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*THE TROUBLE WITH PRINCIPLE* by Stanley Fish (Cambridge, MA: Harvard University Press, 1999)

“Fish” is a name to conjure with. If you don’t believe it, simply consider the dust jacket of this book. FISH is emblazoned the full width of the spine and across the bottom quarter of the front, dwarfing not only the font in which the book’s title is printed, but that of the author’s first name as well. Like Hegel, or Madonna, there’s only one of this name that counts, one significant Fish in the academic pond. Above the bold black-on-red name, a black-and-white picture of the handsome author peers intently at you, a face expressing bemused interest with perhaps a faint trace of challenge. He certainly looks like a serious man, an earnest man, what the Greeks called *spoudaios*. Looks can be deceiving. Now, you may think my attention to these stylistic details excessive. After all, the inappropriateness of judging a book by its cover is so obvious that it serves as a caution against judging by appearances generally. But I have read the book, and can judge its cover by its contents. For reasons I hope to make clear, these choices of design turn out to be quite revealing. It is the man and the persona he wishes to project that is of major importance here.

However, there are several preliminary matters to be addressed first, such as what the book is ostensibly about, and why anything written by someone known to the world primarily as a literary critic might be of interest to those associated with the law. Addressing the latter question first, Stanley Fish does not regard himself in such a narrow manner. A practicing postmodern for whom the whole of human “reality” — from science to sex — is basically an artefact of language, he is at home wherever there is any “discourse” or “narrative” to be analyzed (or “interrogated,” to use another of these favourite code words). Contemporary political and legal theory is a special interest of his; he displays an acquaintance with this literature that many academics in those fields might envy, and has himself previously published several works on legal theory (such as the controversial *There’s No Such Thing as Free Speech and It’s a Good Thing Too*<sup>1</sup>). Hence, his may be a name already known to many in the legal community. Indeed, portions of this very book may already be familiar, as no fewer than seven of its sixteen chapters have previously appeared in various law journals. Analyses of cases, of judicial decisions, and of legal scholarship pervade the text. For instance, the so-called “Skokie case” (*Collin v. Smith*<sup>2</sup>) arising out of a neo-Nazi group’s plan to march through the small, largely Jewish village of Skokie, Illinois, is the theme of an entire chapter<sup>3</sup> and is referred to several other times. Moreover, the book’s two central sections (“Fish on the First” — Amendment, that is — and “Reasons for the Devout,” together comprising nine chapters) are explicitly focused on several contemporary moral and political issues that are at the heart of legal controversies.<sup>4</sup> And while they are discussed mainly in terms of the U.S. Constitution and judicial reasonings based on its Bill of Rights, the problems addressed are endemic to all modern liberal democracies, and Canadian readers will have no difficulty translating the arguments into the Canadian context.

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<sup>1</sup> (Oxford: Oxford University Press, 1993).

<sup>2</sup> 578 F.2d 1197 (7th Cir. 1978).

<sup>3</sup> S. Fish, *The Trouble with Principle* (Cambridge: Harvard University Press, 1999) at c. 3.

<sup>4</sup> *Ibid.* at c. 5-13.

Now, as to what the book is ostensibly about: “the trouble with principle.” The first thing to be clarified is that it’s not about principles *per se*, but about a certain kind of principle, the (supposedly) purely formal, impartial, impersonal principles understood to be intrinsic to liberal democracy’s equality before the law, civil rights, tolerance, and procedural justice:

The trouble with principle is, first, that it does not exist, and second, that nowadays many bad things are done in its name. On the surface, this is a paradox: how can something that doesn’t exist have consequences? The answer is to be found in the claim made for principle, or at least for the kind of principle — usually called neutral principle — favored by liberal theorists. The claim is that abstractions like fairness, impartiality, mutual respect, and reasonableness can be defined in ways not hostage to any partisan agenda. The importance of the claim is that if it can be made good, these and other abstractions can serve as norms or benchmarks in relation to which policies favoring no one and respecting everyone can be identified and implemented. The problem is that any attempt to define one of these abstractions — to give it content — will always and necessarily proceed from the vantage point of some currently unexamined assumptions about the way life is or should be, and it is these assumptions, contestable in fact but at the moment not contested or even acknowledged, that will really be generating the conclusions that are supposedly being generated by the logic of principle.<sup>5</sup>

