

Jakub Łakomy\*

University of Wrocław

# Academic Freedom on the Frontlines of Culture Wars: Stanley Fish and the Freedom of Expression of a University Teacher<sup>1</sup>

## 1. Introduction

The university today, particularly in Europe and the USA, often appears less as a quiet space for intellectual inquiry and deliberation in search of truth and more as a battle-ground in “culture wars”.<sup>2</sup> The very intense debates about curriculum content (syllabuses), trigger warnings, safe spaces, speaker invitations (and disinitations), pronoun usage, and – particularly intensive – political and ethical debates frequently result in

---

\* ORCID: 0000-0002-6655-6787; e-mail: jakub.lakomy2@uwr.edu.pl

<sup>1</sup> This article was written as part of a research project funded by the National Science Centre, Poland, No. 2023/51/B/HS5/01186.

<sup>2</sup> It is worth mentioning that these problems are important not only within legal philosophy but also psychology and popular culture. See for example: G. Lukianoff, J. Haidt, *The Coddling of the American Mind. How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure*, Penguin Books, New York 2018. The term “culture wars” is hard to define. It denotes deep ideological clashes over values and identity played out in our culture. They are especially relevant at universities. For most relevant sources about culture wars, see: J.D. Hunter, *Culture Wars: The Struggle to Define America*, Basic Books, New York 1991; A. Hartman, *A War for the Soul of America: A History of the Culture Wars*, The University of Chicago Press, Chicago 2016; I.T. Thomson, *Culture Wars and Enduring American Dilemmas*, University of Michigan Press, Ann Arbor 2016; J. Zimmerman, *Whose America? Culture Wars in the Public Schools, Second Edition*, The University of Chicago Press, Chicago 2022; M.P. Fiorina, S.J. Abrams, J.C. Pope, *Culture War? The Myth of a Polarized America*, 3rd ed., Longman, London 2010.

accusations of censorship, intolerance, and threats to the very core of academic life: the freedom of expression.

University teachers find themselves at the epicentre of this storm, on the front-lines of culture wars. They must carefully analyse intense pressures from students, administrators, politicians, and the public. They are often caught between institutional demands for inclusivity or diversity and the traditional academic ethos, emphasizing freedom of inquiry and open debate, where many different arguments can and should be proposed, checked and defended. The traditional liberal ways of defending academic freedom, invoking John Stuart Mill's marketplace of ideas, the pursuit of objective truth, (liberal) democracy, tolerance (toleration) or the respect and autonomy of the individual rational subject, have become increasingly fragile in the recent three decades.<sup>3</sup> Liberal abstract principles seem not to be very useful in an academic environment characterized by deep ideological polarization, identity politics, and disagreement about the purpose and function of the university itself.<sup>4</sup>

In my opinion, this obvious inadequacy of traditional liberal defences shows us a need to search for alternative conceptual, theoretical, philosophical, political and legal sources. Can we understand the complicated dynamics of academic speech in the age of culture wars without drifting towards either nostalgic appeals to a perhaps mythical past of neutral inquiry or towards the logic of censorship, sometimes used (and cynically abused) in the name of social justice? My paper proposes a provocative, challenging, and potentially more realistic (as well as philosophically and pragmatically useful) lens that can be found in the neopragmatist anti-foundationalism of Stanley Fish.

In my article I analyse the thesis that Stanley Fish's neopragmatist anti-foundationalism, particularly his concept of "professional correctness" connected with the notion of "interpretive communities", provides a more analytically powerful, even if challenging, conceptual framework for understanding the nature and limitations of academic freedom of expression than traditional liberal models. It argues that academic freedom, viewed through a Fishian lens, is not an abstract universal right but a context-dependent privilege intrinsic to the specific goals and internally generated standards of the academic profession, offering a necessary, albeit potentially problematic, perspective to use to solve contemporary "culture war" disputes within universities.

