

REVIEW OF STANLEY FISH'S *SAVE THE WORLD ON YOUR OWN TIME*

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We have come to expect provocative (even impertinent) views about American higher education from seasoned scholar-administrator Stanley Fish, the putative prototype for David Lodge's entrepreneurial and peripatetic academic Morris Zapp.¹ Once again, readers of *Save the World on Your Own Time* will not be disappointed—though they may be surprised. In this slender but trenchant volume, Fish offers advice to his faculty colleagues, to the institutions at which they teach, and incidentally to those who nurture and support higher education, from alumni and parents to legislators and other benefactors. Many readers from the academic community may not relish such counsel, but we would disregard it at our peril.

Central to Fish's thesis is that college and university professors should avoid intruding political, social, and moral views into the classroom, however benign or innocent may be their motive for doing so (for example, to enliven classroom discussion or to engage students in more timely and "realistic" exchanges). The basis for such caution is less the obvious risk of politicizing the classroom, and far more an abiding concern for the quality and stature of a college or university education. In contrast to politically oriented pedagogy, Fish posits the goal of "academicizing" (a novel term for which he deserves both praise and blame)—that is, "to detach [a topic] from the context of its real world urgency, where there is a vote to be taken or an agenda to be embraced, and insert it into a context of academic urgency, where there is an account to be offered or an analysis to be performed."²

The skeptic might venture that here (as in several other sections of the book) Fish poses an incomplete disjunction, or perhaps even a false dichotomy. Here, for example, he seems to discount substantially the genuine potential for engaging students on truly "academic" matters through careful and selective citation of current issues that afflict society.

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1. See DAVID LODGE, *CHANGING PLACES: A TALE OF TWO CAMPUSES* (Penguin Books 1975).

2. STANLEY FISH, *SAVE THE WORLD ON YOUR OWN TIME* 27 (2008).

His premise is that “the genuinely academic classroom [is] full of passion and commitment. . . . The really dull classroom would be the one in which a bunch of nineteen or twenty-year-olds debate assisted suicide, physician-prescribed marijuana, or the war in Iraq in response to the question ‘What do you think?’”³

One might observe, in substantial agreement with Fish’s central thesis, that politicizing the classroom can be both tempting and pernicious. Yet there are myriad variant forms of politicization—some are reprehensible, but others are not only permissible but even laudable. At one extreme, efforts from the podium to proselytize students to a political, social, or moral cause—especially by straying from the assigned and expected coverage of the course—should be condemned for the reasons that Fish articulates clearly and forcefully. But what of the political science professor who, the morning after a hotly contested primary or election, is urged by students to share with the class his or her personal preference? Arguably the teacher who refuses even under such conditions to reveal such a preference could be faulted for “hiding the ball” from students to whom such information has not only curricular relevance but pedagogical value—and which could not possibly serve to proselytize. The point is that the distinction between “politicizing” and “academicizing” the college or university classroom—appealing though it is in the abstract—turns out in the real life of the academy to be infinitely subtle and complex.⁴

What would be immensely helpful here, and would comport nicely with most of *Save the World’s* thesis, is a continuum or range of circumstances under which introduction into the classroom of currently controversial social or moral issues may be more or less acceptable. There are obvious differences between the professor who gratuitously inflicts partisan views on the class and one who is simply responding to a student inquiry. There is also a clear contrast between unabashed campaigning, on one hand, and scholarly consideration even of issues that invite emotional response and may sharply divide members of the class. The manner in which any possibly contentious view is prefaced and explained may also affect any judgment by the academic community; a preliminary caution may substantially calm or mitigate an otherwise potentially divisive discussion. While this is not the time or place to refine such counsel, an otherwise appreciative reader nonetheless regrets a lost opportunity to hear more from this author on a set of issues with which he is intimately familiar and has compelling views.

Curiously, Professor Fish’s constraint upon colleagues who are tempted to politicize their teaching applies only in the classroom; “[a]fter hours, on

3. *Id.* at 39.

4. See Robert M. O’Neil, *What Not to Say in Class During an Election Season*, CHRON. OF HIGHER EDUC. (Wash. D.C.), Sept. 19, 2008, at A104, available at <http://chronicle.com/article/What-Not-to-Say-in-Class-Du/33228/>.

their own time, when they write . . . or speak at campus rallies, they can be as vocal as they like about anything and everything.”⁵ What never becomes quite clear is the rationale for such a separation, especially in times such as these when learning and teaching occur less and less within the four walls of the traditional physical classroom and more and more in electronic communications that transcend familiarly confining dimensions of the historic campus. Indeed, Fish’s whole approach to current academic issues might fairly be faulted for a surprising lack of attention to the profound effect on pedagogy of rapidly evolving new information technologies. While the resulting cautions would doubtless remain, their application would be rather different in an age when the “in and out of classroom” distinction seems rather quaint and archaic.