This constellation of contentions is basic to most of what Fish argues throughout his book, and he provides an ample number of plausible examples that both illustrate and support his claim that the strict neutrality of such principles is illusory. However, as for his allegation that the consequences of their invocation are so often *bad*, suffice it to say that here matters are far less clear. For the most part, he merely characterizes certain (not all) of the (alleged) consequences in such a way that anyone whose moral sense is what Fish thinks it should be would disapprove of them; that is to say, he begs the more basic question. Not that he pretends otherwise: “I have labeled the things I see being done with neutral principles ‘bad’ because they involve outcomes I neither desire nor approve.<sup>6</sup> And though his enlightened (or at least *au courant*) views are on display throughout the book, and sometimes are even partially explained or defended, he steadfastly refuses to provide the *grounds* for the rightness of his desires and judgments. Supposedly, this is because doing so would somehow be in contradiction to his primary thesis here:

But, someone might ask, what exactly are (or should be) our deepest aspirations and convictions? I shall not answer that question because, were I to do so, I would be urging some particular vision of the good, whereas it is my purpose in this book only to argue that particular visions of the good are unavoidable. That argument, in and of itself, is not and could not without contradiction be an argument either for affirming or rejecting any particular vision. That kind of argument, in which I am happy to engage, would take place in some historical context of substantive dispute, exactly the context neutral principles were designed to bypass or transcend.<sup>7</sup>

So? We are in a particular historical context (as he reminds us a few hundred times) — why not at least give a rational defense of why his deepest aspirations and convictions are

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<sup>5</sup> *Ibid.* at 2-3.

<sup>6</sup> *Ibid.* at 7.

<sup>7</sup> *Ibid.* at 150.

those suited for this here and now? Is he not hiding behind the kind of suspect neutrality he decries in the legions of liberal theorists he pillories? Mr. Fish responds:

The difference is that liberal neutrality is positive; it directs you to do something, to bracket or set aside your substantive convictions; my neutrality, (if that is the word, and it isn't) leaves you where you always were, in the grip of whatever substantive convictions have become yours by virtue of experience and education. It is the minimalism rather than the neutrality of my position that should be emphasized.<sup>8</sup>

The profoundly personal (hence incorrigibly subjective?) and historically relative character of people's basic moral convictions and commitments is also part of what he is arguing: that there are no means of rational reconciliation between people with fundamentally different convictions. Their quarrels will be "settled," so far as they can be and for so long as they will stay, by the power struggles of "politics."

Indeed, according to Fish, "...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."<sup>9</sup> Regardless of what is being said, "[t]he assertion of interest is always what's going on even when, and especially when, interest wraps itself in high-sounding abstractions."<sup>10</sup> Thus, he maintains, the rhetoric of liberal neutrality, the pose of being above politics, is actually in the service of a political agenda (*e.g.*, to roll back affirmative action, to perpetuate male dominance, to oppress minorities),<sup>11</sup> and those who don't realize this — whether as speakers or as hearers — are simply dupes. Now, this claim that "everything is political," which passes for profundity among many today who fancy themselves hard-headed realists, is an almost vacuous claim. The only reason not to regard it as utterly and completely vacuous is its being a reflection of the age-old truth that humans are political by nature. For in all other respects, it is a levelling reduction that obliterates every distinction vital to understanding and assessing people and policies. As Fish and his ilk understand it, this claim is roughly equivalent to the claim that everyone acts out of self-interest — which, if accepted, *logically* should elevate to primary importance the *differences* amongst "selves" and their interests (for in practical terms, it makes all the difference in the world what a "self" is interested in: truth and justice, or coke and kiddie-porn). But its *psycho*-logical effect tends to be the opposite: for too many people, it seems to imply that no one is morally better than anyone else, which doubtless comes as a liberating relief to those selves that have little enough to be proud of. So, what common sense would regard as a "selfless" act by an individual (*e.g.*, giving up a lucrative law practice in order to head a relief agency at a token salary), or a policy that is in the long-term interest of an entire citizenry (protecting the air quality, say), the sophisticated "realist" regards as every bit as selfish and "political" and partisan as the most naked exploitation of political office to favour self and friends.