Fish, a literary theorist and legal scholar known for his contrarian stances and his critique of liberal values – most famously present in the title of one of his essays (and

<sup>3</sup> J.S. Mill, *On Liberty*, London 1859. Liberal arguments in the context of freedom of speech are very informatively and thoroughly presented by Paweł Jabłoński in: P. Jabłoński, P. Kaczmarek, M. Wojtanowski, *Wolność ekspresji sędziego w czasach kryzysu kultury politycznoprawnej* [Eng. *Freedom of Expression of a Judge in The Times of The Crisis of Political-Legal Culture*], Wydawnictwo Naukowe Scholar, Warszawa 2024, pp. 23–40, and the literature cited there. For a very comprehensive general analysis of the liberal concept of freedom of speech see: W. Sadurski, *Freedom of Speech and Its Limits*, Kluwer Academic Publishers, Dordrecht – Boston – London 1999.

<sup>4</sup> R. Post, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State*, Yale University Press, New Haven – London 2013, pp. 27–60.

a book) *There's No Such Thing As Free Speech and It's a Good Thing, Too*<sup>5</sup> – offers a set of arguments and proves several theses that, in my opinion, fundamentally change the very basics of the debate. By questioning the concepts of abstract principles, neutral procedures, and objective meaning on which liberal defences of a certain scope of academic freedom (of expression) typically rely, Fish forces us to confront the radically contextual, conventional, and inherently constrained nature of all expression, including academic expression, which is the topic of my analysis.

Drawing upon the insights developed throughout the analysis of Fish's broader interpretive theory, my paper will use his core concepts, particularly interpretive communities, the social construction of meaning, the critique of foundationalism, and the notion of professional correctness, to re-examine the problem of academic freedom of expression of university teachers. The central argument is that Fish's framework, while attacking liberal illusions, provides a powerful analytical tool for understanding the actual dynamics governing speech within the specific institutional context of the contemporary university. The thesis of this article is that freedom of expression is never absolute (and cannot be absolute) but is always already structured by the implicit rules, shared assumptions, professional goals, and power relations of the relevant interpretive community.

Fish's relevance for this topic stems from the hermeneutic universalism, the idea that all understanding is interpretive and situated.<sup>6</sup> Just as he argues, legal texts lack inherent meaning outside the interpretive strategies of the legal community, so too does "freedom of expression" lack inherent meaning outside the specific practices and agreements that give it content within a particular context.<sup>7</sup> What is more, and what can be concluded from above, the same holds true for the interpretation of each act of speech and expression of university teachers. The neopragmatist insight into the absence of transcendental guarantees becomes the basis for a critique of abstract free speech principles. These principles, Fish argues, are not foundational truths but rhetorical constructs, used strategically within specific arguments and deriving their force

<sup>5</sup> S. Fish, *There's No Such Thing As Free Speech and It's a Good Thing, Too*, Oxford University Press, New York – London 1994. The title of the book is the same as the title of one of the essays inside, which is most important for my analysis. For the specific essay, see pp. 102–119.

<sup>6</sup> R. Shusterman, *Pragmatist Aesthetics: Living Beauty, Rethinking Art*, 2nd ed., Rowman & Littlefield INC, New York – Oxford 2000, pp. 115–138; J. Łakomy, *Critique of legal interpretation: Hermeneutic universalism, interpretive communities, and the political* [in:] *Legal scholarship and the political: In search of a new paradigm*, eds. A. Sulikowski, R. Mańko, J. Łakomy, C.H. Beck, Warszawa 2020, pp. 95–116; J. Łakomy, *Hermeneutic universalism: A post-analytical inquiry into the political of legal interpretation* [in:] *A Post-analytical Approach to Philosophy and Theory of Law*, eds. A. Bator, Z. Pulka, Peter Lang, Berlin 2019, pp. 39–56; J. Łakomy, *Polityczność (teorii) wykładni prawa: perspektywa neopragmatyzmu Stanleya*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2018, no. 3, pp. 24–37.

<sup>7</sup> This is a direct application of the argument that can be found in: S. Fish, *Is There a Text in This Class? The Authority of Interpretive Communities*, Harvard University Press, Cambridge, MA 1980; J. Łakomy, *Polityczność (teorii) wykładni prawa...*, pp. 24–37

not from abstract validity but from their acceptance within a particular community or tradition.<sup>8</sup>

Therefore, instead of asking whether an abstract right to free expression should protect a university teacher's speech, Fish suggests to us, that we should ask different questions: What are the constitutive norms and goals of the specific academic interpretive community in question? What kind of speech contributes to, and what kind of speech undermines, those specific professional aims (e.g., research, teaching, disciplinary advancement)? Who gets to define those aims and police those boundaries? How do power relations within the institution shape what counts as acceptable or "professionally correct" speech? This shifts the focus from abstract rights to concrete practices, institutional contexts, and the internal logic of professional communities.

