

THINK

Contrarian Reflections on Life, Culture, Politics, Religion, Law, and Education

Contrarian Reflections on Life, Culture, Politics, Religion, Law, and Education

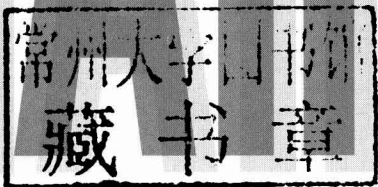
AGAIN

STANLEY

FISH

THINK

AGAIN



Contrarian Reflections on Life, Culture,
Politics, Religion, Law, and Education

STANLEY FISH

PRINCETON UNIVERSITY PRESS
Princeton & Oxford

Copyright © 2015 by Princeton University Press

Published by Princeton University Press
41 William Street, Princeton, New Jersey 08540

In the United Kingdom: Princeton University Press
6 Oxford Street, Woodstock, Oxfordshire OX20 1TW

press.princeton.edu

Jacket design by Chris Ferrante

All of the essays in this volume, with the exception of the introduction,
were originally published by the *New York Times*.

All Rights Reserved

ISBN 978-0-691-16771-8

British Library Cataloging-in-Publication Data is available

This book has been composed in ITC Cheltenham Std
and ITC Franklin Gothic Std

Printed on acid-free paper. ∞

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

To my brothers, Ron and Peter,
and in memory of my sister Rita
who was surprised to find that
her brother could be funny

INTRODUCTION

The essays collected here are culled from the three hundred or so columns I wrote for the *New York Times* from 1995–2013. The order in which they appear is intended to bring out connections and themes that were perhaps not evident in their serial publication over a long period. One theme, often repeated, is that although the columns were published in the Opinion section of the newspaper, they are not, for the most part, opinion pieces. That is, they are less likely to declare a position on a disputed matter than to anatomize, and perhaps critique, the arguments deployed by opposing constituencies. There are two judgments one might make on a position: (1) the arguments put forward in support of it are weak and incoherent, and (2) it is wrong. These judgments, I contend, are logically independent of each other: it is quite possible that you could find the case being made for a position unpersuasive and still be persuaded of its rightness. Well, yes, you would be saying, I think those guys have it right, but the reasons they give for their conclusion (with which I agree) are contradictory and don't hold together. And conversely, you might be impressed by the elegance of the reasons put forward in defense of a point of view you nevertheless reject; you would be saying, yes, they have the better of it if the measure is logical cogency, but nevertheless, they're wrong.

Because I separate these two kinds of judgment—formal and substantive—a reader of these columns will often not know where I stand on the issue being discussed. The fact, for example, that I excoriate and ridicule the reasoning of professional atheists Richard Dawkins, Christopher Hitchens, and Sam Harris does not mean that I am myself a theist; it just means that I find their arguments slipshod and even silly. I might well be of their mind at bottom and still think that they are poor advocates for the conviction we share. Many readers found my refusal to lay my substantive cards on the table infuriating and agreed with Larry, who sent in this comment on November 2, 2010: “Could you do us all a favor and state in a simple declaration what you believe, because, man, you're killing me.”

Sorry, Larry, that's not what I am doing in these columns. If what you want are opinions and protestations of belief, there are plenty of places to find them, but not here. This is not to say that I make

no strong assertions; only that what I assert doesn't take the form "affirmative action is right" or "affirmative action is wrong" but rather, the form "this particular argument (for or against) doesn't prove what it claims to prove." After I'm done with saying that, the substantive issue remains unaddressed, or at least unresolved, and my readers are no more in the know about where I come down than they were at the beginning. One might say, then, that although I am writing in plain sight, I'm in hiding.

But not always. A number of columns are autobiographical and even confessional. A selection of these is presented in part 1 ("Personal Reflections") of this collection. There readers will learn about my anxieties, my aspirations, my eccentricities, my foibles, my father, and my obsessions—Frank Sinatra, Ted Williams, basketball, and Jews. What links the columns, even when their subject matter is disparate, is a relentless internality, a tendency to live "in my head," a preference for activities that are absorptive, an affinity for enclosures and closure, and a fear of anything new and open.