It is especially curious to find Fish endorsing such a levelling, difference-ignoring abstraction, since he roundly berates liberals and their principled neutrality for that very

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.* at 45.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* at 43.

sin: refusing to acknowledge obvious differences between, say, the Ku Klux Klan and the NAACP invoking the protection of the First Amendment. "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 skillfully, by persons and groups with definite goals in mind..."<sup>12</sup> I certainly agree with this general observation, and would instance Fish's "politics is all there is, and it's a good thing too" as a perfect case in point. Moreover, there is a deep paradox in treating all reasoning as mere rationalization, something engaged in simply for the sake of "good public relations." What, then, accounts for its effect? Why is some "good" (*i.e.*, "effective"), some not? Only naïve ignorance on the part of the unenlightened Many? The mere fact that a particular outcome is in someone's personal interest is, strictly speaking, irrelevant as to whether it is right or wrong, or whether it is in the general interest as well. It is simply wrong to punish an innocent person knowingly, and this is so irrespective of that person's having an interest in not being punished. Is there no universally valid rationale, then, why we *all* ought to prefer our present procedures and rules of evidence to a reliance on the duck pond? On his view, were an entire populace to become as wise as Fish, no one would bother to *justify* what they do or urge, for no one else would take it seriously. They would look on Fish's book, for example, as so much smoke and mirrors, window dressing that masks his real interests and intentions. What he refuses to acknowledge — but only when convenient for his own argument, *all* of which relies upon what he selectively refuses to acknowledge — is that apparently valid reasoning exerts a power over us, and that sometimes at least its apparent validity is due to real validity. Indeed, how can you account for apparent validity (and thus the power of rhetoric and sophistry) except in light validity plain and simple?

As for Fish's "minimalism," it is every bit as "positive" as what he opposes. For throughout the book we are tacitly exhorted to recognize the passivity inherent in the illusory neutrality of liberal principles, that they in effect serve as fetters from which we ought to liberate ourselves, so that we may pursue by whatever means are effective the moral goals we believe are right. He would endorse (as do I) Lenin's famous endorsement of Machiavelli's basic teaching: "Of course the end justifies the means. What else could?" Beats me. But Fish gives this "end-based reasoning" a profoundly irrational and (I shall argue) obscuring sophistical twist: "[W]hen all is said and done there is nowhere to go except to the goals and desires that already possess you, and nothing to do but try as hard as you can to implement them in the world."<sup>13</sup>

These "ends" are themselves beyond rational justification in any full, meaningful sense; they mysteriously emerge from one's life experiences. At times, Fish's pronouncements sound downright mystical, offering a kind of historicist's variation on Rousseau's General Will.<sup>14</sup> For instance, he assures us that the absence of neutral standards:

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Supra* note 3 at 8-9.

<sup>14</sup> J.J. Rousseau, *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997), Book II, c. 3.

...does not prevent us either from knowing what is good or working to bring it about. That knowledge is ours by virtue of being situated moral beings; and if we go with it and do not disdain it in favor of empty abstractions, it will direct us to the resources, wholly and benignly political, by means of which our deepest convictions and aspirations might be realized.<sup>15</sup>

