Behavior and Philosophy, *29*, 75-78 (2001). © 2001 Cambridge Center for Behavioral Studies

THE TROUBLE WITH STANLEY . . .

John Staddon
Duke University

A review of *The Trouble With Principle* by Stanley Fish. Cambridge, MA: Harvard University Press, 1999

Professor Stanley Fish may not be well known to philosophers or behavioral psychologists, but he cuts quite a figure in the intellectual community—as a social and legal commentator, as a philosopher manqué, and as a Milton scholar (his original academic claim to fame). He contributes frequent op-eds to *The New York Times*. He has received the ultimate accolade as a public intellectual: a piece devoted entirely to him in the June 11, 2001, *New Yorker*. In short, Fish's influence in the world of opinion-makers is considerable. Since he speaks on many of the same topics as behaviorists and philosophers and shares many behavioristic ideas, both right and wrong, his writings deserve our attention.

Fish's style is to take conventional wisdom, either traditional or even, occasionally, progressive, and turn it on its head—his most notorious article is entitled, "There's no such thing as free speech—and it's a good thing too!" This book, a collection of essays, most originally published elsewhere in legal journals, anthologies and the broadsheet press, is no exception. After the fashion of Feyerabend's destructive and iconoclastic *Against Method,* it could have been entitled *Against Principle:*

> While I was writing the chapters of this book, a scene from Sam Peckinpah's classic western *The Wild Bunch* was never far from my mind. The wild bunch is an outlaw gang led by two grizzled veterans played . . . by William Holden and Ernest Borgnine. One evening the two are sitting around discussing an old comrade who has gone over to the other side. . . . The Borgnine character is incensed and can't understand why their old friend doesn't abandon the pursuit and come home to where he really belongs. You have to remember, the Holden character says, he gave his word to the railroad. So what? is the response; it's not giving your word that's important, it's who you gave your word to. (1999, p. 1)

Fish comes down decisively on Borgnine's side. He is against principle. To him, "government of laws not of men" is a false ideal. "The trouble with principle is,

AUTHOR'S NOTE: Please address all correspondence to John Staddon, Department of Psychological and Brain Sciences, Duke University, Durham, NC 27708. Email: staddon@psych.duke.edu.

first, that it does not exist, and, second, that nowadays many bad things are done in its name" (p. 2).

I return to his first point in a moment, but his second follows a pattern not uncommon in public debate—to be against knives because some people are cut with them, against cars because some people are killed by them, and so on. To refute it is easy. The counter-argument is simply a quantitative one. We favor cars and knives because the benefits they offer much exceed the costs they incur. It follows that we can be opposed to principle only on quantitative grounds. Since experiment is impossible, all we can do is compare societies that lack principle to those that favor it. Which are better? Would we prefer to live in some lawless third-world country where all allegiances are (like Borgnine's) personal or in a country with a developed legal code to which all are expected to adhere? To pose the question is to answer it.

Fish's attack on principle is an example of what might be called the *bad-apple fallacy* (as in, "one bad apple spoils the whole barrel")—the idea that a concept can be refuted by showing it has some—any—bad consequences. As we'll see, this fallacy finds a home in many of Fish's writings.

So in what sense does principle "not exist"? "The answer is to be found in the claim made for . . . the kind of principle favored by liberal theorists. This claim is that abstractions like fairness, impartiality, mutual respect, and reasonableness can be defined in ways not hostage to any partisan agenda" (p. 2). Fish goes on to provide examples of how terms like "fairness" presuppose "background conditions in relation to which fairness has an operational sense" (p. 3). I'm not sure in what sense he means "operational"—probably not in the technical sense of "operational definition." Perhaps just in the sense of "practical"—how the term is used in practice. As an example, he says, "Would it be fair to distribute goods equally irrespective of the accomplishments of those who receive them, or would it be fair to reward each according to his efforts?" (p. 3). Good point; these are indeed different meanings for "fairness." But how should the issue be decided? Not by giving up the principle of fairness, one suspects, but by agreeing on one definition—one version of the principle—or another. The principle is preserved, but the meaning is changed. Settling such debates is difficult. But who is Fish to say that it is always impossible? Yet Fish's proposal to abolish principle assumes the impossibility of resolving such questions. It's another version of the bad-apple fallacy: because we can see some difficulties with "fairness" or "equality," it follows that the terms have no meaning at all.

These comments are taken from the Prologue. The rest of the book is divided into four loosely structured sections, dealing with political issues such as affirmative action and multiculturalism (*Politics All the Way Down*), the First Amendment (this section is modestly entitled *Fish on the First*), religious freedom and toleration (*Reasons for the Devout*), and belief (*Credo*).