In part 2 ("Aesthetic Reflections"), I (inadvertently) reveal more of myself in a series of meditations on movies, television, art, and music. Not surprisingly, my affinity is for self-contained, highly structured artifacts that refuse political engagement and celebrate craft. Author Colm Toibin is, in effect, my spokesman when he refuses to ground his art in autobiography. Writing is "not therapy," he declares, and I would add that writing is not self-expression or a call to justice or a thousand other things. Writing is the effort to make something out of words, and the political or sociological significance of the thing made is finally of less value than the process of making. Art, of course, must make use of political and social themes, but it is not in service to them; rather, it is the other way around. This is true even of country music, which, though it wears its politics (family values, patriotism, low-church Christianity) on its sleeve, is not aggressively political. The politics is just part of the package; it's not the message. The message is the unity and coherence of the country music vision of life, a vision that may or may not be true to the everyday experiences of actual people but is relentlessly true to the fictive world it ceaselessly elaborates. My admiration for country music is of a piece with my admiration for Charlton Heston, whose work as an actor is often dismissed by those who dislike his politics. What does one thing have to do with the other? Heston, like Kim Novak, was the victim (as well as the beneficiary) of a God-given physical beauty; it was all too easy

for critics of both actors to linger on their impressive surfaces and fail to see the sensitivity and inward fragility that marked their best performances.

In part 3 (“Cultural Reflections”) I myself turn political, in a way. The politics is antiliberal. Liberalism, as a form of thought and a mode of political organization, privileges impartiality. The idea is to develop procedures that are to the side of or above or below partisan agendas, procedures the implementation of which will neither advance nor exclude anyone’s vision of the good and the good life. My argument (somewhat in tension with the argument of part 2) is that there are no such procedures and that the talismanic values that supposedly accompany them—fairness, objectivity, neutrality—are either empty or filled with the substantive claims they supposedly exclude. The world of liberal abstractions has efficacy and relevance in the pages of theorists like John Rawls, but in the everyday world of local choices and decisions, one acts on the basis of what one believes and desires. There is no road from the precepts of high philosophy to the solution of any real-world problem. Your account of truth or evidence may be right or it may be wrong, but whichever it is, it will not generate recipes for action.

This is what I mean when I declare that philosophy doesn’t matter, and this is also the lesson deconstructive or postmodernist thought (otherwise known as “French Theory”) preaches when it debunks the idea of a master narrative from the vantage point of which undoubted facts and universally compelling values come clearly into view. That promise, forever renewed and forever unredeemed, has recently taken a new form in the digital computer: the limitations that attend the partial perspective inhabited by all mortal men can be overcome, we are told, if we harness ourselves to an engine that knows no perspective and delivers undistorted (because unselected) data. The problem is that data randomly gathered—gathered, that is, under the impetus of no purpose or point except to have more—remains inert, and the addition to it of purpose or point will always be arbitrary. A computer (like IBM’s Watson) can count things and perform calculations on what it counts, and even reach “conclusions” about what does and does not match, but it cannot produce meaning; that is the province of human beings who begin with (and within) purposes and reach conclusions not on the basis of “impartial” evidence—evidence that sits, unsituated, in an abstract space—but on the basis of commitments and beliefs already in place and internalized.

That is why double standards are inevitable and right, and why favoritism is good and moral: double standards are invoked when you prefer the beliefs you hold to the beliefs others hold and distribute rewards accordingly; favoritism occurs when you are loyal to those who are loyal to you because they share the same values, which are local, not universal. The alternative is to award your loyalty by consulting an independent measure unattached to anyone's preferences. My message in these columns is that there is no such measure.

