

# ACADEMIC FREEDOM'S DUTIES: A REVIEW OF STANLEY FISH'S *SAVE THE WORLD ON YOUR OWN TIME*

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Stanley Fish's *Save the World On Your Own Time* is a “medley of disparate essays”<sup>1</sup> collected into a book whose theme is to exhort each liberal arts professor to “just do your job” in terms of the mission of the college or university and the professor’s specific teaching duties to serve the mission.<sup>2</sup> The collected essays sometimes struggle with the linear flow of the analysis, repetition, and tangents, but the book’s overall emphasis on the professorate’s academic duties is much needed.

Whether the reader agrees or disagrees with some of Fish’s analysis (and I disagree with a number of points, as indicated below), the book forces thought, and I hope debate, on the mission of colleges and universities, the academic profession’s role in serving the mission, and each professor’s specific rights and duties. Self-assessment and reflection about failures of duty and their impact on the public trust are particularly timely given the steady erosion of the academic profession’s control over and autonomy in academic work in recent decades, particularly in institutions other than the research universities and elite liberal arts colleges.<sup>3</sup>

## THE MISSION OF THE UNIVERSITY AND THE DUTIES OF THE PROFESSORATE

Understanding the analysis supporting Fish’s exhortation to “just do your job” is a good first step. Fish argues that a college or university’s mission is “to produce and disseminate (through teaching and research)

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1. STANLEY FISH, *SAVE THE WORLD ON YOUR OWN TIME*, Acknowledgments (2008).

2. *Id.* at 16, 153, 178.

3. See Neil Hamilton, *Pro-actively Justifying the Academic Profession’s Social Contract*, in NEIL HAMILTON & JERRY GAFF, *THE FUTURE OF THE PROFESSORATE: ACADEMIC FREEDOM, PEER REVIEW AND SHARED GOVERNANCE* (American Association of Colleges & Universities Academy in Transition Series, forthcoming 2009) [hereinafter Hamilton, *Pro-actively Justifying the Academic Profession’s Social Contract*].

academic knowledge and to train those who take up this task in the future.”<sup>4</sup> In producing and disseminating academic knowledge, institutions embrace “the pursuit of truth” as their “central purpose.”<sup>5</sup> In their research and teaching, faculty members are held to serve the morality that follows from the institution’s truth-seeking purpose.<sup>6</sup> The pursuit of truth is thus the cardinal value of the academic profession in carrying out the mission of the college or university.<sup>7</sup> Fish believes this truth-seeking morality is “not the whole of morality,” but “it is, or should be, the whole of academic morality.”<sup>8</sup>

The “truth” for Fish has an objective validity, but not in the sense of a standard of validity “independent of any historically emergent and therefore revisable system of thought and practice.”<sup>9</sup> Fish’s standard of validity is truth claims “backed up by the tried-and-true procedures and protocols of a well-developed practice or discipline—history, physics, economics, psychology, etc. . . .”<sup>10</sup> A professor can hold “firmly to judgments of truth, accuracy, correctness, and error as they are made in the precincts of some particular realm of inquiry.”<sup>11</sup> A truth claim must stand up against challenges involving “the quality and quantity of evidence, the cogency of arguments, the soundness of conclusions and so forth.”<sup>12</sup> Postmodern reasoning (a version of fallibilism) surmises that because accounts emerge in the course of history and come to us in vocabularies that belong to a particular moment in the adventure of inquiry, it is always possible, and perhaps probable, that in time new vocabularies will replace the old ones and bring with them new, and newly authoritative, accounts.<sup>13</sup>

“The mistake” for some postmodern thinkers, “is to go from this perfectly ordinary description of how knowledge is established, tested, and sometimes dislodged—this, after all, *is* the scientific method—to the extraordinary and unearned conclusion that nothing that has been established as knowledge is to be trusted.”<sup>14</sup>

It follows that Fish defines “academic morality”<sup>15</sup> in terms of “being conscientious in the pursuit of truth” including the “intellectual virtues of thoroughness, perseverance, [and] intellectual honesty.”<sup>16</sup> Academic

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4. FISH, *supra* note 1, at 99.