The approach of Stanley Fish directly challenges the liberal mainstream view, which often treats academic freedom of expression as a special instance of a general right to free speech, perhaps changed by the specific needs of truth-seeking. Fish, by contrast, insists on the particularity of the academic enterprise. In his *Professional Correctness*, he argues that the freedoms are strongly connected with academic inquiry.<sup>9</sup> They are not universal rights but privileges earned and maintained through adherence to disciplinary standards and goals. They are freedoms for the specific purpose of advancing knowledge within a discipline, not freedoms from constraint. This perspective naturally changes debates about "controversial" speakers or "offensive" research: the relevant question for Fish is not primarily whether the speech is protected by an abstract First Amendment principle, but whether it constitutes a competent contribution according to the internal standards of the relevant academic game.

My article proceeds as follows. After concluding this introduction (which is section one), section two will analyse the relevance of Fish's core neopragmatist concepts – hermeneutic universalism, interpretive communities, anti-foundationalism, context-dependence, and especially "professional correctness" – for analysing academic freedom of expression (which can be of course derived from more widely assumed academic freedom). It will show how these concepts emerge from his broader interpretive theory and how they provide the groundwork for his specific critique of free speech liberal absolutism. In section three, I will use this Fishian framework to critique the dominant liberal understanding of academic freedom, highlighting its reliance on foundationalist assumptions and its failure to adequately grasp academic practice's conventional and constrained nature. Section four, the main and most important analytical part, will reconstruct Fish's alternative conception of academic expression, focusing on the internal constraints imposed by disciplinary norms, professional obligations, and the specific goals of the academic enterprise. It will explore

<sup>8</sup> S. Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*, Duke University Press, Durham – London 1989, pp. 471–502.

<sup>9</sup> S. Fish, *Professional Correctness: Literary Studies and Political Change*, Harvard University Press, Cambridge, MA – London 1999, *passim*.

the provocative implications of his view that limiting certain kinds of expression (mainly speech acts) might sometimes be necessary to protect the very integrity and purpose of that enterprise. Finally, part five will offer concluding reflections, assessing the strengths and weaknesses of the Fishian perspective for the times of culture wars.

## 2. Interpretive communities, anti-foundationalism, professional correctness and free expression at universities

Using Stanley Fish's thought as a critical instrument to analyse contemporary dilemmas surrounding academic freedom is possible only after a presentation of the most important principles constituting his neopragmatist and anti-foundationalist philosophy of interpretation.<sup>10</sup>

Developed across several decades through engagements with literary theory, legal interpretation, and cultural critique, Fish's arguments constitute a coherent, although frequently counter-intuitive, legal and philosophical architecture of concepts. This complicated neopragmatist network is a fundamental challenge to the core assumptions (objectivity, neutrality, textual determinacy, and abstract principles) upon which traditional liberal defences of free expression usually depend.<sup>11</sup> Thinking about the nuances of this architecture, particularly his important concept of "interpretive communities," his radical contextualism, his anti-foundationalism, and his consequent critique of abstract principles, I have to underline that these lenses are extremely important to analyse acts of expression of university teachers entangled in the "culture wars".<sup>12</sup>

At the heart of Stanley Fish's project lies the theory of interpretive communities, arguably his most significant contribution. My reading, based on a broader analysis of his legal thought, is that the American neopragmatist legal philosopher argues that meaning is neither inherent in texts nor solely dependent on individuals' subjective intentions or responses. Rather, meaning emerges from and is constrained by the shared interpretive strategies, assumptions, goals, and standards of relevance

<sup>10</sup> S. Fish, *Is There a Text...*, pp. 13–17, 303–371. Fish emphasizes that principles which are visible in processes of interpretation are often very deeply inscribed, that they are constitutive of the minds to which they are present. That is why, paradoxically, metacognition in this regard (and looking at it from "metaperspective") is extremely difficult, as S. Fish, *Doing What Comes Naturally...*, p. 142: "(...) texts and readers lose the independence that would be necessary for either of them to claim the honor of being the source of interpretive authority; both are absorbed by the interpretive community which, because it is responsible for the texts those performances bring into the world". Dear Reader, you should interpret this and previous sentence having this in mind!

