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## The Doctrine of Balance

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## The Doctrine of Balance

*Kenneth L. Marcus\**

Five characteristics separate political indoctrination from the sphere of academic freedom: non-educativeness, controversy, extraneousness, imbalance, and bias.<sup>1</sup> These five traits reflect the notion that academic freedom protects a uniquely academic function which defines its scope, justifies its privileges, strengthens its defense, and limits its applicability. Stanley Fish, in his important new book, provides useful tools for understanding why some people support such standards and others do not. Despite its admirable lucidity, however, Fish's book succumbs to the facile argumentation that has characterized discussions of the politically trickiest of the five, i.e., imbalance.<sup>2</sup>

The doctrine of "balance" provides that academic instruction must provide due consideration of varying views of any subject matter. Imbalance is an attribute of political advocacy and indoctrination, both of which have their proper place, which is not in the classroom. The balance doctrine provides that when practitioners of a particular discipline are divided among multiple approaches, each of which enjoys some academic legitimacy, students should be exposed to the primary established approaches and provided the analytical skills necessary to navigate among them. Thus, for example, students should be taught both Keynesianism and monetarism if both theories garner respect among a significant number of economists. Students are disserved when given only one approach.

While simple in theory, the doctrine is complex in application. There are easy cases. Holocaust denial is so unscholarly that it may properly be ignored. But there are harder cases too. For example, some think it obvious that intelligent design is so discredited that it may properly be ignored. Others disagree. The same could be said, for example, of Marxian economics and deconstructionist literary theory. The scholarship of academic freedom could be advanced by a careful elucidation of the ways in which the academic enterprise requires balance and those in which it

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<sup>1</sup> Kenneth L. Marcus, *Academic Freedom and Political Indoctrination*, 39 J.C. & U.L. 727, 732, 736 (2013).

<sup>2</sup> STANLEY FISH, *VERSIONS OF ACADEMIC FREEDOM: FROM PROFESSIONALISM TO REVOLUTION* (2014 forthcoming) (on file with FIU Law Review).

does not.

Rather than confronting such difficult questions, however, Fish resorts to the conventional dodges. One technique is to “Horowitz” the issue. That is to say, one can taint the very idea of balance by reminding readers that conservative bugaboo David Horowitz supports it. Fish proves especially adept at this technique, assailing even Judith Butler for too closely resembling Horowitz in this respect. Fish goes further, scaring liberal readers with the prospect that the doctrine of balance requires affirmative action for right-wingers. The very idea of balance could apparently open the academic floodgates to the hiring of conservatives.

This *ad hominem* argument is followed by a straw man. Fish argues that balance is “a bad idea” by trotting out two bad versions of it. In one version, instructors would be required to teach every possible reading of, say, *King Lear* or the Reform Bill of 1832. In the other, instructors must assign both conservative and liberal interpretations of the two texts. These *are* bad versions for the reasons that Fish gives. Instructors must have leeway to select a manageable number of interpretations, rather than being required to teach every idea that has been voiced. Selecting instructional materials based solely on the political orientations of their authors unduly emphasizes partisan politics. But this does not prove, as a successful refutation of balance must, that instructors may properly ignore any interpretations of *Lear* but their own, or exclude any readings that deviate from their own political perspectives. Fish successfully refutes his own ideas of balance, but he does not lay a glove on the doctrine itself.