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The Principle Problem Stanley Fish Rises to Debate by Peter Berkowitz

A review of *The Trouble with Principle* by Stanley Fish. Harvard University Press, 288 pp., \$24.95.

Why does the front cover of Stanley Fish's latest book feature a big photograph of Stanley Fish? After all, the man is not a movie star or a politician. He is a leading literary critic and legal theorist, and *The Trouble with Principle* --- his new collection of essays, many previously published in academic journals --- is addressed in large measure to professors and students.

But if you think that evidence, arguments, and ideas are therefore what matter in a scholarly book, think again, for we live in the age of the celebrity scholar. Look at recent books by University of Michigan legal theorist Catherine MacKinnon, Stanford philosopher Richard Rorty, Princeton ethicist Peter Singer, and Harvard social critic Cornel West. There, on the front covers, they pose in carefully arranged casualness, staring out with Mona Lisa smiles.

Fish's insouciant response to how scholars pursue celebrity --- and why they are right to --- would come as no surprise to those who have followed his sardonic assaults on his profession in his 1989 *Doing What Comes Naturally*, 1994 *There's No Such Thing as Free Speech . . . and It's Good Thing Too*, and 1995 *Professional Correctness*, or who have chuckled at Professor Morris Zapp (a cheerfully self-aggrandizing character, widely supposed to have been inspired by Fish, in David Lodge's comic novels about academic life). Of course academics desire fame and glamour and wealth and power, Fish would say. One would have to be a fool to fail to take advantage of the increase in media access for professors, the tremendous growth of the conference circuit, and the big fees universities are prepared to offer for a public lecture and a private dinner.

A gifted scholar who relishes his celebrity and has employed his considerable powers of salesmanship and showmanship to promote it, Stanley Fish established his academic credentials in 1967 with his first book, a reading of Milton called *Surprised by Sin*. In it, he sought an interpretation of *Paradise Lost* that would combine the insights of those who saw the poem as a vindication of God's glory with the insights of those who imagined the poem derived from the "Devil's party" (as William Blake put it). With ingenuity and flair, Fish argued that Milton's intention is to arouse in readers the very experience of falling from innocence into sin that the poem chronicles. Reissued in 1998 with a new preface, *Surprised by Sin* remains must reading for serious students of Milton.

A rising star in the 1970s, Fish helped attract to Johns Hopkins University the hottest scholars in the hip field of cultural studies. In the mid-1980s, even as he was pursuing a second career as a critic of moral and legal theory, Fish moved to Duke University to become chairman of the English department. There, generously bank-rolled by the university --- which also appointed him to the law school faculty and made him executive director of the school's press --- he made several high-profile appointments, transforming the English department into the home of cutting-edge literary theory.

Many at Duke regarded Fish as a benevolent despot. Others (particularly members of the National Association of Scholars, with whom he had a nasty fight) saw only the despotism. Stepping down as chairman in 1992, Fish stayed at Duke long enough to witness, amidst bickering and bruised egos, the well-publicized unraveling of his expensive handiwork, before heading off in 1998 to the University of Illinois at Chicago, where he is now among the highest-paid deans in America.

In the latest of his cocky and clever books, Fish claims that contemporary intellectuals, particularly the academic liberals who are his favorite target, have made a hash of the issues they have devoted their lives to expounding. Concentrating on debates about multiculturalism, the First Amendment, and religion, Fish brilliantly exposes the self-serving and self-deluding games that professors often play to maintain the pretense that impartial reason requires the political outcomes they desire. Whether the players are partisans of "public reason," or "deliberative democracy," or "discourse ethics," Fish masterfully detects the rhetorical ruses by which they exclude opinions and close down debate in the name of diversity and dialogue.

Illumination intermingles promiscuously with obfuscation in Fish's writing. Indeed, *The Trouble with Principle* is a book in which dazzling criticism stands cheek by jowl with flagrant fallacies; a book that deftly vivisects other scholars' foolish arguments and false views, only to put in their place foolish arguments and false views of its own; a book in which a playful, urbane, and witty spirit more than once gives way to a glib, even vicious message.

Fish's declared purpose is to demolish the appeal to principle in morals and politics: "The trouble with principle is, first, that it does not exist, and, second, that nowadays many bad things are done in its name." Now, the second part of this is old, old news: The fact that the appeal to principle can serve corrupt purposes is a venerable truth --- almost a principle, one might say. But as for the first part, how exactly does it follow from the games professors play that political and legal theory are merely games? For this would require a comprehensive account of the human condition that shows why the mind is unable to transcend the local, contingent, and historical --- and it is part of Fish's intellectual gamesmanship to imply that such comprehensive accounts are impossible (while insinuating at the same time that he actually knows that beyond the conventional, there is no place for the mind to go).

