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# What's Sauce for One Goose: The Logic of Academic Freedom

*Stanley Fish*

All my life I've been searching for a position no one likes, and I may have found it. It goes like this: Academic freedom is the name of a way of thought that confuses eccentricity with genius and elevates pettiness, boorishness, and irresponsibility to the status of virtue; evacuates morality by making all assertions equivalent and, because equivalent, inconsequential; empties history of its meaning so that actions proceeding from entirely different motives and agendas become indistinguishable as instances of individual preference and free choice; and promotes a regime of relativism by refusing to make judgments, on the reasoning that one man's meat is another man's poison. It is this last – one man's meat is another man's poison – that makes the whole thing work. It is a complex argument: first, it asserts fallibility. We are all prone to error and to the overvaluation of our own opinions. From fallibility follows the obligation to refrain from judging one another: Who among us is fit to cast the first stone? From the obligation to refrain from judging one another follows an ethic of mutual respect: Because none of us is God and in full possession of the truth, we must allow others the freedom to pursue the truth by their own rights, and they must allow us to do the same. In Kantian terms, this ethic becomes the doctrine of the autonomy of free agents who are to be regarded not as means but as ends. The final flower of the entire sequence is the logic of reciprocal rights. If I claim a privilege – say, the privilege of speaking my mind without restrictions – I must accord the same privilege to my fellow autonomous agents; and if I seek to restrain the speech or action of my fellows, I must accept the same restraint on my own speech and action. In Kant's words, "Each may seek his happiness in whatever way he sees fit so long as he does not infringe upon the freedom of others to pursue a similar end; that is, he must accord to others the same rights he enjoys himself."[1] Or in the words of John Stuart Mill: "We must beware of admitting a principle of which we should resent as a gross injustice the application to ourselves."[2]

It would be hard to overestimate the power of this line of reasoning, which underwrites such familiar statements as "You can't fight discrimination with discrimination," "Racism is racism, no matter what the colour, ethnicity, or economic status of the perpetrator," "Speech should be freely allowed even when, no, especially when, we find the message loathsome," "What's sauce for the goose is sauce for the gander." These and similar pronouncements are seldom inquired into – they constitute the limit of the open inquiry they otherwise mandate – but I propose to inquire into them with a view toward rendering them less comfortable than you may now find them; and I will begin with what might seem an unlikely topic, religion and religious discourse, which are to my mind the keys to understanding academic freedom, at least as it developed in the United States. I say this because of a famous passage in the declaration of principles of the American Association of University Professors (AAUP), first published in 1915 and left in place (if only by silence) in subsequent declarations. In that passage, the AAUP denies to religiously based institutions the name of "university" because "they do not, at least as regards one particular subject, accept the principles of freedom of inquiry." Such institutions, the association grandly allows, may continue to exist, "but it is manifestly important that they should not be permitted to sail under false colors," for "genuine boldness and thoroughness of inquiry, and freedom of speech, are scarcely reconcilable with the ... inculcation of a particular opinion upon a controverted question."[3] It is not that controverted questions should not be asked, but answers to them should not be presupposed and insulated from the challenge of free rational inquiry.

Unfortunately, it is the nature of religious dogma to resist and even condemn challenges from perspectives other than its own. Accordingly, in an institution founded on dogma, some avenues of inquiry may have been closed off even before the classroom doors open. As Professor Walter Metzger puts it, "Academic freedom ... was historically the enemy and is logically the antithesis of religious tests."[4]Although the dangers to unfettered inquiry can have many more sources – in legislative actions, administrative biases, and forms of political pressure including what has come to be known as "political correctness" – religion has always been considered the original and prototypical danger, and the fact that it is a danger whose force has diminished in the wake of the Enlightenment makes it a convenient reference point for its modern successors. Thus, Philip Resnick of the University of British Columbia speaks of the "long and hard struggle for the freedom of scientific inquiry ... against very strong opposition from the adherents of religious orthodoxy" before going on to consider more recent threats from powerful economic interests and various forms of identity politics. And in *Moral Panic: Biopolitics Rising,* John Fekete characterizes the emergence of campus speech codes as "The New Religion"; speech codes are shots fired in

a "holy war" in which universities are pushed in the direction of becoming "doctrinal institutions" bent on punishing "heresies" that deviate "from orthodox beliefs." This outcome, Fekete goes on to say, is "the *fundamentalism* of biopolitics," the "new piety," a form of Calvinism not unlike the Inquisition, all leading to a creed-state "on the model of medieval Christendom."[5]