Out of experience, then, come one's preferences, and moral behaviour consists of carrying them into practice, of conscientious existential "commitment" to them. Except in trivial matters of taste, "preferences ... are principles (or at least principled) — not principles of the neutral kind but principles of the only kind there really are, strong moral intuitions as to how the world should go combined with a resolve to be faithful to them."<sup>16</sup> Apparently, how *strongly* they are felt is to be regarded as indicative of their rightness. And what does being "faithful" to them consist of? Although neither Fish nor anyone else who sees things this way (and there are plenty these days who do) would ever admit it, the logical implication of their view is that the fanatic — impervious to all reasons and evidence that might count against his moral intuitions, who sticks to his commitments come hell or high water — is more moral than Sokrates, who recognized the provisionality of all he believed about what is noble and good, who thus remained perpetually open to further rational discussion, and who counselled moderation (rather than commitment, resolve, fanaticism) in political life. The philosopher understood well enough that there are times when one must stand up and be counted, as proven by his unwillingness to countenance the *ad hoc* departure from the city's fair trial procedures in the case of the ten generals, as well as by his having fought at least three times on behalf of Athens and its interests.<sup>17</sup> Fish's view, however, is untempered by any Sokratic humility, and so is a good deal more "pro-active":

Taking sides, weapon in hand, is not a sign of zealotry or base partisanship; it is a sign of morality; and it is the morality of taking sides, of frank and vigorous political action, that is celebrated (not urged; it is inevitable) in the pages that follow.<sup>18</sup>

Parenthetically, I confess I have an easier time imagining that moderate-spoken ancient philosopher on a real blood-and-guts battlefield than I do this tough-talking postmodern scholar, who has in mind nothing more hazardous to himself than trading sarcasms in the culture wars. Be that as it may, Fish's disclaimer is disingenuous. His entire book is a condemnation of liberals' passivity and an exhortation to them to take the gloves off: to stop trying to be so fair to their opponents, to regard them instead as "enemies," and to take whatever action furthers the ends Fish himself repeatedly endorses. And here one cannot help but admire how Fish consistently manages to have it both ways: cleverly revealing shortfalls — not to say, gaping lacunae and absurdities — in the reasoning of leading liberal theorists, while nonetheless subscribing to all their favourite causes ("academic freedom";<sup>19</sup> multiculturalism;<sup>20</sup> suppressing "hate speech";<sup>21</sup> affirmative

<sup>15</sup> *Supra* note 3 at 149.

<sup>16</sup> *Ibid.* at 9 [emphasis in original].

<sup>17</sup> J.J. Helm, ed., *Plato, Apology: Texts and Grammatical Commentary* (Chicago: Bolchazy-Carducci, 1981) at 28e, 32b-c.

<sup>18</sup> *Supra* note 3 at 14.

<sup>19</sup> *Ibid.* at 37.

<sup>20</sup> *Ibid.* at 63.

action,<sup>22</sup> *etc.*). But in order to realize these desired ends, “What’s a liberal to do? My answer is simple: forget about the principle (and therefore stop being a liberal)...”<sup>23</sup>

But such advice is a double-edged sword, and people whose souls naturally incline to a liberal disposition may not be the most deft and vigorous in wielding it. Reflecting upon the past century of human experience, my “moral intuition” tells me that this unqualified licensing of action, the more resolute the better, coupled with learned assurances that ultimate ends are beyond rational assessment, is precisely what is *not* needed to make the world a better place.