So, for example, in the course of explaining why there is no common ground on which Christians can meet secular liberals, Fish casually delivers himself of the remarkable statement that "Adhering to the convention that two plus two equals four is like adhering to the convention that we drive on the right side of the road." At the deepest philosophical level, the question of whether mathematics is a human artifact is worth asking. But so tightly is he caught in the grip of a theory of the radical contingency of knowledge that Fish --- the master expositor of the theory-induced blindness of others --- does not see how his comparison betrays his own claim. The fact that we can visit a country where people drive on the left but not where two plus two equals anything other than four: Doesn't that suggest something like an objective order to human knowledge, something beyond convention?

Fish's own examples and arguments suggest, contrary to his official position, that principle often does exist and that it is important. But this is not the only surprising form of instruction his book yields. Notwithstanding the numerous laughs he wins at the expense of academic liberals, Fish's book itself provides a case study in the consequences of the abandonment of principle for scholarly inquiry.

At the beginning of *The Trouble with Principle*, Fish claims that a scene from Sam Peckinpah's 1969 film *The Wild Bunch* captures the heart of his argument:

| The wild bunch is an outlaw gang led by two grizzled veterans played to a career-performance turn by William Holden and Ernest Borgnine. One evening the two are sitting around discussing an old comrade who has gone over to the other side and now rides at the head of the band of railroad detectives pursuing them. The Borgnine character [Dutch] is incensed and can't understand why their old friend doesn't abandon the pursuit and come home to where he really belongs. You have to remember, the Holden character [Pike] says, he gave his word to the railroad. So what? is the response; it's not giving your word that's important, it's who you give your word to. . . . | On the one side is the man of principle for whom a formal contract must be kept irrespective of the moral status of the other party; when you give your word, you give your word, and that's it. On the other side is the man who varies his obligations according to the moral worth of the persons he encounters; some people have a call on your integrity, others don't, and the important thing is to determine at every moment which is which.

Fish is quick to proclaim his preference for the moral vision of Borgnine's Dutch. Too quick. Holden's Pike does not reject practical judgment; the "man of principle" must discern which promises are valid, in accord with proper forms and based on reliable assessments of character. In fact, Pike is the opposite of a man indifferent to "the moral status of the other party," for he thinks that moral status derives from being a man, and he judges that Thornton, their pursuing friend, will be a keeper of his word to the railroad precisely because Thornton is a man of moral character.

Similarly, Dutch does not repudiate principle in favor of practical judgment; rather he uses a different principle. Fish's "man who varies his obligations according to the moral worth of persons he encounters" must use principle both to direct his judgment and to realize it in action. For one thing, "moral worth" is often defined in terms of principle: Is the person whose worth is in question one of the gang? An old friend? A creature endowed with certain natural and inalienable rights? Indeed, the morality Fish attributes to Dutch presupposes an abstract principle: Aid the person --- a young gang member, say, who has run afoul of corrupt business associates --- you deem morally worthy, whether it is in your immediate self-interest to do so or not.

By presenting the clash of principles in *The Wild Bunch* --- and, by analogy, in the world of legal, moral, and political theory --- as though it were a contest between principle and freedom from principle, Fish makes two errors: He equates principle with a neutral and abstract algorithm for resolving conflicts, and he supposes that if practical judgment is involved, then principle cannot really be present.

The version of principle that Fish attacks is neither the only one nor the best one, and, ironically, by insisting that the essence of principle is to be purely neutral, abstract, and transparently applicable, he embraces the dubious definition of principle held by the professors whose procedural liberalism he fancies himself to be overcoming. Generally speaking, principles --- do unto others as you would have others do unto you, all human beings are by nature free and equal, the unexamined life is not worth living --- do not entail an exhaustive body of rules and regulations. Nevertheless they set a tone, they draw some considerations into the foreground and push others into the background, they function as landmarks and signposts, not as fixed itineraries and packaged tours.

But that does not mean that principles do not exist or that we would be better off without them. The golden rule does not yield the precise sum you ought to donate to charity, but it requires you to imagine the condition of others. The principle that all human beings are by nature free and equal does not decide whether you ought to support affirmative action, but it will compel you to consider the issue in terms of common humanity. The principle that the unexamined life is not worth living cannot tell you to study literature, but it demands you seek opportunities to hone your mind.