5. *Id.* at 38, 118–19.

6. *Id.* at 101.

7. *Id.* at 20, 118–19.

8. *Id.* at 101–02.

9. *Id.* at 139.

10. FISH, *supra* note 1, at 139.

11. *Id.* at 134.

12. *Id.* at 39–40.

13. *Id.* at 132.

14. *Id.*

15. *Id.* at 102.

16. FISH, *supra* note 1, at 20 (quoting James Bernard Murphy, Op-Ed., *Good*

morality condemns cheating, academic fraud, plagiarism and all actions “antithetical to the search for truth.”<sup>17</sup>

Explaining what he means by “just do your job,” Fish says almost nothing about faculty research to produce academic knowledge and focuses specifically on the professorate’s teaching duties to serve the institution’s mission to disseminate knowledge. The “job” of liberal arts teaching is:

[D]o 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.<sup>18</sup>

The professor and students are to subject all ideas to a “certain kind of interrogation”<sup>19</sup> that Fish calls “academicizing”<sup>20</sup> an issue or question. Every topic becomes “a basis for analysis rather than as a stimulus to some moral, political, or existential commitment.”<sup>21</sup> All topics are subject to the canons of argument and evidence of a discipline.<sup>22</sup>

Fish points out that academic freedom is a necessary condition for professors to carry out the college or university’s mission of producing and disseminating academic knowledge.<sup>23</sup> He defines academic freedom as “the freedom to do one’s academic job without interference from external constituencies like legislators, boards of trustees, donors, and even parents. . . . Academic freedom, correctly (and modestly) understood, is not a challenge to the imperative always to academicize; it is the *name* of that imperative . . . .”<sup>24</sup> In other words, a professor must be trying to meet the duty to academicize teaching for the rights of academic freedom to apply. Fish points out that academic tradition articulated in the American Association of University Professors’ (AAUP) 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* links the rights of academic freedom in research and teaching to the correlative duty that the claim of academic freedom can be asserted only by “those who carry on their work in the temper of the scientific inquirer” and never by those who would use it “for uncritical and intemperate partisanship.”<sup>25</sup> These

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*Students and Good Citizens*, N.Y. TIMES, Sept. 15, 2002, § 4, at 15).

17. *Id.* at 101 (quoting John J. Mearsheimer, *The Aims of Education*, 22 PHIL. & LITERATURE 137, 149 (1998)).

18. *Id.* at 12–13.

19. *Id.* at 24.

20. *Id.* at 27.

21. *Id.* at 169.

22. FISH, *supra* note 1, at 170.

23. *Id.* at 82.

24. *Id.* at 80.

25. *Id.* (quoting AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, 1915 DECLARATION OF PRINCIPLES ON ACADEMIC FREEDOM AND ACADEMIC TENURE (1915),

correlative duties are part of the academic morality discussed earlier. Fish cites the 1915 *Declaration of Principles* again later for its warning that if the faculty does not clean up its own shop, external constituencies with motives more political than educational will step in and do it for the faculty.<sup>26</sup>

*Save the World on Your Own Time* asks liberal arts faculty members to focus on specific and clear teaching duties (“just do your job” by teaching both disciplinary knowledge and analytical skills) while understanding those duties in the context of the mission of the college or university and the responsibilities of the professorate in serving the mission. I agree that these two duties are the core of every professor’s teaching obligations, and that each professor should at a minimum meet some floor of competence in achieving them. Discussion below will focus on the role of peer review, which Fish does not analyze, in setting this floor of competence. The AAUP’s 1966 *Statement on Professional Ethics* also states the special responsibility of faculty members in teaching to “hold before [students] the best scholarly and ethical standards of their discipline.”<sup>27</sup> Fish argues that fulfilling these two core teaching duties is all a liberal arts faculty member can realistically achieve and that adding the goal of the moral formation of students is not within the competence of faculty and is a diversion from the core teaching duties.<sup>28</sup> It is true that scholars are only beginning to understand and assess which learning models, curriculum, and pedagogies are most effective in fostering adult moral formation,<sup>29</sup> but it is clear that undergraduate liberal arts education does foster increases in moral reasoning.<sup>30</sup> As academic knowledge on how to foster adult moral formation develops, some liberal arts professors could learn how to do this effectively.