This might sound like relativism, but it's the reverse. It's standing up for your commitments and for your comrades rather than standing up for a principle no one has seen and whose shape is always in dispute. It's politics, and that is the theme of part 4 ("Reflections on Politics"). The rap against politics has always been that its judgments are partial; to label a decision "political" is to say that it is suspect because it proceeds not from an overarching and universal principle but from a local calculation of interest. "It's all spin," is the complaint. But the complaint has force only if there is an alternative to spin, if one could persuade simply by sticking to the facts as they exist apart from any particular point of view that might distort them. But facts are known *as* facts only within a particular point of view in relation to which they are obvious and perspicuous; to those who are ignorant of, or have rejected, that point of view, they will not be facts or even be visible. Knowledge is irremediably perspectival, and perspectives are irremediably political. Spin is not an obstacle to thought; it is the engine of thought. To hold out for a decision procedure that has not been spun is to hold out for the God's-eye point of view in which things are known face-to-face; perhaps someday, but now, as mortals, we see through a glass darkly, and the only question—not to be answered by an algorithm or a "decision procedure"—is through which dark glass we shall be seeing. It follows then that the perpetual search for a common ground, for an apolitical politics, is a fool's errand, an impossible dream; and in the absence of a common ground—despite the triumphant cries of those who claim to have found one (never the same one)—identity politics, the whipping boy of every self-righteous liberal, makes perfect sense, makes the same sense as preferring the beliefs you think to be right to the beliefs you think to be wrong. (Why would anyone do anything else?)

The unhappy (to many) consequence of this train of thought is that it makes unavailable any principled way of labeling an action

as either obviously right or obviously wrong. Take “hate speech,” so called. I say “so called” because in order to identify something as hate speech, you would have to be in possession of a baseline rationality in relation to which some statements could be judged as resting on nothing but malignant ill will; those statements, then, could be said to proceed from no motive but the motive to inflict harm; they would be hate speech rather than political speech or nationalistic speech or religious speech. The problem is that no one accused of spewing hate speech would accept that description of his words; he would say, in fact, does say (read the websites of Holocaust deniers), “I am only speaking the truth, however difficult it may be for some to hear it; indeed, they contrive not to hear it by stigmatizing it as hate speech.” This doesn’t mean that there is no such thing as hate speech but that the determination of what is or is not hate speech can never be independent of the commitments and values of the person who is making the determination. Hate speech *is* a category, but it is an unstable category whose content varies with politics.

Of course, “hate speech” is a legal category, and the most significant political issues sooner or later become legal issues, at which point the politics of the matter is supposedly left behind (hence the title of part 5, “Reflections on the Law”). But since a legal issue must be framed, and the framing is never an innocent act but one fraught with ideological implications, politics is in the mix at every stage of the legal process. Consider, for example, the vexed topic of affirmative action. If affirmative action is defined as “reverse racism” (as it is by Justice Clarence Thomas and others), the issue immediately becomes one of fairness, and the question is, “Is it fair that those who did not cause the harms of past discrimination must now pay for it simply because of the color of their skin?” The question is rhetorical and the answer is directed. If, however, affirmative action is defined as an effort to remedy the deplorable consequences of state-produced wrongs, the questions put to it are quite different: “Does it work?” “Are the inconveniences experienced by some outweighed by an increase in the general good, or do the costs exceed the benefits?” These questions are linked to the calculation of empirical effects. The question, “Is it fair?” turns its back on empirical calculations and insists on applying the standards of formal, abstract concepts. It is the history of philosophy not the history of race relations in the United States that controls the discussion. It is as if racism were a concept

that came down with the Ten Commandments rather than a category that emerged in the wake of the historical acts that led men first to give it a name and then to propose remedies for it.

Much the same tension—between history and principle—structures disputes that arise under the rubric of the First Amendment. Is the infusion of enormous sums into the political process to be understood as an extension of the right to free speech (money talks) or is it to be understood as an impediment to the workings of democracy and as a dilution of the right of every citizen to have a vote that counts as much as the vote of any other citizen? Must the production of “crush videos” in which kittens are brutally killed (the video-makers are not doing the killings, just filming them) to be protected as an instance of artistic expression or should it be criminalized because it encourages the acts it depicts and contributes to the coarsening of society? Should the action of militantly antigay “Christians” who show up at soldiers’ funerals with signs proclaiming “Thank God for dead soldiers” be classified as a contribution to the marketplace of ideas where the moral status of homosexual acts remains a live issue, or should it be regarded as an intentional infliction of emotional distress on fathers, mothers, sisters, and brothers who are already experiencing more pain than they can bear? Is the First Amendment a theology, a veritable deity that brooks no rivals and refuses to bend to circumstances, or should the First Amendment value of free expression be weighed in the balance with other values that occasionally trump it?