Fish might have used his enviable rhetorical skills to defend principle against its clumsy handling by his academic colleagues. Instead, he exploits their clumsiness to discredit the idea of principle. So he flamboyantly argues that multiculturalism is trivial or incoherent: Either you are a "boutique multiculturalist" who is only prepared to tolerate superficial forms of diversity and whose real loyalty is to universal principles of freedom and equality, or you are a "strong multiculturalist" who fervently embraces other cultures --- including their monoculturalism and repudiation of universal principles. Free speech, he claims, does not exist because it inevitably requires the suppression of those opinions that undermine its preconditions. And liberalism is impossible, since while it claims to be neutral toward all

perspectives, it is of necessity biased, not only against Nazis and white supremacists but, notwithstanding the free-exercise clause of the First Amendment, also against religious persons and communities.

Fish has a point --- the reach of principle is limited and the weight of hard cases may cause principles to bend and buckle --- but his incendiary formulations distort the issues. In fact, the game that Fish plays is easily recognizable and intellectually disreputable. It consists in finding the extreme case and then treating it as the representative case --- as though an airplane that can't reach altitudes of fifty-thousand feet is therefore unable to fly.

As it happens, Fish identifies a test case for his own claim that principled liberalism is both undesirable and impossible. According to Fish, at the heart of debates about multiculturalism, First Amendment doctrine, and religion is the liberal understanding of the relation between church and state. But "the discussion of this vexed issue," Fish proclaims, "has not advanced one millimeter beyond the terms established by John Locke in his *A Letter Concerning Toleration* (1689)." Needless to say, Fish's purpose is not to vindicate Locke's wisdom, but to show that today's liberals are not original, informed, or terribly clever. And if Fish is wrong about Locke --- which he is --- then notwithstanding his criticisms of contemporary liberals, he will have failed to demonstrate the failure of a principled liberalism.

Fish asserts that Locke's argument for toleration is riven by a fatal contradiction. On the one hand, Locke argues that "every Church is orthodox to itself," which Fish takes to mean that all moral and political opinions are relative. On the other hand, Locke holds that "the judgment of all mankind" is properly in agreement that some moral and political ideas are universally binding. But the simple-minded blunder that Fish exposes with such glee --- the assertion that morals are simultaneously relative and absolute --- is not in Locke. By the proposition that "every Church is orthodox to itself," Locke did not declare the incommensurability of moral and political opinions; he much more narrowly maintained that opinions about salvation differ from church to church, and reason is not capable of settling which is true. But that doesn't make reason impotent. Indeed, by the phrase "the judgment of all mankind," Locke indicates not that all humanity has actually reached agreement but that the reason shared by all humanity is capable of grasping basic principles of morals and politics.

The difficulties created by *A Letter Concerning Toleration* are serious: Does Locke presuppose a Protestant understanding of salvation? Are his arguments for believing that reason can identify natural rights and public morality persuasive? Does he correctly infer from his principles the necessity to deny toleration to Catholics and atheists? But none of these questions subverts the idea of principled toleration. There are no fatal contradictions in holding that human reason can establish basic principles of moral and political life but cannot demonstrate the truth about salvation. Or in maintaining that in such circumstances

respect for the individual requires toleration of a wide but not infinite range of opinions. Indeed, these simple ideas, compatible with many Christian and Jewish self-understandings, constitute pillars of classical liberalism.

To press his case, Fish argues that religion ought to be as intolerant of liberalism as he tries to persuade his reader liberalism in practice is of religion. "The religious person," Fish counsels (as if he were speaking from the religious point of view), "should not seek an accommodation with liberalism; he should seek to rout it from the field." Appealing almost exclusively to fragments from Milton's writings and the case of Vicki Frost (a plaintiff in 1988's *Mozert v. Hawkins*, who sought to have her child exempted from studying evolution in public school), Fish contends that a true believer must seek to realize God's will on earth, in its entirety and without qualification, and this means replacing the secular political authority with a religious politics.

Can Fish be serious? Even if it did not occur to him as a theoretical possibility that God might command the faithful not to coerce those who do not recognize Him, what excuses the failure of a professor writing on religion to observe that a belief in tolerance, which derives much support from Scripture and the work of seminal theologians of many faiths, informs the religious understanding of large numbers of Catholics, Protestants, and Jews?

