

A SIMPLE MORAL: KNOW YOUR JOB AND DO IT

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I am grateful to Gregory Bassham, Neil Hamilton, and Robert O’Neil for their serious consideration of *Save the World on Your Own Time*, and in what follows, I shall briefly take up some of the issues they raise.

While Professor Bassham conducts an argument with my arguments, Professors Hamilton and O’Neil speak to issues they feel I do not address or address with insufficient nuance.

Bassham begins by objecting to an argument I do not make. “Fish’s ‘purified’ academy is . . . a values-free zone in which instructors never step over the line between is and ought.”¹ No, in the academy I envision and urge, instructors adhere to the values that belong appropriately to the profession: honesty in research, a commitment to truth, a sustained attention to the academic need of students, etc. It is not a matter of being values-free, but of resisting the lure of values (worthy though they may be) that belong to other enterprises. Everything I say depends on the notion (borrowed from legal theorist Ernest Weinrib) of the distinctiveness of tasks. If one begins by asking and answering the question “what is it that we are trained to do?”—which is also the answer to the question “what services does our training authorize us to offer?”—the “appropriate values” will identify themselves, and fidelity to them will be the content of responsible behavior. No task can claim to offer everything, and it is important to understand the scope and limits of a task so that legitimate and illegitimate actions can be distinguished.

Bassham believes that my notion of responsible behavior is overly restrictive, for “[r]esponsibility is not an all-or-nothing thing; it comes in degrees”² Yes it does, but those degrees correspond to the difference between responsibilities that are yours by contract and responsibilities that are yours because you are a human being. If I miss classes or come unprepared or never return papers or teach from outdated materials, I am

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1. Gregory Bassham, *Fish’s Purified Ivory Tower: A Review of Stanley Fish’s Save the World on Your Own Time*, 36 J.C. & U.L. 289, 290 (book review).

2. *Id.* at 291.

defaulting on my responsibilities in ways that can lead to rebuke, discipline, and even dismissal. And this is so because the obligations I have failed to meet are constitutive of the discipline; ignoring them is tantamount to saying “I’m not doing this job any longer” which could lead to my employer’s deciding that there is no longer any reason to pay me. But if I do all the things the job requires, yet do them churlishly and with insufficient attention to the feelings of my colleagues and students, my behavior is certainly irresponsible in a human sense, but not (unless I am an administrator at a certain level) in a professional sense. I may be in danger of being heartily disliked, but not in danger of being fired.

As a philosopher, Bassham is interested in parsing responsibility as a general concept, so he poses hypotheticals like this one: “Suppose I give a violent, hate-filled speech (‘Death to the San Pedrans!’),” and “there is a small but not negligible chance that at least one member of my audience would be incited by the speech to commit murder. Am I to blame for that murder?”³ It depends on what context of judgment is presupposed. If the context is legal, then the possibility of criminal responsibility is very real under the rubric of “incitement to violence.” It was J.S. Mill who in *On Liberty* formulated the relevant distinction when he remarked on the difference between publishing the opinion that corn dealers starve the poor and delivering the same opinion “to an excited mob assembled before the house of a corn dealer.”⁴ The person who performs the second act may, says Mill, “justly incur punishment.”⁵

Of course expressing an opinion in a newspaper op-ed could also lead a member of the paper’s audience to commit violence, but the chain of causality would be so etiolated that no one—except someone living in a totalitarian state, where the desire (certain to be frustrated) is to control every effect—would think to assign responsibility. The effect would be regarded as one contingently achieved; the op-ed writer’s goal is to express his view, not to provoke violence. While contingent effects are real, they can neither be designed nor become a basis for blame-finding unless one wants to hold people responsible for any action that can be traced back, by however circuitous and unpredictable a route, to something they said or did. The law’s desire to limit responsibility to consequences that could be anticipated—I am thinking of tort law’s categories of foreseeability, proximate cause, and duty of care—reflects a general truth about the way we think about such matters. We ask, given the institutional or professional setting, which consequences can be reasonably aimed at and which consequences, even if they occur, should be regarded as the results of accident and chance.