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reprinted in AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, POLICY DOCUMENTS & REPORTS app. 1 at 298 (10th ed. 2006) [hereinafter 1915 DECLARATION OF PRINCIPLES ON ACADEMIC FREEDOM].

26. *Id.* at 152.

27. AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, STATEMENT ON PROFESSIONAL ETHICS (1966), reprinted in POLICY DOCUMENTS & REPORTS 171, 171 (10th ed. 2006). See generally Neil Hamilton, *Academic Tradition and the Principles of Professional Conduct*, 27 J.C. & U.L. 609, 638–39 (2001) [hereinafter Hamilton, *Academic Tradition*].

28. FISH, *supra* note 1, at 13–14, 58.

29. See Muriel Bebeau, *Promoting Ethical Development and Professionalism: Insights From Educational Research in the Professions*, 5 U. ST. THOMAS L.J. 366, 384–92 (2008); Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470, 484–88, 503–06 (2008) [hereinafter Hamilton, *Assessing Professionalism*]; Darcia Narvaez, *Integrative Ethical Education*, in HANDBOOK OF MORAL DEVELOPMENT 703, 708–09 (Melanie Killen & Judith G. Smetana eds. 2006).

30. Anne Colby, *Fostering the Moral and Civic Development of College Students*, in HANDBOOK OF MORAL AND CHARACTER EDUCATION 391, 396–97 (Larry P. Nucci & Darcia Narvaez eds. 2008).

## PROBLEMS WITH FISH'S ANALYSIS

The book's strength is Fish's emphasis that academic freedom grants rights but also has correlative duties, but the book does not give a complete picture of all the interrelated concepts defining the academic profession's social contract:<sup>31</sup> academic freedom, peer review, shared governance, and faculty professionalism. Fish does cite with approval the AAUP's 1915 *Declaration of Principles*' warning that if the faculty does not clean up its own shop, more political external constituencies may fill that void.<sup>32</sup> Implicit in this reference to the 1915 *Declaration of Principles* is the importance of peer review with respect to academic freedom, but the book does not analyze peer review. The book also fails to analyze how shared governance is the corollary—a natural consequence—of academic freedom and peer review. The concept of faculty professionalism discussed below also adds to a fuller understanding of a faculty member's rights and duties.

The 1915 *Declaration of Principles* states the social contract of the academic profession:

It is conceivable that our profession may prove unworthy of its high calling, and unfit to exercise the responsibilities that belong to it . . . . And the existence of this Association . . . must be construed as a pledge, not only that the profession will earnestly guard those liberties without which it cannot rightly render its distinctive and indispensable service to society, but also that it will with equal earnestness seek to maintain such standards of professional character, and of scientific integrity and competency, as shall make it a fit instrument for that service.<sup>33</sup>

The profession's "high calling" is service to the college or university's mission of creating and disseminating academic knowledge. College and university boards of trustees or regents represent the public with respect to the social contract between society and the academic profession to serve this public purpose. The 1915 *Declaration of Principles* states that the boards are in a position of "public trust" to represent the public's interest in realizing the mission of the university.<sup>34</sup>

As the American tradition of academic freedom evolved over the course of the past century, boards acknowledged the importance of freedom of inquiry and speech to the college or university's and the academic

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31. The social contract of each peer-review profession is the tacit agreement between society and members of a profession that regulates their relationship with each other, in particular the profession's control over professional work.

32. FISH, *supra* note 1, at 152.

33. 1915 DECLARATION OF PRINCIPLES ON ACADEMIC FREEDOM, *supra* note 25, at 291, 300.