What makes these statements somewhat odd is that whenever freedom is celebrated, freedom of religion is always high on the list of what the concept includes. Here is a sentence from an essay on academic freedom by the legal philosopher Ronald Dworkin: "Freedom of speech, conscience, and religion, and academic freedom are all parts of our society's support for a culture of independence and of its defense against a culture of conformity."[6] Notice that religion occupies opposing positions in the two halves of this sentence: in the first half, it is one of the freedoms; in the second, it is, implicitly, the enemy of freedom because of its insistence on conformity (with doctrine, or received morality, or rigid theodicy). Of course, in standard liberal thought this paradox – religion is honoured, religion is condemned – is easily resolved by invoking the belief/action distinction, as the Supreme Court of the United States did when it rejected the claim by some Mormons that polygamy was essential to their religion and thus protected by the free exercise clause. "Laws are made for the government of actions, and while they may not interfere with mere religious belief and opinions, they may with practices."[7] That is, Mormons are free to believe and say anything they like so long as they do not put their beliefs and words into actions of which the authorities disapprove. One sees in this example what freedom of religion means in a liberal regime and why the announcement of it can go hand in hand with the demonization of religion: you are free to express your religious views, not because of their content, but because of their status as expression. Religious views in this understanding are just like other views – political views, aesthetic views, sexual views, baseball views – and what is valued about them is that they have been freely produced – no one forced you to utter them – and that they are freely broadcast – no one has censored them. What is *not* valued about them is what they urge. As instances of a favoured category – expression – religious utterances are cherished; as something to take seriously, they are feared and condemned.

I have lingered over the example of religion because it can stand for what liberalism, in the name of academic freedom, does to any form of strong conviction that refuses to respect (or even recognize) the line between the private and the public, between the cerebral and the political, and that moves instead to institutionalize itself in the rule of law. The "Trent University Statement on Free Inquiry and Expression" claims that "academic freedom makes commitment possible." No, it makes commitment, except to expression, suspect, or rather, it makes possible and *mandates* commitment to academic freedom, which requires as the price for being able to proclaim

your views that you tolerate the views of others, even those "you do not condone and, in some cases, deplore."[8]

Now it is hard to know exactly what "deplore" means in such a statement. For the ethic of tolerance to make sense, "deplore" must indicate a revulsion that is merely personal, as in "I deplore the ties he wears" or "I deplore the music she listens to." Deploring something on that level does not involve the determination to stamp it out, root and branch. If, however, by "deplore" you mean "fear" or "think dangerous" or "find evil," then it is not clear why you would be so willing to allow what you deplore to flourish. Academic freedom is coherent only if you assume that the things you freely allow will be innocuous and containable, which they will be if they are regarded not as calls to action but as material for discussion, preferably in the setting of a seminar. If, however, a form of speech or advocacy will not offer itself as material for discussion but simply declares itself to be the *truth* to which all must bend, academic freedom will reject it as illiberal, just as it rejects religious speech seriously urged.

What this means is that academic freedom, rather than being "open to all points of view," is open to all points of view *only* so long as they offer themselves with the reserve and diffidence appropriate to Enlightenment decorums and only so long as they offer themselves for correction. In short, academic freedom places severe limits on what can go on in its playground, and it is in fact a form of closure. Academic freedom is not a defence against orthodoxy; it *is* an orthodoxy and a faith: the orthodoxy is rational deliberation, and the faith – somewhat paradoxically – is that through rational deliberation we shall arrive at the truth of whose existence rational deliberation is so sceptical.

To say that academic freedom is an orthodoxy is not to score a fatal point against it. Even if academic freedom is deprived of the claim to be hostage to no single point of view, it survives as a point of view you might reasonably want to embrace; and the question to put to it, *as* point of view, is what does it urge and what does it exclude? The answer to that question has already been partly given by the example of religion. Academic freedom urges the interrogation of all propositions and the privileging of none, the equal right of all voices to be heard, no matter how radical or unsettling, and the obligation to subject even one's most cherished convictions to the scrutiny of reason. What academic freedom excludes is any position that refuses that obligation – any position that rests on pronouncements such as "I am the way" or "Thou shalt have no other gods before me."