Fish claims a distinguished lineage for his posture on these matters, including “the pre-Socratics” (collectively? they are preserved in textbooks as illustrating fundamentally incompatible philosophical *alternatives*), Cicero, Hobbes, J.L. Austin, and certain pragmatists (though I suspect Rorty is the only one named who would be comfortable acknowledging the kinship). Of all the traditional heavyweights, however, it is actually Milton who figures most prominently in the book. But Fish suggests that his “most obvious and pertinent antecedent is Machiavelli’s *The Prince*.”<sup>24</sup> Fish likes the way Machiavelli cuts through the “rhetorical embroidery and pompous phrases [that] is the idealizing language of moral and political theory,” that which “...gets in the way of understanding the only knowledge worth having, ‘knowledge of the actions of men’”.<sup>25</sup> Actually, the notorious Florentine — not concerned to appear the properly enlightened egalitarian — said “...the actions of *great men* [*uomini grandi*].”<sup>26</sup> According to Fish, Machiavelli is the ultimate pragmatist, declaring himself against all general rules and in favour of flying strictly by the seat of one’s pants. But this is not quite correct. For example, “a prudent man [*uomo prudente*] should *always* enter upon the paths beaten by great men [*uomini grandi*]....”<sup>27</sup> Then there is the conclusion of Chapter 3: “a general rule that never or rarely fails: whoever is the cause of someone’s becoming powerful is ruined....”<sup>28</sup> Chapter 22 includes a mode of assessing ministers “that never fails,”<sup>29</sup> “a general rule that never falls.”<sup>30</sup> Indeed, *The Prince* fairly teems with general rules. What Machiavelli does disavow is a *prince*’s being bound by strict *moral* rules (*i.e.*, universal and impersonal, regardless of actual circumstances); the justification for this moral “flexibility” lies in a prince’s sovereign responsibilities. One rather suspects that, despite his democratic veneer, this is what Fish — aspiring prince of academic thinkers — finds so attractive. Thus, morality according to Fish means pursuing ends one’s moral intuition strongly approves of but without regard to moral constraints on the means one uses. If liberal means work, fine; otherwise use illiberal ones. To be effective, one’s means must

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<sup>21</sup> *Ibid.* at 70-71.

<sup>22</sup> *Ibid.* at 43.

<sup>23</sup> *Ibid.* at 89.

<sup>24</sup> *Ibid.* at 13.

<sup>25</sup> *Ibid.*

<sup>26</sup> Niccolo Machiavelli, *The Prince: A New Translation, Backgrounds, Interpretation*, ed. and trans. by H. Mansfield (Chicago: University of Chicago Press, 1985) at 3 [emphasis added].

<sup>27</sup> *Ibid.* at 22 [emphasis added].

<sup>28</sup> *Ibid.* at 16.

<sup>29</sup> *Ibid.* at 93.

<sup>30</sup> *Ibid.* at 95.

take into account public relations, of course; so one is often obliged to use liberal rhetoric in a liberal democracy. And there's nothing wrong with sounding like a liberal "as long as you don't take your liberalism too seriously and don't hew to it as a matter of principle."

...[L]iberal platitudes become usable when all you want from them is a way of marking time between battles you think you can win. Switching back and forth between talking like a liberal and engaging in distinctly illiberal actions is something we all do anyway; it is the essence of adhocery, which is a practice which need not be urged because it is the only one available to us.<sup>31</sup>

This, incidentally, is a rhetorical tactic Fish exploits repeatedly: arguing that things are *necessarily* the way he says they are, the only way they could be, hence there's really no need to justify acting accordingly.

On the surface, as should be clear by now, contemporary liberal theorists are the primary target of *The Trouble with Principle*. To be sure, they are not the only ones; neo-conservatives get a roasting in the book's first chapter, and I believe Fish scores some valid points against them. But the bulk of the book focuses on liberals and liberalism — why, for example, equality as a formal concept is empty, whereas when supplied with moral content it is redundant;<sup>32</sup> or, why toleration is "an incoherent ideal"<sup>33</sup> — and for the most part I think his critiques are at least damaging and often devastating. Admittedly, exposing the emptiness of John Rawls' efforts, whose *A Theory of Justice*<sup>34</sup> must be the most vacuous 600-page tome in the history of political thought, is about as difficult as outspinting Orson Welles in galoshes. Fish's summary judgment says it all: "As a genuine model for the behaviour of either persons or nations, as something you could actually follow and apply, political liberalism is hopeless."<sup>35</sup> But Rawls is merely the first of the prominent liberal political and legal theorists whose reliance upon or endorsement of neutral principles brings them under the critical gaze of Dr. Fish: Amy Gutmann ("...her gesture of exclusion ... amounts to little more than holding her nose in disgust"<sup>36</sup>), Michael Walzer, Jürgen Habermas, Ronald Dworkin, Will Kymlicka, Rodney Smolla, Judith Butler, and dozens of others are also included.