The crude practical message of Fish's book is that liberalism should overthrow religion and that religion should stamp out liberalism. Somehow, what began as an effort to show that "principle does not exist" ends in the admonition to secular liberals and religious believers to grasp the unambiguous practical implications of their true principles. One does not know whether to be more amazed by the massive contradiction in which Fish's book culminates, or the vulgarization of liberalism and the brazen abuse of religion on which it is based.

It can be fun to watch Stanley Fish run argumentative rings around academic liberalism, even if it is a wicked exaggeration for him to declare that the doctrine of neutral principles always in the end "turns out to be a device for elevating the decorum of academic dinner parties to the status of discourse universals while consigning alternate decorums to the dustbin of the hopelessly vulgar."

But the pleasure, it must be conceded, is suspect, and the illumination shed by the exaggeration may not compensate for the wickedness. For in the end Fish's arguments are not to be trusted. He tells you so himself. In an interview several years ago, to illustrate what he meant by saying that "there is no such thing as literal meaning," Fish related an amusing family story:

| When my daughter was six years old, . . . [she] was doing something with the dachshunds under the table, and it was experienced at least by me as disruptive. So I said to her, "Susan, stop playing with the dachshunds." She held up her hands in a kind of "Look, Dad, no hands" gesture and said, "I'm not playing with the dachshunds." So I said, "Susan, stop kicking the dachshunds." Pointing to the soft

motions of her feet, she replied, "I'm not kicking the dachshunds." So I said, forgetting every lesson I had learned as a so-called philosopher of language, "Susan don't do anything with the dachshunds!" She replied, "You mean I don't have to feed them anymore?" At that moment I knew several things. First, I knew I was in a drama called "the philosopher and the dupe" and that she was the philosopher and I was the dupe. I also knew that this was a game that she could continue to play indefinitely because she could always recontextualize what she understood to be the context of my question in such a way as to destabilize the literalness on which I had been depending, which she too --- within the situation of the dinner table, our relationship, our house --- recognized in as literal a way as I did.

Of course, the instability in words that Fish's story highlights does not show that "there is no such thing as literal meaning." The story would not make sense unless Fish's daughter (and readers) understood her father's request with crystal clarity. In fact, the game that Fish's daughter plays so precociously is better called sophistry. Which is also the name of the game that Fish plays in calling his daughter's game philosophy.

The sophist argues out of desire for wealth or reputation or victory. The philosopher inquires because of a love for wisdom. The difference is based on distinctions between persuasion and knowledge, and opinion and truth. These distinctions arise out of the world Fish and his daughter (and all of us) share, a world that constantly encourages us to distinguish between what was said and what was intended, what we saw and what was there, what we wish were so and what we have good reason to believe is actually so.

The daughter's clever warding off of her father's clear-out order is cute, not threatening, in part because we know that she knows precisely what her father wants. But her father's casual insinuation that philosophy is nothing more than clever game-playing is far from cute. Fish has declared himself pleased to be thought a sophist. Fair enough. By using his enormous rhetorical powers to persuade others that sophistry is all there is, by seeking to convince his readers that sophistry provides the only genuine satisfactions available to the self-aware mind, in trying to make himself the measure of all things, he confirms Plato's suggestion that sophistry has a root in tyranny.

In response to rival academics, Fish delights in arguing that there is no connection between academic positions and moral and political life. No doubt many professors suffer a doomed ambition for political influence. Yet Fish himself provides evidence that the strict separation he asserts cannot be maintained. The sensibilities and ideas of celebrated scholars are taught across the country to undergraduates, graduate students, and law students, many of whom will go on to occupy positions of privilege and power. Fish himself attests to this influence by repeatedly pointing out in leading law journals and Supreme Court decisions the academic liberalism he aggressively criticizes.

But beyond that, does Fish seriously expect us to believe that there is no connection between his philosophical repudiation of principle and the easy-going misrepresentations and casual contradictions seamlessly woven into the fabric of his book? Does he really think that it is a

matter of indifference whether university students are taught to practice reasoned argument or taught to mock it? Apparently, Stanley Fish counts on a good portion of his readers to endorse his whoppers, or, driven to distraction by his risque declarations and choice provocations, to overlook them entirely, or, seduced by his wit and taste in targets, to condone them implicitly. And give credit where credit is due: Fish's success --- his status, salary, and celebrity --- suggest that his calculations have not been unreasonable.

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