34. *Id.* at 292–93.

profession's mission of creating and disseminating knowledge. Fish's definition of academic freedom discussed earlier is incomplete. The term "academic freedom" describes the mutual understanding or tradition between boards and faculty where the boards, as employers serving the unique mission of the college or university, have agreed to grant rights of exceptional vocational freedom of speech to professors in teaching, research, and extramural utterance without interference by the board or administration, on the condition that individual professors must meet correlative duties of professional competence and ethical conduct. The faculty as a collegial body also has correlative duties to enforce the obligations of individual professors.<sup>35</sup> This tradition of faculty autonomy in and board deference to peer review of professional competence and ethical conduct is essential to academic freedom in the United States. Fish's analysis of "academic morality," while pointing in the right direction, is also incomplete. A professor's duties of competence and ethical conduct in research, teaching, and extramural utterance extend substantially beyond Fish's analysis.<sup>36</sup>

With respect to decisions on matters other than faculty competence and ethical conduct, Fish's analysis is incorrect in stating "[t]he question of who does and does not participate in governance is logically independent of the question of whether the work being done is good or bad."<sup>37</sup> Peer review of professional competence and ethical conduct is the linchpin of academic freedom in the United States. Freedom to teach, for example, does not mean the freedom to say anything and call it teaching; with respect to teaching, a peer-review paradigm means that peers determine the curriculum, the general parameters of the content of a course, grading standards that should apply, and the range of pedagogies meeting standards of minimum competence which will engage the students. Shared governance on matters relating to the curriculum and pedagogy are thus necessary conditions for effective peer review and academic freedom.<sup>38</sup>

AAUP documents during the last century softened the idea of board legal control into a concept of shared governance in decision making. While it concedes that the governing board is by law the final institutional authority, the concept of shared governance urges that the missions of the college or university and the academic profession are best realized by granting varying degrees of deference to faculty decisions, depending on how closely a faculty decision relates to the faculty's expert disciplinary knowledge concerning teaching and research. The faculty deserves

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35. NEIL HAMILTON, *ACADEMIC ETHICS: PROBLEMS AND MATERIALS ON PROFESSIONAL CONDUCT AND SHARED GOVERNANCE* 20 (2002) [hereinafter HAMILTON, *ACADEMIC ETHICS*].

36. Hamilton, *Academic Tradition*, *supra* note 27, at 627–48, app.

37. FISH, *supra* note 1, at 110.

38. HAMILTON, *ACADEMIC ETHICS*, *supra* note 35, at 50–51.

maximum deference on core academic issues such as appointments, promotion and tenure, and the curriculum. Both peer review and shared governance are embedded in an earned deference tradition.<sup>39</sup> If the faculty does not meet its duties with professionalism, it does not deserve deference.

“Faculty professionalism” defines the ethical duties required by the social contract for each professor as well as for the relevant groups of professional peers. The greater the faculty’s professionalism, the greater the deference the faculty merits. The core of faculty professionalism is that: (1) each professor agrees both to meet the ethics of duty (the minimum standards of competence and ethical conduct set by peers) and to strive to realize the ideals and core values of the profession; and (2) the faculty as a collegial body agrees both to hold each other accountable for the minimum standards and to encourage each other to realize the ideals and core values of the profession.<sup>40</sup>

The book’s analysis of the courts’ protection for academic freedom under the First Amendment is also flawed. For example, Fish’s initial analysis of the First Amendment involves the disruption of a graduation speaker at Rockford College.<sup>41</sup> The easy answer, not mentioned by Fish, is that Rockford College, as a private institution, is not a government actor so the First Amendment does not apply to its actions. While there is an overlapping rationale in the tradition of academic freedom applicable to all of higher education and the First Amendment jurisprudence applicable only to government actors in higher education, there are substantial differences in analysis among the tradition of academic freedom and the First Amendment doctrines of Constitutional academic freedom and public employee free speech.<sup>42</sup> Fish does not analyze these differences.