One value that can (at least potentially) trump First Amendment values is enshrined in the amendment itself—the free exercise of religion. The religion clause is anomalous in that it singles out a form of speech for both special privilege and special suspicion in a context that declares all forms of speech equal. The free exercise clause says that religious expression deserves special solicitude; the establishment clause says that religious expression harbors a special danger if it is allowed to influence the public sphere; yet the First Amendment says that all speech (except treason, libel, and incitement to violence) is to be held in the same positive regard. If we live in a liberal state—a state that in Ronald Dworkin’s words is neutral between competing visions of the good—the special attention paid to religion in the state’s primary document is a problem, a dilemma with two horns: if the free exercise clause is read strongly and “exercise” is understood to include religiously inspired action as well as religiously inspired speech, the state is compelled to protect activities (like dis-

criminatorial hiring practices, the refusal to serve in the military, and the ending of education at the eighth grade) that are not allowed to the general population; if the establishment clause is read weakly and aid to religious institutions is justified on the basis of “even-handedness,” the danger feared by James Madison and Thomas Jefferson—the danger that the state and religion will become “entangled” and the civil sphere eroded—will be actively courted. And, conversely, if the free exercise clause is read weakly and is extended only to thoughts and expression (i.e., no peyote in religious rituals), and the establishment clause is read strongly to exclude religious participation in public life (i.e., no prayers in the schools), strong religionists will regard themselves as victims of discrimination. All these permutations, and several more, are on display in the cases discussed in part 6, “Reflections on Religion.”

For many *Times* readers, these dilemmas are artifacts of a mistake, the mistake of taking religion seriously. They agree with Richard Dawkins, Christopher Hitchens, and Sam Harris, who dismiss religion as a relic of the Dark Ages, as a form of mystical thinking, as a fairy tale that has led to the deaths of millions, if not billions. These “New Atheists” ridicule a form of thought anchored not by empirical evidence but by faith, which, they complain, is nebulous, subjective, and incapable of falsification. They are the apostles (irony intended) of the religion of science in its most reductionist form: all phenomena are either available to a materialist explanation or they are chimera, figments of a primitive, outmoded imagination. In a series of columns, I explore these New Atheists’ arguments, not in order to prove that there is a God or that faith-based reasoning is “better” than data-based reasoning, but to suggest (as many others have) that these oppositions are too simple, even simple-minded, and that the conundrums the atheists triumphantly display as if they thought them up yesterday have always been a part of the tradition they deride but do not know.

In parts 7 and 8, I return to concerns closer to home: higher education generally and academic freedom specifically. These columns are written under the shadow of the (perennial) “crisis of the humanities,” a crisis to which humanists have responded by mounting ever more elaborate (and unconvincing) justifications of the humanities as a practice that will save democracy, if not the world. These justifications, wittingly or unwittingly, have the effect of implying that the humanities have nothing to say for themselves, that any defense of

them can only be instrumental. An instrumental defense of the humanities is a defense that rests everything on the humanities' usefulness to some other project—a robust economy, the realization of democratic principles, a peaceful world. The question posed to the humanities is “What are you good for?,” and the answer is assumed to issue from a measure of “good” that the humanities do not contain. The answer given in the columns reprinted here is that the humanities are good for nothing, for that is the only answer that preserves the humanities' distinctiveness. If humanistic work is valued because of what it does politically or economically or therapeutically, it becomes an appendage to these other projects, and in a pinch it will always be marginalized and perhaps discarded when its instrumental payoff fails to arrive, as it always will. The paradox is that the stronger the case made for the utility of the humanities, the weaker the case for their support. In order to be truly healthy, at least in an internal way, the humanities must be entirely disassociated from the larger world of political/social/economic consequences, must, that is, be appreciated for their own sake and for no other reason.