With equal conviction, Fish urges institutions themselves to eschew moral or political judgments and statements. However tempting (or exigent) such posturing may seem, he wisely warns of the perils that accompany such a course:

Those who think that by insisting on a moral yardstick, the university protects its integrity have it all wrong; the university forsakes its integrity when it takes upon itself the task of making judgments that belong to the electorate and to history. A university’s obligation is to choose things worthy of study, not to study only things that it finds worthy.⁶

Thus, for example, a responsible college or university does not legitimately adopt or articulate an institutional position even with respect to investments in companies that manufacture cigarettes or do business in South Africa without regard for internationally accepted principles. Even more clearly, presidents and chancellors—even when pressed by indignant students—may not purport to express such views on the institution’s behalf, though (with exceptions to be noted a bit later) they remain free to express personal abhorrence of corporate indifference or abuse.

For lawyers and legal scholars, certain facets of *Save the World on Your Own Time* merit special attention, and are well worth perusing. Late in the book, Fish briefly addresses the topic of campus speech codes, which he claims to be a “fake issue.”⁷ While many attorneys might share that view, Fish’s rationale for rejection is strikingly different: since “[e]very speech code that has been tested in the courts has been struck down”—an indisputably accurate premise—“[s]tudents don’t have to worry about speech codes.”⁸ The problem is that many such codes which have been invalidated (mainly on First Amendment grounds) were successfully

5. FISH, *supra* note 2, at 29.

6. *Id.* at 37.

7. *Id.* at 149.

8. *Id.*

challenged precisely because (in the courts' view) students had ample reason "to worry" and brought those worries before a federal district judge.

One who thus dismisses the issue might have gone on to note that speech codes are invariably misguided for some of the very reasons that Fish decries institutional posturing on contentious political, moral and social issues. One might have observed that speech codes are ineffectual in redressing campus racism, sexism, or homophobia since they are unlikely to alter attitudes—or, even worse, that they are counterproductive to the degree they create false and unrealistic hopes among disadvantaged and excluded groups. Ironically, this topic represents a clearly missed opportunity. A more elaborate analysis (and denunciation) of campus speech codes would admirably have exemplified Fish's plea for institutional neutrality; when a college or university seeks through coercive sanctions to inhibit or suppress speech on one side of racial, religious, gender, or sexual orientation issues—which is precisely what a speech code seeks to do—the most basic concept of neutrality is disregarded. Sadly, that opportunity eluded the author who persuasively framed the argument.

It is, however, on the subject of academic freedom that Fish's comments may have greatest interest for college and university attorneys and other lawyers. He launches this inquiry by identifying several situations in which academic freedom claims have been made, but in his view inappropriately or unjustifiably. For example, he cites the shouting down of several controversial commencement speakers, and the withdrawal or cancellation of invitations to others, in the period following the invasion of Iraq.⁹ While free speech may have been placed at risk on such occasions, Fish insists that academic freedom was never abridged by such actions. He is then highly critical of the way in which Columbia University President Lee Bollinger sought to distance himself (and implicitly also his institution) from the campus appearance of Iranian President Mahmoud Ahmadinejad soon after the latter's shocking excoriation of Israel. His conclusion, again, has the virtues of clarity and simplicity: "Columbia [University] does not, or at least should not, stand anywhere on the vexed issues of the day, and neither should its chief executive, at least publicly."¹⁰

Here, too, Professor Fish risks posing a distorted, if not false, dichotomy. Though he concedes that President Bollinger was effectively sandbagged by the Ahmadinejad invitation that one of Columbia's deans had extended without senior review, he seems to insufficiently appreciate the acute exigency of the situation as it played out that fall in New York City. He seems also to undervalue—indeed almost to disdain—the capacity of a college or university president to express personal views on contentious current issues without necessarily implicating the institution

9. *Id.* at 73.

10. *Id.* at 78.

over which he or she presides. The distinction is subtle but crucial: while the college or university clearly should not take or express positions on the Middle East, and while professors may freely (save from the classroom podium) convey their views, the president's position is somewhere between and thus not easily defined. Whether Bollinger overdid his ungracious greeting to President Ahmadinejad is a fair question; whether as president he should have felt free to express deeply personal aversion or even revulsion to his anti-Semitic guest, is a vastly different question to which no formula neatly applies.

Precisely that question played out at another Ivy League institution in ways that nicely illustrate the paradox. Fish briefly mentions the case of then Harvard President Lawrence Summers, but by calling it simply a "failure of judgment,"¹¹ he understates the dilemma and misses a splendid opportunity for illustration. What this eminent economist failed to appreciate is that the academic freedom which Professor Summers clearly enjoyed—including freedom to speak disparagingly of the role of women in science—did not extend to the same economist who happened also to be President of Harvard. Nor did so visible a chief executive have the luxury of briefly exiting his official role to address fellow economists as a scholar and teacher; a prominent college or university president may no more enjoy such latitude than the Pope may ever speak *ex cathedra*—as in fact the current Pope discovered to his dismay soon after the denouement of the Summers Presidency.