3. *Id.*

4. JOHN STUART MILL, *ON LIBERTY* 55 (Alburey Castell ed., Harlan Davidson, Inc. 1947) (1859).

5. *Id.*

Rather than beginning, as I do, with professional and institutional settings and reasoning from them to questions of what can be responsibly done, Bassham begins with a general analysis of responsibility and reasons from it to professional and institutional settings. In the process, the differences I want to emphasize are flattened out. Thus, for example, he objects to my “claim that people should aim to achieve only what they are responsible for”⁶ by invoking the practice of parenthood: “Parents clearly can’t ‘determine’ whether their kids will respect their prohibitions on underage drinking or risky sexual behavior.”⁷ But it is a parent’s job to announce such prohibitions independently of whether they are heeded; it is not a teacher’s job, however, to pronounce on matters of personal morality (unless the morality involves cheating and plagiarism, sins that undermine the pedagogical enterprise). When you sign up for the task of raising children, every aspect of their growth is an appropriate matter of concern, even if your efforts may not bear immediate fruit and you do not have degrees in psychology and ethics. When the task you have signed up for is the bringing of young adults to a mastery of the forms and traditions of inquiry, the only appropriate matter of concern is their intellectual growth. This is not only a matter of definition—teaching chemistry is different from teaching respect for others—but a matter of material conditions: on the one hand, a structured three hours per week for a four month semester; on the other, an open ended and evolving relationship that lasts for a lifetime.

Bassham argues that, in saying this, I am begging the question, assuming what I should be proving. What about those educational theorists whose “claim is precisely that professors *do* have some responsibility . . . to positively shape students’ moral and civic attitudes”?⁸ My answer is, first, that they are wrong, and second, that I will listen to their claim only if it is supported by an analysis of the ways in which academic training equips instructors to perform these moral and civic tasks. Bassham offers no such analysis and the fact that some theorists have a characterization of teaching opposed to mine is not itself an argument.

On another point, Bassham is simply incorrect. I do not reject “*any* endorsement of a contestable idea, policy, or value.”⁹ I reject endorsement of ideas, policies, or values that would send students out of class with marching orders (to achieve social justice, or gun control or health-care reform). I do not reject ideas about the rightness of an interpretation or the accuracy of a description or the coherence of an argument. When I teach legal interpretation, I am not shy about saying that textualism is a misguided and impossible enterprise and that intentional originalism is not an option, but the very definition of what interpretation is. I do stop short,

6. Bassham, *supra* note 1, at 291.

7. *Id.*

8. *Id.* at 292 (emphasis added).

9. *Id.* at 294 (emphasis added).

however, of recommending that courts should decide this way rather than that; analyzing policies and urging policies are entirely different things.

Bassham wonders “how would Fish’s ban on classroom advocacy be enforced?”¹⁰ He imagines chairs and deans monitoring professors’ classes, and he worries that this would mean the shredding of “any concept of academic freedom.”¹¹ No, it would mean the honoring of academic freedom which, as I say repeatedly, is the freedom to do the job, not the freedom either to shirk it or do other jobs.

Academic freedom is the focus of Professor Hamilton’s essay. He is in general agreement with my strictures, but he complains that “the book does not give a complete picture of all the interrelated concepts defining the academic profession’s social contract: academic freedom, peer review, shared governance, and faculty professionalism.”¹² He is especially bothered by my lack of attention to peer review and my skepticism about shared governance. A peer-review paradigm, he explains, “means that peers determine the curriculum, the general parameters of the content of a course, grading standards . . . and the range of pedagogies meeting standards of minimum competence which will engage the students.”¹³ And he concludes that “[s]hared governance on matters relating to the curriculum and pedagogy are thus necessary conditions for effective peer review and academic freedom.”¹⁴

But this is to make academic freedom something that faculty members define and enforce, whereas I would say that the definition of academic freedom should follow from a specification of what properly belongs to the academic task. Faculty members should be guided by that specification and not sit around in meetings debating it. I agree that the missions of the college and university and the academic profession “are best realized by granting varying degrees of deference to faculty decisions”¹⁵ (something courts already do), but I don’t believe that faculty members should be empowered to determine by vote what that mission is. Were they to be so empowered, you can bet that many of them would decide that their mission was to save the world and that they had a positive duty to point their students in the right (meaning left) direction.

Hamilton declares that the “tradition of faculty autonomy” is the “linchpin of academic freedom;”¹⁶ but this is true only in the sense that faculty must be protected from the intrusive monitoring of external

10. *Id.*

11. *Id.*

12. Neil Hamilton, *Academic Freedom’s Duties: A Review of Stanley Fish’s Save the World on Your Own Time*, 36 J.C. & U.L. 297, 301 (2009) (book review) (footnote omitted).

13. *Id.* at 302.

14. *Id.*

15. *Id.* at 303.

16. *Id.* at 302.

constituencies (politicians, donors, parents). Independence from external impositions cannot mean that faculty members are unconstrained by a standard, and the standard that constrains them is not something faculty members should be free to nominate. Here Hamilton and I are in agreement: “Freedom to teach . . . does not mean the freedom to say anything and call it teaching”¹⁷ But he courts the danger of such license when he ties academic freedom to a form of governance rather than to a hard bright line that determines what academic work is and thereby determines what it is not. If that bright line has been drawn and everyone is pledged to respect it, the form of governance that happens to be in place will not endanger it. And if that line has not been drawn and is continually up for grabs, no form of governance will inscribe it. Questions of governance—who gets the vote on what issues—are only obliquely related to the question of the proper forms of academic work. This does not mean that different forms of governance do not have different effects on a scholarly community: collegiality, morale, self-esteem, efficiency, economics—all these may be affected by the governance structure of a department, college, or university; but what will not be affected is the integrity of the classroom.