His discussions of issues and various people's treatments of them leave no question in my mind that Fish is capable of clear, trenchant analysis — the man *can* think. Thus, when his arguments favoring his own views turn out to be clearly inadequate, sometimes almost laughably so (e.g., his "refutations" of nine standard arguments against affirmative action<sup>37</sup>), it's not because he is an incompetent reasoner, making unwitting mistakes in reasoning. Something else is responsible: Fish's "pragmatism." His arguments are presumably (1) the best he can come up with, and (2) better than nothing — if someone is convinced by them, fine (they've done their rationalizing political work); if not, nothing

<sup>31</sup> *Supra* note 3 at 72.

<sup>32</sup> *Ibid.* at 142-43.

<sup>33</sup> *Ibid.* at 162.

<sup>34</sup> J. Rawls, *A Theory of Justice* (Cambridge: Belknap Press of Harvard University Press, 1971).

<sup>35</sup> *Supra* note 3 at 12.

<sup>36</sup> *Ibid.* at 69.

<sup>37</sup> *Ibid.* at 29-33.

is really lost in the attempt. For truth is not the issue here. Having certain effects is. And this points to the central and most basic thing to understand about this book: its author is a sophist, who has contempt for truth and reason and everyone who believes in them.

Fish starts making suspicious noises early on:

Academic freedom is not a defense against orthodoxy; it *is* an orthodoxy and a faith. The orthodoxy is rational deliberation, and the faith — somewhat paradoxical — is that through rational deliberation we shall arrive at the truth of whose existence rational deliberation is so skeptical.<sup>38</sup>

Of course, this “orthodoxy” is hardly arbitrary, but derived from the original idea of a university as an Ivory Tower, a place removed so far as possible from the bustle and especially the hustle of everyday political life, precisely so that the great questions confronting human beings can be calmly and impartially considered. Fish would leap to object that it is nothing of the sort, and he is certainly correct. The modern university has been drawn from the margin into the center of political life by a multitude of forces, not the least of these being the increasing prominence of academics who, like Fish, justify their own partisan activity with the dogmatic claim that “everything is political” regardless.

Fish soon ups the ante: “But if rationality is always differential, always an engine of exclusion and boundary making, the opposition is never between the rational and the irrational but between opposing rationalities, each of which is equally, but differently, intolerant.”<sup>39</sup> *Never? Equally?* I can hardly imagine an “if” more deserving of a red circle. And one must wonder: which intolerant rationality is Fish using in his book. Or does he move among several? Moreover, if anything counts as rationality, why, then, should we not regard all of his criticisms of other people’s reasoning as irrelevant, so much noise issuing from an opposing rationality? In a note attached to this chapter on “Boutique Multiculturalism,”<sup>40</sup> we read:

The key word is “reason,” which for Kymlicka, as for [Steven] Rockefeller, is a standard that crosses cultural boundaries and will be recognized by all parties (except those that are nuts). But reasons of the kind liberals recognize — abstract, universal, transhistorical — are precisely what the members of many so-called illiberal cultures reject. The application of “reason” in an effort to persuade is not the opposite of imposition but a version of it.<sup>41</sup>

Simply “apply” this view of reason reflexively to Fish’s analysis of reason, and watch it dissolve into incoherent mush: is it, or is it not, the simple, universal, transhistorical truth about reason as such? Whichever horn you choose, the result is the same: the account is self-contradictory, hence incoherent.

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<sup>38</sup> *Ibid.* at 40.

<sup>39</sup> *Ibid.* at 69-70.

<sup>40</sup> *Ibid.* at c. 4.

<sup>41</sup> *Ibid.* at 316.



Matters come to a head with the thirteenth chapter, “Faith before Reason.” The preposition is important here, since Fish claims to reject the opposition between faith and reason, contending instead that they are “mutually interdependent” (correctly so, I believe, though not in the sense Fish means).