#### ACCULTURATING PROFESSORS TO “JUST DO YOUR JOB”

Fish points out that some faculty members understand academic freedom as “not only freedom from external intrusions into the everyday business of [the] workplace, but freedom from the everyday obligations of the work place [sic].”<sup>43</sup> He assumes throughout the book that a significant subset of faculty do not understand the rights and correlative duties of academic freedom.<sup>44</sup> All the available empirical evidence supports Fish’s conclusion that many faculty do not understand the academic profession’s social contract and the relationships among the mission of the college or university—academic freedom, peer review, shared governance, and

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39. *Id.* at 60–61.

40. See Hamilton, *Pro-actively Justifying the Academic Profession’s Social Contract*, *supra* note 3.

41. FISH, *supra* note 1, at 73.

42. HAMILTON, *ACADEMIC ETHICS*, *supra* note 35, at 21–25.

43. FISH, *supra* note 1, at 113.

44. *Id.* at 7, 96.

faculty professionalism.<sup>45</sup> They do not understand how failures of faculty professionalism undermine the social contract and lead the boards to renegotiate the contract with a consequent loss of professional autonomy for the faculty.

Fish points out that if faculty members understood academic freedom and reflected high professionalism in their teaching, “you [would] be able to defend [academic freedom] both from those who see it as an unwarranted indulgence of pampered professors and from those pampered professors who would extend it into a general principle that allows them to say and do, or not do, whatever they like.”<sup>46</sup> While the implication here is that education of faculty regarding the rights and correlative duties of academic freedom, peer review and shared governance would be helpful, Fish does not make any specific recommendations on how to acculturate faculty “to just do your job.”

The other peer-review professions are exploring the most effective educational engagements to help students and new entrants both understand the duties of the profession and internalize an ethical professional identity that informs the professional’s other skills.<sup>47</sup> It is obvious that a professional will not live out duties that he or she does not know, nor can a professional defend a social contract and professional autonomy when he or she does not understand the analytical foundation for occupational control over the work.

In a market economy, the strong presumption is that competitive markets—where management of each competing enterprise exercises control over employee’s work—will maximize consumer welfare. All of the older peer-review professions including law, medicine, the professorate, the clergy; and newer peer-review professions like accounting and engineering, carry an ongoing burden to justify occupational control over work and professional autonomy different from typical competitive market arrangements between either employer and employee or service provider and consumer. Essentially the members of each peer-review profession must continually demonstrate, through attention to duty and education of the public about the societal benefits of professional autonomy, that the profession merits the public’s trust in exercising the profession’s unique

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45. The academic profession tends not to study itself. The data available all support significant failures in faculty understanding of their duties. Neil Hamilton, *The Ethics of Peer Review in the Academic and Legal Professions*, 42 S. TEX. L. REV. 227, 257–65 (2001); Hamilton, *Academic Tradition*, *supra* note 27, at 612–13, 653–54; HAMILTON, *ACADEMIC ETHICS*, *supra* note 35, at 6–8.

46. FISH, *supra* note 1, at 82. For similar arguments, see *id.* at 97, 153, 169, 176.

47. See WILLIAM M. SULLIVAN ET AL., *EDUCATION LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 21–33 (2007); Neil Hamilton, *Foreword: The Formation of an Ethical Professional Identity in the Peer-Review Professions*, 5 U. ST. THOMAS L.J. 361, 362–65 (2008).



control over work.<sup>48</sup> The academic profession is failing to do this.<sup>49</sup>

Fish, based on his personal experience as a dean attempting to educate board members and the public about academic freedom and the tradition of the profession, is pessimistic that it can be done.<sup>50</sup> But Fish as a dean is limited to sound bites in short conversations. If the faculty at a particular institution were to undertake self education and education of the board and administration on the rights and duties of academic freedom, and were to commit themselves to high professionalism at these duties, I am optimistic that the board and the public would react very favorably. We are educators. At least we should first make every effort at education to help faculty both to “just do your job” and to equip them to educate others to understand the benefit to the public of doing the job.

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48. See Hamilton, *Assessing Professionalism*, *supra* note 29, at 473–75.

49. Hamilton, *Pro-actively Justifying the Academic Profession's Social Contract*, *supra* note 3.

50. FISH, *supra* note 1, at 153–67.

