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Stanley Is Not Doing His Job

*Christopher J. Roederer**

If this title troubles you, so should this book's thesis. Fish claims "our" job is to "deliver the good of disinterested inquiry,"¹ teach "knowledge and skills,"² and "engage in research that adds to the body of what is known"³ within the area we are "trained and paid to perform."⁴ For Fish, what justifies a practice is a professional community with standards, expectations, and an "immediately and intelligible purpose" that relates to every feature of the practice.⁵ The community of practitioners must be able to say, "what we do is not done by others who lack our training, and what others do we don't pretend to do because we lack the expertise and it's not our job."⁶ Fish believes there is no academic freedom for activities outside this job description, "no matter how worthy they might be."⁷

If Fish is right, it is not part of "our" job to discuss this "new field" of Academic Freedom Studies in a law journal. It is not a settled discipline with uniform standards. Rather, it is a playground for academics from different disciplines with "extraneous" values and standards. Further, if Fish is correct, the participants in this micro-symposium do not enjoy academic freedom while "playing here"? Only the "it's just a job" academics are engaged in "academic" activities deserving of academic freedom. The rest of us are pushing extrinsic political agendas (e.g., advocating for our own self-importance, democracy, justice, freedom and the common good, relentless critique, dissent, or revolution).⁸ If academic freedom does not protect these activities, then we are equally not free to advocate for them.

However, if the community of practitioners determines the scope of their expertise, then it is Fish who is not doing his job. As he states, "it cannot be the job of disciplinary scholarship to subvert and unsettle the

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¹ STANLEY FISH, VERSIONS OF ACADEMIC FREEDOM: FROM PROFESSIONALISM TO REVOLUTION (forthcoming 2014) (manuscript at 16) (on file with FIU Law Review).

² *Id.* (manuscript at 9).

³ *Id.*

⁴ *Id.* (manuscript at 10).

⁵ *Id.* (manuscript at 18) (adopting the views of Ernest Weinrib, *Legal Formalism: On the Immanent Rationality of Law*, 97 YALE L.J. 949, 952 (1988)).

⁶ *Id.* (manuscript at 41).

⁷ *Id.* (manuscript at 10).

⁸ *Id.* (manuscript at 10-16).

status quo.”⁹ The status quo is represented by the AAUP and, in law, by the AALS, ABA, and a bulk of academics who do not share his views.¹⁰ Most academic institutions recognize service, and even community service as part of the job;¹¹ so, is this an elaborate scheme by Fish to get out of committee work?

The case against Fish is stronger in the legal academy. While some communities tightly police their borders, we in the legal academy are an open community, accepting academics from other disciplines on our faculties,¹² in “our” journals, and influencing our curriculum. Further, we are open to the values they bring, be it principles of justice or policy grounded in utilitarianism or even economics. Strangely, Fish thinks disciplines like economics are extrinsic to the law and thus useless or irrelevant to understanding the legal enterprise.¹³ Economics is not “extrinsic” and neither is history, theory, politics, or even literary criticism. While the law is not reducible to any other discipline, the study and practice of law is greatly enriched by its interdisciplinary nature.

⁹ *Id.* (manuscript at 41).

¹⁰ Fish notes the “common good school” had its origin in the 1915 AAUP Declaration of Principles. *Id.* (manuscript at 9). The AAUP mission statement still contains the goal of furthering the common good. *Mission & Description*, AM. ASS’N U. PROFESSORS, <http://www.aaup.org/about/mission-description> (last visited October 23, 2013). The AAUP boast over 48,000 members. *Id.* The AALS has 176 law school members representing over 10,000 law faculty. *What is the AALS?*, ASS’N AM. L. SCH., <http://www.aals.org/about.php> (last visited October 23, 2013). Its values and expectations include, that its member schools value faculty who are “devoted to fostering justice and public service in the legal community.” *Id.* The ABA is the principle accrediting body for U.S. law schools and its mission and goals, include “Work[ing] for just laws, including human rights, and a fair legal process.” *ABA Mission and Goals*, A.B.A., http://www.americanbar.org/about_the_aba/aba-mission-goals.html (last visited October 23, 2013). ABA accredited law schools “must provide an educational program that ensures that its graduates . . . understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice.” ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS viii (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf [hereinafter ABA STANDARDS].

¹¹ ABA Standard 404 states that the responsibilities of full-time faculty includes both service to the institution and service to the profession and community. ABA STANDARDS, *supra* note 10, at 34. For higher education in general see Kelly Ward, *Faculty Service Roles and the Scholarship of Engagement*. *ERIC Digest*, ERIC CLEARINGHOUSE HIGHER EDUC. 1, 2 (2003), available at <http://files.eric.ed.gov/fulltext/ED480469.pdf>.

¹² Compare the number of S.J.D.s to Ph.D.s. Some, like Fish, don’t even have J.D.s.

¹³ FISH, *supra* note 1 (manuscript at 16) (endorsing Weinrib, *supra* note 5, at 1013-15).