The point is elusive and poorly understood even by seasoned administrators. Department chairs, deans, provosts, and even presidents do have academic freedom; most of them hold tenured faculty appointments, from which they may not be removed any more readily than their non-administrative colleagues may be dismissed. And even as administrators they enjoy certain (if imperfectly defined) latitude by reason of their positions. But when they publicly express contentious views—e.g., Summers on women in science—they may place their official appointments at risk to a degree that does not endanger purely professorial posts. Professor Fish appreciates the ultimate lesson, if not all the refinements, when he concludes that President Summers "spoke freely, and if he suffered the consequences, they are not consequences from which the First Amendment protected him."¹²

The relationship between academic freedom and free speech plays out in different ways elsewhere in this volume. The case of University of Colorado Professor Ward Churchill receives substantial attention in an earlier section.¹³ Fish seems puzzled by apparent dissonance between the

11. FISH, *supra* note 2, at 92.

12. *Id.* at 93.

13. *Id.* at 84–86.

disposition of two quite separate charges brought against Churchill—that his outspoken comments about “Little Eichmanns” among the World Trade Center victims and his seeming praise for the hijackers were found to be protected speech, while demonstrated research conduct ultimately brought about his dismissal from a tenured position on the Boulder faculty.

In fact, however, the seemingly disparate outcomes reflect a striking symmetry of values distinctive to the academic community. Academic freedom (and in the case of state college or university faculty, free expression as well) protects even outrageous and shocking statements such as those in Churchill’s “Little Eichmanns” essay. Colleges and universities must tolerate a far broader range of such speech and writing than do other institutions—as Northwestern University has repeatedly declared in its refusal to seek the dismissal of persistent Holocaust-denier Arthur Butz from its engineering faculty.

Yet when it comes to integrity in scholarship, the dynamic is reversed; colleges and universities are substantially less tolerant of plagiarism and non-attribution than are other institutions or the general legal system. Plagiarism, specifically, is deemed unacceptable and offers a potential basis for dismissal even at levels that fall far below the threshold for actionable infringement under Copyright Law. Paradoxical though this juxtaposition may appear, the contrasting results accurately reflect two values deeply ingrained in the academic culture. Most remarkably, each illustrates a different dimension of academic freedom.

Professor Fish tells us much of what he believes academic freedom does not include, but offers far less insight into what he believes is (or should be) protected. Indeed, one would welcome a more extensive discussion than the tantalizing bits the author offers. “[O]ne exercises academic freedom,” he explains, “when determining for oneself (within the limits prescribed by departmental regulations and graduation requirements) what texts, assignments and exam questions will best serve an academic purpose”¹⁴ His rationale is equally compelling: to those who find academic freedom “an unwarranted indulgence,” the answer is that such a safeguard is “a necessary condition for engaging in this enterprise, and if you want this enterprise to flourish, you must grant it”¹⁵ Yet such statements fall short of an unequivocal endorsement, and import qualifications which make the endorsement even seem grudging; the earlier of the two just-quoted sentences ends with this ominous warning: “one violates academic freedom by deciding to set aside academic purposes for others thought to be more noble or urgent.”¹⁶

In fairness, Professor Fish did not set out to glorify either academic

14. *Id.* at 81.

15. *Id.* at 82.

16. *Id.* at 81.

freedom or free speech in the college or university community, but rather to caution his colleagues against the exaggeration of both values in the current uncertain climate for higher education. His concluding chapter notes (and laments) waning public enthusiasm for post-secondary education under the title “Higher Education Under Attack.”¹⁷ The nexus between this loss of grace and some of the transgressions on which earlier chapters focus is hardly accidental, even though causal links are not easily established. What Professor Fish has done is to get our attention to conditions of which we are keenly aware but may too readily condone. That he has done this with a firmness and clarity (as well as an insider’s perspective) is likely to command respect if not admiration on America’s college and university campuses.

A recent review by conservative columnist George F. Will characterizes *Save the World* as “often intelligent but ultimately sly and evasive.”¹⁸ Mr. Will claims (somewhat unfairly) that there is less to this book than meets at least the author’s eye:

Suggesting bravery on his part, Fish says his views are those of an excoriated academic minority. Actually, it is doubtful that a majority of professors claim a right and duty to explicitly indoctrinate students. But if they do, Fish should be neither surprised nor scandalized—he is both—that support for public universities has declined.¹⁹

With all deference to Mr. Will, many within the academic community should be more appreciative than he would ask us to be of an author who has brought an unusual blend of candor and compassion to academic life in the early twenty-first century.

17. FISH, *supra* note 2, at 153.

18. George F. Will, Op-Ed., *Free Ride for the Campus Left*, WASH. POST, Nov. 27, 2008, at A29.

19. *Id.*