To be sure, a champion of academic freedom would say that those positions are not excluded at all; rather, they are invited into the seminar, where they can be discussed, interrogated, reasoned with, analyzed. But of course, that is not what the proponents of doctrinaire agendas want; they want to win; they want to occupy and be sovereign over the discursive space and to

expel others from it, and this position is what academic freedom will not permit. (It wants to win, too, and *does* by exiling from its confines any discourse that violates its rules.) In short, academic freedom invites forceful agendas in, but only on *its* terms, and refuses to grant legitimacy to the terms within which such agendas define themselves. We are right back to the 1915 AAUP declaration with a slight modification: religion can be part of university life so long as it renounces its claim to have a privileged purchase on the truth, which is the claim that defines a religion as a religion as opposed to a mere opinion.

It's a great move whereby liberalism, in the form of academic freedom, gets to display its generosity while at the same time cutting the heart out of the views to which that generosity is extended. It is not only a great move, it is also a move that works, in part because it comes packaged in a vocabulary of rights that is also a theory of personhood. In that theory, you are defined as the bearer of rights (the right to believe, the right to speak, the right to choose) and not by the content of the acts you perform when exercising them. From this definition of personhood follows what I called at the beginning of this chapter the logic of reciprocal rights, for if what makes you what you are is your capacity for speech, belief, and choice and not what you believe, say, or choose, then you are obligated, as a mark of self-respect, to respect the beliefs, utterances, and choices of others, because they are incidental to the essence you and those others share. If your neighbours' meat is your poison, then you should just refrain from eating it while leaving them to eat what they like; if your colleagues' positions on abortion or affirmative action are anathema to you, debate them while upholding their right to have them so long as they uphold your right to have yours. What is sauce for the goose is sauce for the gander.

It all sounds fine and highly moral, but in fact it displaces morality by asking you to inhabit your moral convictions loosely and be ready to withdraw from them when pursuing them would impinge on the activities and choices of others. In short, the what's sauce for the goose is sauce for the gander argument asks you to be morally thin by asking you to conceive of yourself not as someone who is committed to something but as someone who is committed to respecting the commitments of those with whom he or she disagrees. Again, this argument sounds fine until you realize that it requires you to suspend those very urgencies that move you to act in the world and to regard them as no different from the urgencies of your enemies. To put the matter from the other direction: the logic of what's sauce for the goose is sauce for the gander requires that you redescribe your enemy as someone just like you. Indeed, in this vision, there are no enemies (except religious zealots), just persons with different preferences, and if that's all there is, you certainly don't want to silence, or penalize, or even imprison people just because they don't share your preferences. Again, for the

third time, this argument sounds fine *if* you don't detect the sleight of hand involved whereby convictions and life allegiances are turned into preferences, much as free speech doctrine turns all utterances into opinions. In this profoundly reductive scenario, everything is like everything else, neither something to live for nor something to fight for. Once moral stances have been turned into individual preferences and assertions into opinions, it makes perfect sense that you refrain from acting on them in ways that would interfere with the freedom of others to prefer differently. I think the Holocaust really happened; you think it didn't; let's agree to disagree, that's what makes horse races, and who is to judge anyway? Any tendency to judge and to enforce your judgment by an act of coercion will be met by someone asking, "How would you like it if someone did that to you?" – a question that assumes that you and the hypothetical someone are interchangeable, exactly alike except for a few moral, political, or religious views; and that the act you wouldn't want done to you is abstract, identifiable apart from any set of circumstances or motives, and a violation of right no matter who does it to whom.