The difference between a believer and a non-believer is not that one reasons and the other doesn't but that one reasons from a first premise the other denies; and from this difference flow others that make the fact that both are reasoning a sign not of commonality but of its absence. If, as Neuhaus says, a secularist liberal and a committed Christian recognize and deploy the same “rules of reason, evidence, and critical judgment,” sooner or later they will disagree about whether something is or is not evidence or about what it is evidence of, and such disagreements cannot be resolved by the rules of reason because the rules of reason unfold in relation to a proposition they do not generate. That proposition — God exists or he doesn't, Christ is the word made flesh or he isn't, human nature is perfectible or it isn't — is an article of faith, and while two persons proceeding within opposing faiths might perform identical operations of logical entailment, they will end up in completely different places because it is from different (substantive) places that they began.<sup>42</sup>

This statement requires much more comment than I can give it here. We might begin by noting its common sense appeal; it's surely true that most people do not, and probably could not, establish their own “first principles.” As Plato's Sokrates taught long ago, most people live and die within a particular political “Cave” that (among other things) supplies them ready-made the intellectual architecture in terms of which they conduct their practical reasoning. But to say that, and *know* what of one speaks, requires a vantage point outside of the Cave, whence Caves as such can be understood, both in relation to each other and to this sun-lit outside. That is, the limitations that characterize the vast majority of people's thinking are not limitations on human reason *per se*.

In order to see how an ascent out of one's Cave is in principle possible, it is essential that one not confuse reason with “rules of reason” (*i.e.*, deductive logic) — as, most unfortunately, has become the pervasive modern conception of reason (and which is at the basis of Fish's argument). This, along with the misbegotten Fact-Value distinction (offspring of this emaciated notion of reason coupled with Positivism's long-since discredited misunderstanding of modern science) is ultimately responsible for the ascendancy of irrational, nihilistic perspectives such as that of Rorty and Fish. The ancient, and far superior view is well represented by the famous Divided Line in Plato's *Republic*, which depicts our four distinct rational powers: imagination; trust, or faith (*pistis*); discursive reasoning (as in logical deduction); and intellecting, or rational intuition (*noësis*).<sup>43</sup> One never has faith, for example, without some “reason” for it; it is often based on rational induction from more or less incomplete, and often heterogeneous, evidence. Thus it is a variable: in some things we have “complete faith,” in others we “barely trust.” But we are inescapably reliant upon this rational power in that we must have a basic trust in perception in order to learn anything about the world (including the limitations on perception: to explain why a stick appears to bend as we insert it into a pail of water, we must trust that it does indeed appear to bend). However, the first

<sup>42</sup> *Ibid.* at 263.

<sup>43</sup> *The Republic of Plato*, ed. and trans. by A. Bloom (New York: BasicBooks, 1968) at 509d-511e.

“propositions” that Fish treats as incorrigibly matters of faith, need not be so at all. Rather, they may be established by a combination of inductive reasoning whereby one ascends from the particular to the general, and rational intuition whereby one recognizes the terminal principle for what it is — much as Aristotle is led to his metaphysical principles, Darwin to the first principles of Evolution, or as the Savoyard Vicar of Rousseau’s *Emile*<sup>44</sup> quite reasonably ascends to the belief in a benevolent god.

Fish assures us that we are merely “spinning our wheels” if we attempt to “bracket our first premise and make it the object of critical attention.”<sup>45</sup> Again, there is a sense in which he is correct, but it’s not his sense. He means by first premise something like “God exists.” This sort of *conclusion* becomes a first principle of subsequent reasoning by virtue of its logical place, not because it is temporally one’s starting point. But the first premise of *all* reasoning is the “law of (non)contradiction.” Its validity cannot be arrived at either inductively or deductively, as it would necessarily be presumed in any attempt to prove it. Rather, one “knows” it to be true “instinctively,” that is to say, on the basis of one’s rational intuition. Reflecting upon it, one realizes that it is inherent in reasoning *per se*.