Although the phrase “ivory tower” is often used in derision, it is one that humanists should embrace, for it is only by embracing it that the humanities, and liberal arts education in general, can be distinguished from the forces that are always poised to turn them to foreign purposes, to purposes not their own. The distinctiveness of the humanities and liberal arts education rests on their inutility, on their fostering a mode of thought that does not lead (at least by design) to the “practical” solution of real-world problems but to a deeper understanding of why they are problems in the first place and why they may never be resolved. That distinctiveness is compromised whenever the liberal arts dance to the tunes of politics, economics, citizen-making, or anything else.

Moreover, it is only in the context of an enforced purity of motive—we do contemplative analysis; that's our job, and we don't do anyone else's—that a defensible account of academic freedom can be formulated. If the work of the liberal arts is narrowly conceived as the search for knowledge, the freedom to pursue that work in a manner unimpeded by external constituencies that want inquiry to reach predetermined conclusions is an obvious and necessary good. But if the work of the liberal arts is expansively conceived to include the alteration of worldly conditions in the direction of prosperity or justice or peace, academic freedom becomes the freedom of academics to

do what they think is right irrespective of what academic protocols, traditionally understood, allow. The limiting force of the adjective “academic” is no longer felt, and academic freedom means nothing because it means everything. Both academic work and academic freedom thrive only if they are attached to precisely defined core activities; to open them up is not only to distort them but to lose them, to make them disappear, which is exactly what happens when academic institutions join the boycott of Israeli universities; the academy ceases to be what it is—a space for disinterested contemplation—and becomes an arm of someone’s ideological agenda.

It might seem, as I noted earlier, that there is a tension, if not a contradiction, between my assertion that politics inflects every form of human organization despite liberalism’s claim to be wholly procedural and my insistence that the liberal arts project hold itself aloof from politics and maintain a purity of motive and performance lest its distinctiveness be entirely lost. But the contradiction is only apparent. The argument that politics is everywhere and cannot be expelled or bracketed is made on a very general level: short of revelation or absorption into eternity, any action taken will always be challengeable from an alternative perspective; there is no hope, in this vale of tears, of escaping perspective altogether, and perspective is another name for politics. Yet within this condition (the human condition) marked by the pervasiveness of politics, there are differences that make a difference. The politics that is appropriate to the academy involves decisions about personnel, curricula, requirements, class size, and the like. Those involved in those decisions surely have conflicting views as to what is the right thing to do, and it is fair to label those conflicts political. But if a party to such a conflict were to take a position on an academic matter because in his or her judgment it furthered the interests of the Democratic Party or of social justice or economic equality, he or she would be importing the concerns of partisan politics—where the goal is to get someone elected or to implement a policy—into the context of academic politics, where the goal is to establish a matter of fact or verify an experimental hypothesis or come up with a better account of a social or physical phenomenon. Such an admixture, I contend, would have the effect not of enriching academic work but of corrupting it by attaching it to the wrong kind of politics. In saying that, I once again display the preference for enclosures, boundaries, and internal spaces to which I confessed in part I. What goes around comes around.

CONTENTS

<i>Introduction</i>	XI
PART 1 PERSONAL REFLECTIONS	1
1.1 My Life Report	3
1.2 'Tis the Season	7
1.3 Max the Plumber	10
1.4 Is It Good for the Jews?	13
1.5 My Life on the Court	18
1.6 The Kid and Old Blue Eyes	21
1.7 Travel Narrows	24
1.8 I Am, Therefore I Pollute	26
1.9 Why We Can't Just Get Along	29
1.10 Truth and Conspiracy in the Catskills	32
1.11 Moving On	35
PART 2 AESTHETIC REFLECTIONS	37
2.1 Why Do Writers Write?	39
2.2 Two Aesthetics	42
2.3 Norms and Deviations: Who's to Say?	47
2.4 The Ten Best American Movies	52
2.5 Giving Kim Novak Her Due	59
2.6 Larger than Life: Charlton Heston	62
2.7 Vengeance Is Mine	67
2.8 Little Big Men	70
2.9 Narrative and the Grace of God: <i>The New True Grit</i>	73
2.10 <i>Les Misérables</i> and Irony	76
2.11 No Way Out: <i>12 Years a Slave</i>	80
2.12 Stand Your Ground, Be a Man	84
2.13 Country Roads	87
PART 3 CULTURAL REFLECTIONS	91
3.1 Professor Sokal's Bad Joke	93
3.2 French Theory in America	98
3.3 Dorothy and the Tree: A Lesson in Epistemology	105
3.4 Does Philosophy Matter?	109
3.5 What Did Watson the Computer Do?	112
3.6 None of the Answers: Charles Van Doren Finally Speaks, or Does He?	115

