focusing on particular substantive areas of law, legal academics sometimes engage in more general attempts to explain law as a whole; to describe what sets it apart from other social institutions and to make clear what its unique job is. H. L. A. Hart, Ronald Dworkin, and Richard Posner are prominent jurisprudence scholars who have taken up this more abstract academic exercise, and Fish has joined them too.¹⁴⁶ He entered

141. FISH, *SAVE*, *supra* note 3, at 22.

142. Stanley Fish, *Teaching Law*, N.Y. TIMES: OPINIONATOR (Dec. 12, 2011, 9:00 PM), <http://opinionator.blogs.nytimes.com/2011/12/12/teaching-law/>. On law schools see also FISH, *VERSIONS*, *supra* note 1, at 134-5.

143. STANLEY FISH, *THE TROUBLE WITH PRINCIPLE* (1999) at 75-150.

144. *Id.* at 153-275.

145. FISH, *NO FREE SPEECH*, *supra* note 5, at 141-168.

146. For an account of Fish’s substantial contributions to general jurisprudence, see ROBERTSON, STANLEY FISH, *supra* note 10, at 177-334.

into a decade-long debate with Dworkin¹⁴⁷ and has also written in response to Hart¹⁴⁸ and Posner.¹⁴⁹ He has developed his own distinctive jurisprudential position which I have described elsewhere.¹⁵⁰

But what about the views of a law student who is paying a lot of money to acquire a professional qualification, and who might consider the academic inquiries that Fish values to be unnecessary and expensive luxuries? Recall Fish's earlier point that students should not be analogized to consumers, because unlike the consumers of cars "the recipients of higher education do not know in advance what they need. If they did, they wouldn't need it, and what they often want, at least at the outset, is an education that will tax their energies as little as possible."¹⁵¹ Therefore Fish would not give much weight to what he would consider to be the uninformed views of law students as to what legal education requires. He would also point out that if law students want to obtain their law qualification from a university, as opposed to a polytechnic or an apprenticeship, then engaging with the academic study of law is part of the process they must go through to obtain it.

147. See ROBERTSON, STANLEY FISH, *supra* note 10, at 251-86.

148. FISH, DOING, *supra* note 4, at 503-24.

149. FISH, NO FREE SPEECH, *supra* note 5, at 200-30.

150. See ROBERTSON, STANLEY FISH, *supra* note 10, at 287-304.

151. FISH, SAVE, *supra* note 3, at 159.