The result is not only a self rendered morally thin but a society rendered morally thin when the logic of reciprocal rights is invoked to forbid the state from taking any action that endorses or seems to endorse one point of view over another. In a landmark case (*American Booksellers* v. *Hudnut*), the US Appeals Court for the seventh circuit struck down an antipornography ordinance because it enshrined in law a particular view of women – the view that they are human beings and not sex objects – rather than the alternative view found in pornography. The same withdrawal from moral judgment and from morality – on the basis, supposedly, of principle – is the content of the phrase "reverse racism" – the idea that any action taken on the basis of a racial classification is equivalent to any other action taken on the basis of racial classification. Justice Clarence Thomas had the move down pat when he declared in *Adarand* v. *Pena* (512 U.S. 200, [1995]) that "it is irrelevant whether ... racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help the previously oppressed. In each instance, it is racial discrimination plain and simple." But the word "irrelevant" should alert us to the cost of the plainness and simplicity Thomas so confidently announces: We must discount – declare irrelevant – the moral and historical difference between the oppressed and the oppressor. Supreme Court Justice Stevens on his part, is unwilling to do so, and he answers Thomas with his own plain and simple point: "There is no moral or constitutional equivalence between a policy ... designed to perpetrate a caste system and one that seeks to eradicate racial subordination." Of course, these practices can be *made* equivalent if you first detach them from the real-world purposes that made them what they were in the

first place and then recharacterize them as interchangeable instances of a conceptual category, such as the category of "race consciousness," which Thomas declares to be odious and inherently suspect, no matter what the intentions and practices of those who display it. Armed with this scalpel, you can find Ku Klux Klan lynchings no different from efforts to deny the Klan representation in public spaces; you can find the exclusion for centuries of minorities from the construction industry no different from minority set-aside programs; you can find quotas designed to exclude races from institutions of higher education no different from admissions procedures that take race into account; you can find that the Voting Rights Act, passed to grant blacks a share of the franchise, can be invoked by whites who declare themselves disenfranchised by that act; you can find the rantings of neo-Nazis no different from – indeed, more legitimate than – the proclamation of the golden rule, on the reasoning, first, that they are both expressions and, second, that the golden rule is an expression of a religious viewpoint and therefore out of bounds in a forum dedicated to academic freedom.

This is where liberal neutrality, academic freedom, and the principle of what's sauce for the goose is sauce for the gander get you: to a forced inability to make distinctions that would be perspicuous to any well-informed teenager – distinctions between lynchings and set-asides, between a Shakespearean sonnet and hard-core pornography, between, in Justice Steven's words, a welcome mat and a no-entry sign. It is an inability that follows from shifting situations out of the historical context that gave them meaning and into an abstract context where they have no meaning. Here is another example. Samuel Walker, writing as a member of the American Civil Liberties Union – that curious organization whose mission it is to find things it hates and then grow them – complains because at different times the Supreme Court of the United States protected the National Association for the Advancement of Colored People from acts of harassment but declined to protect the Ku Klux Klan from similar acts. The only difference, says Walker, is the "reputation of the organization under attack."[9] Right. The only difference is the difference between the Klan and the NAACP, and if that's not a difference, then I don't know what is. In 1959, Columbia Law School professor Herbert Wechsler declared himself unable to justify the desegregation decision *Brown* v. *Board of Education*[10] because as far as he could see, the choice the case offered was between the wish of blacks freely to associate and the wish of whites freely not to associate. Wechsler reports he can find no principle that favours one wish over the other. But Wechsler's dilemma is of his own making; it follows from his having turned the richly contextualized actions of agents embedded in particular histories with particular agendas into abstract wishes with no content except the desire to

prevail. It is only when these wishes float free of everything that animated them in the first place that they will seem indistinguishable and incapable of being sorted out, even by a famous law professor.

The question is, why would anyone *reason* as Wechsler and Thomas and the seventh circuit court do? And the answer is, because reasoning *that* way has a payoff in outcomes *someone* desires: the rollback of affirmative action, the perpetuation of male dominance, the flourishing of arguments for racial superiority. The way of thinking that produces an inability to make otherwise obvious distinctions is not politically innocent; it is a political weapon wielded self-consciously, and often skilfully, by persons and groups with definite goals in mind. Those goals are *not* free speech, open inquiry, mutual respect, and so on, but sales of pornography, maintenance of lily-white construction crews, the disadvantaging of minority religions, and so on. If liberal neutrality cannot make good on its claim to be above the fray (and it certainly cannot), then it is necessarily embroiled in the fray, coming down on one side rather than another, and doing so with an effectiveness that is inversely proportional to the plausibility of the claim it cannot make good on. Liberal neutrality does political work so well because it has managed to assume the mantle of being above political work, and if you don't like the political work it is doing, you must labour to take the mantle away, strip off the veneer of principle so that policies wearing the mask of principle will be forced to identify themselves for what they are and for what they are not.