Fish could be excused for not understanding these matters, however, and so the resulting failures of his reasoning would not prove him a sophist — merely that he’s not as smart as he thinks he is. But he obligingly removes all doubt in the course of pretending to argue that even the most elementary truths of mathematics are not necessarily true, but mere conventions:

Adhering to the convention that two plus two equals four is like adhering to the convention that we drive on the right side of the road or adhering to the convention that red means stop and green means go. You do it not because you are invested in its truth but because it is only if everyone adheres to the same conventions that automobiles won’t crash and contracts will be enforceable. The truths of arithmetic are (for most of us) indisputable because it is in no one’s interest to dispute them and in everyone’s interest to agree about them. All of us ... use them and use them in situations in which it is understood that what is at stake is the maintenance of civil order....<sup>46</sup>

Oh, please, Mr. Fish — as if you really cannot understand one of the most basic distinctions in philosophy (between Nature and Convention), and thus can’t tell the difference between that which is due purely to human making and agreement (such as traffic rules, weights and measures, and the meaning of words) and that which isn’t. Once the meanings of the words “two” and “four” are (conventionally) established as referring to twoness and fourness, the words can be used to express correctly the natural fact: two plus two equals four, everywhere, always, by the strictest necessity imaginable. Did you hear the one about the free-thinking woman who happened to have two sets of twins? She was a student of Dr. Fish who had persuaded her that the truths of arithmetic were mere conventions. And so, being of an unconventional disposition, she preferred to think that two plus two is three. It saved her money when she bought her kids bathing suits, but left her quite puzzled when she took them swimming and one was always naked. Or how

<sup>44</sup> J.J. Rousseau, *Emile*, trans. A. Bloom (New York: BasicBooks, 1979).

<sup>45</sup> *Supra* note 3 at 267.

<sup>46</sup> *Ibid.* at 270.

about that other Fishite who preferred to believe that two plus two is six? When he accidentally swallowed poison, he immediately called a doctor, who told him to take at least six aspirin as an antidote. So he shook two tablets out of the bottle, swallowed them, then two more, swallowed them also, then laid down to rest for the last time.

Civil order often requires getting the natural facts right, as well as adhering to relevant conventions. Automobiles do not crash merely because some conventions have been violated; the laws of physics (*physis*, Greek for “nature”) have a lot to do with it. That airplanes fly and pigs don’t is not due to our using conventions that our porcine friends are incapable of framing. But according to Fish, we have merely been lucky so far: “As yet two plus two equals four has not become ... a flashpoint of disagreement, but it could....”<sup>47</sup> Here he calls Hobbes to his side, as issuing a similar warning about the truths of geometry — that the only reason they are not disputed (as is the doctrine of justice) is “because men care not in that subject what be truth, as a thing that crosses no mans ambition.”<sup>48</sup> Fish’s reference here is ironic, for Hobbes’ point is that there is always someone brazen enough to dispute even the most indisputable of truths, provided that there is some personal advantage to be gained in doing so.

How does the most elementary truth of arithmetic — a truth any four-year-old child playing with its fingers can literally *see* — cross the ambition of Dr. Fish? Here it is helpful to consider Leo Strauss’ discussion of what essentially defines a sophist:

The sophist is a man who is unconcerned with the truth, or does not love wisdom, although he knows better than most men that wisdom or science is the highest excellence of man. Being aware of the unique character of wisdom, he knows that honor deriving from wisdom is the highest honor. He is concerned with wisdom, not for its own sake, not because he hates the lie in the soul more than anything else, but for the sake of the honor or prestige that attends wisdom.<sup>49</sup>

The first purpose of *The Trouble with Principle* is to show how devilishly clever is Fish the man, how much wiser than all those liberal theorists who have not risen to the wisdom that there is no wisdom, no philosophy, only sophistry. To be the ultimate sophist — the Madonna of all Sophists — capable of arguing for or against anything at any time, one must insist that there are no restraints, absolutely no absolute truths limiting what it is reasonable to believe or say. As Fish asserts by way of beginning the final section of this book (entitled “Credo”), “there is nothing that undergirds our beliefs, nothing to which our beliefs may be referred for either confirmation or correction....”<sup>50</sup> Why read on?

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<sup>47</sup> *Ibid.* at 271.

<sup>48</sup> *Ibid.*

<sup>49</sup> L. Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953) at 116.

<sup>50</sup> *Supra* note 3 at 279.