VIII CONTENTS

3.7	Can I Put You on Hold?	120
3.8	So's Your Old Man	123
3.9	Two Cheers for Double Standards	126
3.10	Favoritism Is Good	129
PART 4	REFLECTIONS ON POLITICS	133
4.1	Condemnation without Absolutes	135
4.2	The All-Spin Zone	138
4.3	Against Independent Voters	142
4.4	When "Identity Politics" Is Rational	145
4.5	Blowin' in the Wind	149
4.6	Looking for Gas in All the Wrong Places	151
4.7	When Principles Get in the Way	154
4.8	Revisiting Affirmative Action, with Help from Kant	157
4.9	Is the NRA Un-American?	162
4.10	All You Need Is Hate	167
4.11	How the Right Hijacked the Magic Words	170
PART 5	REFLECTIONS ON THE LAW	175
5.1	Why Scalia Is Right	177
5.2	How Scalia Is Wrong	180
5.3	Intentional Neglect	185
5.4	What Did the Framers Have in Mind?	189
5.5	What Is the First Amendment For?	192
5.6	How the First Amendment Works	198
5.7	What Does the First Amendment Protect?	203
5.8	The First Amendment and Kittens	207
5.9	Sticks and Stones	212
5.10	The Harm in Free Speech	215
5.11	Hate Speech and Stolen Valor	220
5.12	Going in Circles with Hate Speech	225
5.13	Our Faith in Letting It All Hang Out	231
PART 6	REFLECTIONS ON RELIGION	235
6.1	The Three Atheists	237
6.2	Atheism and Evidence	242
6.3	Is Religion Man-Made?	246
6.4	God Talk	249
6.5	Suffering, Evil, and the Existence of God	254
6.6	Liberalism and Secularism: One and the Same	260

6.7	Are There Secular Reasons?	266
6.8	Serving Two Masters: Sharia Law and the Secular State	271
6.9	Religion and the Liberal State Once Again	276
6.10	Religion without Truth	281
6.11	Is the Establishment Clause Unconstitutional?	283
6.12	The Religion Clause Divided against Itself	288
6.13	When Is a Cross a Cross?	291
6.14	Being Neutral Is Oh So Hard to Do	294
PART 7	REFLECTIONS ON LIBERAL ARTS EDUCATION	299
7.1	Why We Built the Ivory Tower	301
7.2	There's No Business like Show Business	304
7.3	Tip to Professors: Just Do Your Job	307
7.4	Devoid of Content	311
7.5	What Should Colleges Teach?	315
7.6	Will the Humanities Save Us?	320
7.7	The Uses of the Humanities	324
7.8	The Value of Higher Education Made Literal	331
7.9	A Classical Education: Back to the Future	334
7.10	Deep in the Heart of Texas	339
7.11	The Digital Humanities and the Transcending of Mortality	343
7.12	Mind Your P's and B's: The Digital Humanities and Interpretation	349
PART 8	REFLECTIONS ON ACADEMIC FREEDOM	357
8.1	Conspiracy Theories 101	359
8.2	Always Academicize: My Response to the Responses	363
8.3	A Closing Argument (for Now)	368
8.4	The Two Languages of Academic Freedom	374
8.5	Are Academics Different?	378
8.6	The Kushner Flap: Much Ado about Nothing	384
8.7	Sex, the Koch Brothers, and Academic Freedom	388
8.8	To Boycott or Not to Boycott, That Is the Question	395
8.9	Academic Freedom against Itself: Boycotting Israeli Universities	402
8.10	Boycotting Israeli Universities: Part 2	407
8.11	So Long, It's Been Good to Know You	412
	<i>Acknowledgments</i>	415
	<i>Index</i>	417

PART 1

Personal Reflections