In your efforts to do so, the vocabulary and rhetoric of multiculturalism will not help. I said at the outset that I may have found a position no one likes. Liberal defenders of academic freedom won't like it, but neither should defenders of multiculturalism, if only because they are liberal defenders of academic freedom in slightly different clothing. Whereas the watchwords of liberal defenders of academic freedom are neutrality and impartiality, the watchwords of multiculturalists are difference and diversity; but just as neutrality and impartiality mandate the exclusion of strong religious views from their circle, so do difference and diversity mandate the exclusion of views alleging racial superiority or the immorality of homosexuals. Liberal neutrality and multiculturalism are both engines of exclusion trying to fly under inclusive banners.

That is why people on the wrong side of these respective engines feel suffocated when they get going, why minorities protest that neutrality is a sham, and middle-aged white professors, like me, protest that diversity reaches out to include everyone but them. Both sides are right. They *are* being excluded. Where they are wrong is in thinking that *in*clusion, of a truly capacious kind, is possible. All that is possible – all you can work for – is to arrange things so that the inevitable exclusions are favourable to your

interests and hostile to the interests of your adversaries. The inclusive university is not an attainable goal. It is not even a worthy one, for to attain it would be to legitimize all points of view and directions of inquiry, defaulting on the responsibility of the university to produce knowledge and to refine judgment. The debate is never between the inclusive university and the university marked by exclusions; the debate is always between competing structures of exclusion; and the debate ends, at least for a time, when one structure of exclusion manages to make its interests perfectly congruent with what is understood by the term "academic freedom." The assertion of interest is always what's going on – even when, and especially when, interest wraps itself in high-sounding abstractions.

This is not an indictment of anyone and certainly not an indictment of anyone for having forsaken principles for politics; politics is all there is, and it's a good thing too. Principles and abstractions don't exist except as the rhetorical accompaniments of practices in search of good public relations. This is not an indictment either, just an observation and perhaps advice. Be alert to those moments when your opponents have a public relations machine so good that it's killing you; for then, you're going to have to stop and try to take it apart. Right now, the public relations machine that rides on the tracks of the ethic of mutual respect and the mantra of academic freedom is in such high gear that those whose interests are likely to be rolled over by it had better do something. That's what I have been trying to do here by explaining, over and over again, how these formulas work, the kind of work they do, and why, if you look beneath them, you may not like what you see. I am not so naive as to believe that I have persuaded you, but I will be more than pleased if when you next hear someone say what is sauce for the goose is sauce for the gander, or you are tempted to say it yourself, you at least hesitate – and remember that a goose *is* a goose and not a gander – before surrendering to the satisfaction of liberal complacency.

**Notes**

Some of the material in this chapter was published previously in *The Trouble with Principle* (Cambridge, MA: Harvard University Press), 35-45.

1 Immanuel Kant, *Political Writings,* ed. Hans S. Reiss (Cambridge: Cambridge University Press, 1991), 74.

2 John Stuart Mill, "On Liberty," in *Texts: Commentaries,* ed. Alan Ryan (London: Norton, 1997), 108.

3 *Freedom and Tenure in the Academy,* ed. W.W. Van Alstyne (Durham: Duke University Press, 1993), 394.

4 Walter Metzger, "The 1940 Statement of Principle on Academic Freedom and Tenure," in *Freedom and Tenure in the Academy,* ed. W.W. Van Alstyne (Durham: Duke University Press, 1993), 36.

5 John Fekete, *Moral Panic: Biopolitics Rising* (Montreal: Robert Davies, 1995), 200, 203.

6 Ronald Dworkin, "We Need a New Interpretation of Academic Freedom," in *The Future of Academic Freedom,* ed. Louis Menand (Chicago: University of Chicago Press, 1996), 189.

7 *Reynolds* v. *United States* (1878), in *First Amendment Cases and Materials*, ed. W.W. Van Alstyne (Westbury, NY: Foundation Press, 1991), 932.
8 Fekete.
9 Samuel Walker, *Hate Speech* (London: University of Nebraska Press, 1994), 27.
10 Herbert Wechsler, "Toward Neutral Principles of Constitutional Law," *Harvard Law Review* 73 (1959): 1-35.