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Andrew Kloster

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## A Modern Academic Priesthood

*Andrew Kloster*\*

The development of academic freedom norms in America has come full circle in the work of Stanley Fish. This development began with a few good men founding the first corporation, Harvard University, in 1650, taking a premodern view of education. They placed “knowledge and godliness” on equal footing, believing that the function of the academy was to inculcate specific values.<sup>1</sup> This development continued with the modern view expressed in the *95 Theses* of American academia, the 1915 *Declaration of Principles* of the American Association of University Professors.<sup>2</sup> This document argued that “ever more rare” was the university with an ideological axe to grind; rather, publicly funded universities were a “public trust” that could not be allowed the right to ideologically self-police.<sup>3</sup> Finally, in the 1960s when Fish was a young academic, the Free Speech Movement brought postmodernism into the academy, making use of the language of neutrality to extend academic freedom to students, arguing with a wink and a nod that debate itself was a value, so that restraining expression in search of truth was seen as a contradiction in terms. Today, Fish has returned to the premodern view, arguing that academic freedom is “the right of the academy to make its own decisions about academic matters.”<sup>4</sup>

He has been two spokes on the wheel of history ahead of other theorists of academic freedom for some time now. Robert Post, for example, has sought to tie academic freedom to “democratic competency,” optimistic in his liberal attempt to tie academic procedures to actual truth and democracy.<sup>5</sup> This has the disadvantage, Fish rightly notes, of

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\* Legal Fellow, Edwin Meese III Center for Legal and Judicial Studies, The Heritage Foundation. J.D. 2010, New York University School of Law.

<sup>1</sup> See THE CHARTER OF THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE (1650).

<sup>2</sup> See AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, 1915 DECLARATION OF PRINCIPLES ON ACADEMIC FREEDOM AND ACADEMIC TENURE (1915), available at <http://www.aaup.org/file/1915-Declaration-of-Principles-o-nAcademic-Freedom-and-Academic-Tenure.pdf>.

<sup>3</sup> *Id.* at 293.

<sup>4</sup> Stanley Fish, *Academic Freedom in Brooklyn: Part Two*, N.Y. TIMES (Feb. 25, 2013, 9:00 PM), [http://opinionator.blogs.nytimes.com/2013/02/25/academic-freedom-in-brooklyn-part-two/?\\_r=0](http://opinionator.blogs.nytimes.com/2013/02/25/academic-freedom-in-brooklyn-part-two/?_r=0).

<sup>5</sup> See ROBERT POST, DEMOCRACY, EXPERTISE, ACADEMIC FREEDOM (2012). See also Judith Butler, *Academic Norms, Contemporary Challenges*, in ACADEMIC FREEDOM AFTER SEPTEMBER 11 127 (Beshara Doumani ed., 2006) (“By identifying the threat to academic freedom as unbridled individualism, on the one hand, and retributive administrative and governmental powers, on the other, Post ends up with a form of political liberalism that is coupled with a profoundly conservative

attempting to justify something, education, which is its own value. In a plural society this twist on the premodern view is important, because no agreement on utility can be made. Thus, no one has argued more forcefully than Fish for the sovereign rights of the academy.

Yet by arguing for the *sui generis* nature of the academy, and that academic freedom is a collective right rather than an individual one, Fish succeeds only in demanding that *this* generation of academics continues to be supported by a body public unable to second-guess its decisions. Our academy is back to 1650, and only the professors and values have changed.

Certainly, academic freedom is an important value (even a constitutionally protected value), and it is important to seek principled ways to defend the academy from external political attack. Yet while the student radicals of the 1960s did a valuable service in defeating The Man at the university, they are now entrenching their graying values by revisiting notions of unreviewable expertise that were scoffed at only a generation ago.<sup>6</sup> Seen in this light, Fish's claim—that the First Amendment demands the government allow all voices to be heard while academic freedom simply reinforces prevailing academic views—might simply reflect Fish's assessment that governmental units are more likely to suppress speech that Fish likes.

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intellectual resistance to interdisciplinarity and disciplinary innovation.”).

<sup>6</sup> See generally JÜRGEN HABERMAS, TOWARD A RATIONAL SOCIETY: STUDENT PROTEST, SCIENCE, AND POLITICS (1970).