In some respects, Fish is a savvy philosopher. For example, in a section on "belief" he writes, "[A]n account of our mental processes . . . cannot affect our mental processes" (p. 284). Forget the mentalistic language. It's still true that whatever we know about our brains, our mind, or the laws of behavior (take your

theoretical pick), if it's true it remains true irrespective of our knowledge of it. It's a nice touch that he defends his assertion not by citing Carnap or Popper—or Skinner—but by quoting Milton on cosmology: "it needs not thy belief."

The issue discussed by Fish that is perhaps of most relevance to *Behavior & Philosophy* is his take on free speech and the First Amendment. On this point he offers some thought-provoking ideas and some silly asides. One of the sillier is "Speech, like lunch, costs . . . if [it] always works to advance some agenda, its effectiveness will always be achieved at the expense of some other interests as defined by some other agenda" (p. 94). This is silly because it assumes a sort of "law of agenda conservation;" if I advance my agenda, I retard yours. Again, this is true sometimes but not always. For example, if I announce that I have discovered a new star in Orion, I advance my agenda (to find new stars), but I retard no one else's. It is easy to think of other examples. A little later he comments, "since speech is unimaginable apart from consequences," a happily behavioristic assertion that could have been made by B. F. Skinner—or Richard Dawkins—and goes on to add, "and since the consequences of any piece of speech will be friendly to some interests and inimical to some others, the decision to draw a line between protected and unprotected speech will always be a decision to advance some interests and discourage others . . . a political decision" (p. 94). Truth, half truth, and falsehood, in turn: it is possible to support an interest without opposing another, and not all decisions, about protected speech or anything else, are entirely or even partly political. For example, "Fire!" in a crowded theater is the classic example of nonprotected speech. Reciting nonsense verse is clearly protected. What is *political* about either of them?

At the heart of Fish's free-speech argument is his original "no such thing" paper. His core assertion is "[that] the act of speech . . . is always at once constrained and constraining. Speech is constrained because one does not think to speak (or write) independently of some vision or agenda that, quite literally, *compels* assertion; speech is not free because one is in the grip of compulsion . . . at the moment of its production" (p. 93). Fish's argument here might be rephrased in a terminology more congenial to scientists as follows: "The act of speech is constrained because it is *behavior* and behavior is always determined—by motives desires, plans, etc. Because it is determined it is not, and cannot be, free."

Readers of this journal will recognize in this restatement echoes of B. F. Skinner's attack on the idea of personal responsibility: "In the traditional view, a person is free. He is autonomous in the sense that his behavior is uncaused. He can therefore be held responsible for what he does and justly punished if he offends. That view, together with its associated practices, must be re-examined when a scientific analysis reveals unsuspected controlling relations between behavior and environment" (1971, p. 17). Skinner and Fish seem to agree on the following syllogism: "All behavior is determined; speech is behavior; hence speech behavior is determined; hence the speaker is not free; hence there is no such thing as free speech nor should reprehensible acts be punished." But, as I have argued elsewhere (Staddon, 1995, 2001), Skinner's argument is false, and so, therefore, is Fish's. Skinner's conclusion is wrong because the fact that behavior is determined has no

direct bearing on whether or not a perpetrator should be held responsible for—punished for—his acts. Indeed, without some assurance that the perpetrators, and others like him, will be predictably deterred from future misbehavior, there is no point to punishment or the idea of personal responsibility that goes along with it. Similarly, free speech, in the sense of speech that is uncoerced, can perfectly well exist whether or not the speaker's behavior follows deterministic laws, is compelled by private motives, or whatever.

There is much more that might be said about Professor Fish's provocative and tendentious essays, but this would take us well into the political realm and away from the purposes of *Behavior & Philosophy*. I found the essays irritating but readable—not, I think, an unusual reaction. Decide for yourself whether the irritation is the kind that stimulates, like chili, or simply aggravates, like poison ivy.

References

Fish, S. (1992) There's no such thing as free speech and it's a good thing too. *Boston Review,* February, p. 3.

Fish, S. (1999). *The trouble with principle.* Cambridge, MA: Harvard University Press.

MacFarquhar, L. (2001). The dean's list: The enfant terrible of English lit. grows up. *The New Yorker,* June 11, 62-71.

Skinner, B. F. (1971). *Beyond freedom and dignity.* New York: Knopf.

Staddon, J. (1995). On responsibility and punishment. *The Atlantic Monthly,* Feb., 88-94.

Staddon, J. (2001). *The new behaviorism: Mind, mechanism and society.* Philadelphia, PA: Psychology Press.