Robert O’Neil writes mostly in praise, but he believes that some of the distinctions I insist on are too absolute and insufficiently nuanced. He agrees with me “that politicizing the classroom can be both tempting and pernicious,” but he thinks that “there are myriad variant forms of politicization, some reprehensible but others not only permissible but even laudable.”¹⁸ He asks, “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?”¹⁹ Wouldn’t the teacher who said no to that urging “be faulted for ‘hiding the ball’ from students to whom such information has not only curricular relevance but pedagogical value?”²⁰ Quite the contrary. This *is* a teaching moment, but not of the kind O’Neil imagines. The teacher should not only refuse to declare his preference; he should explain why, which would also involve explaining the difference between academic work and political work, a difference that would be blurred and perhaps lost sight of if he gave into the temptation to bring his partisan views into the classroom.

O’Neil wishes that I had traced out “a continuum or range of circumstances under which introduction into the classroom of currently controversial social or moral issues may be . . . acceptable.”²¹ It is always

17. *Id.*

18. Robert M. O’Neil, *Review of Stanley Fish’s Save the World on Your Own Time*, 36 J.C. & U.L. 307, 308 (2009) (book review).

19. *Id.*

20. *Id.*

21. *Id.*

acceptable as long as the issues are made the object of study rather than the occasion of a decision or commitment. Any issue can be the focal point of an academic discussion; it is just that care must be taken that the discussion remain academic and not veer into the realm of the political. (Analyzing political issues is one thing, taking a stand on them quite another.) The slightest relaxing of this discipline opens a door that will then be very hard to close. That is why I cannot assent to the “obvious differences between the professor who gratuitously inflicts partisan views on the class and one who is simply responding to a student inquiry.”²² The difference, as I see it, is between bringing politics in directly and allowing politics in through a back door. What “curricular relevance” could there be to the revelation by a professor of his voting record? The only point (and effect) of providing that information is to open up the classroom to “real life.” But the classroom is not real life; it is a controlled environment structured by task-specific protocols and those protocols do not include taking sides on questions that should be the object of analysis.

O’Neil comes closer to my position when he asserts “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.”²³ If the class is being taught properly—that is, academically—the emotional responses provoked should not be to the issues but to different (and possibly opposing) analyses of those issues. Members of a class can be as sharply divided on an academic matter, as they might be on matter that involves their ideological allegiances and affiliations.

O’Neil notes correctly that that there are topics I do not consider; he calls these “missed opportunit[ies].”²⁴ Two he mentions are speech codes and the case of Larry Summers, former president of Harvard University. I am on record on both matters, but my judgment was that the argument I was making in *Save the World on Your Own Time* would have been sidetracked if I had explored them fully. I mentioned speech codes in response to conservative charges that they constitute a threat to academic freedom. My point was that the threat was exaggerated because speech codes have been repeatedly struck down by the courts. My general view of speech codes was not to that point, and I did not offer it although I have elaborated it elsewhere.

As to former president Summers, O’Neil believes that I miss the essential distinction between a faculty member and a senior administrator, even if they are the same person: “[W]hen [administrators] publicly express contentious views . . . they may place their official appointments at

22. *Id.*

23. *Id.*

24. O’Neil, *supra* note 18, at 310.

risk to a degree that does not endanger purely professional posts.”²⁵ That is precisely the distinction I make in several essays published in *The Chronicle of Higher Education*, but I acknowledge that explaining it once again would have been pertinent to the argument of *Save The World*. Indeed the lesson of that episode as I saw it—Summers was forced to resign not because he was politically incorrect, but because he was professionally incorrect; he didn’t know what his job was—is the lesson of the book.

It is a lesson O’Neil falls away from when he says that while Lee Bollinger, president of Columbia University, “overdid his ungracious greeting” to President Mahmoud Ahmadinejad of Iran, he perhaps “should have felt free to express deeply personal aversion . . . to his anti-Semitic guest.”²⁶ Free as a citizen, even free as a university president, but not free in the sense of being free of the consequences he, like Summers, made himself vulnerable to when he allowed his “deeply personal” views to take center stage during the performance of his official duties. My moral as always is simple: know your job, do it, and don’t confuse it with other jobs.

25. *Id.* at 311.

26. *Id.*