<sup>11</sup> S. Fish, *Professional Correctness...*, pp. 41–70. Fish analyses disciplines as having specific objects of attention and protocols of inquiry, which would be important later, when one thinks about freedom of expression.

<sup>12</sup> These are widespread assumptions in Fish's theory. See, for example: S. Fish, *Doing What Comes Naturally...*, pp. 342–355; *idem*, *The Trouble with Principle*, Harvard University Press, Cambridge, MA 1999, pp. 279–308; *idem*, *There's No Such Thing...*, pp. 102–119.

employed, often tacitly, by members of a specific community. We read, understand, and make sense of the world from within such a community, be it lawyers interpreting a statute, literary critics analysing a poem, or scientists evaluating experimental data. The university itself, and more specifically, different academic disciplines, function for Fish as powerful, although internally complex and sometimes contested, interpretive communities. This immediately suggests that academic speech cannot be understood in a vacuum but only in relation to the specific interpretive "game" being played within the academic community.

This emphasis on community practice is rooted in Fish's anti-foundationalism. He coherently argues against the existence of any neutral language, objective facts, or transcendent principles that could serve as an external anchor for interpretation or judgement. All facts are dependent upon theory; all perceptions are dependent upon interpretation. This directly leads to his notorious critique of abstract principles like "justice", "fairness", or, most relevantly here, "free speech".

Such terms, Fish argues, have no independent or fixed meaning outside the specific contexts and historical circumstances in which they are invoked and given content according to the prevailing assumptions of an interpretive community. They are "empty containers" that can be filled with whatever content serves the interests and aligns with the beliefs of those using them in a particular rhetorical situation.

This is the crucial philosophical move behind the provocative title, *There's No Such Thing As Free Speech...* Fish does not deny the empirical reality of people speaking or the political value many place on open discourse. He denies the existence of "Free Speech" as a foundational, abstract principle that operates above or outside specific contexts and community agreements to determine automatically what speech is permissible.<sup>13</sup> For Fish, any claim for free speech is itself an argument within a particular context, advancing a particular political or institutional vision, not an appeal to a neutral, universally valid standard.<sup>14</sup> What counts as "free," "protected," or "legitimate" speech is always the result of prior interpretive and political work performed by a community according to its situated values and goals. There are no context-free rights, only context-specific practices permitting or prohibiting certain utterances.

The second, equally provocative part of Fish's title: *...and It's a Good Thing, Too* reveals another important aspect of his thought: the inevitability and necessity of constraint when we interpret text, speech and different forms of expression. If abstract

<sup>13</sup> S. Fish, *There's No Such Thing...* p. 102. Fish argues that "free speech" is "not an independent value but a political prize," and its content is determined by whatever substantive vision currently dominates.

<sup>14</sup> This aligns Fish's neopragmatism with the broader poststructuralist critique of (seemingly) neutral concepts as being infused with *the political* and specific historical assumptions. Neopragmatism is not the only critical stream in legal philosophy that argues in such a way. This line of critique is even more visible in Critical Legal Studies Movement. Cf. R. Mańko, *Judicial decision-making, ideology and the political: towards an agonistic theory of adjudication*, "Law and Critique" 2022, vol. 33, pp. 175–194, <https://doi.org/10.1007/s10978-021-09288-w>.

principles cannot guide us, and meaning arises only within structured community practices, then completely “free” expression – expression unbound by any norms, goals, or relevant standards – would be meaningless noise.<sup>15</sup> As Fish argues, communication and understanding are only possible because our speech is always constrained by shared assumptions, conventions, and implicit rules of the game.<sup>16</sup> We can only make sense to each other because we operate within mutually intelligible frameworks. Therefore, constraints are not the enemy of meaningful speech but its precondition. Some form of regulation, some demarcation between acceptable and unacceptable speech based on the purposes of the specific “speech situation” or “interpretive community,” is unavoidable and desirable if speech has any point or is to achieve any goal.

This general argument finds its specific application to the academic context in Fish’s “professional correctness” concept. Fish insists that the university and its various disciplines should not be mistaken for Hyde Park Corner – a space for wholly unregulated expression. Instead, academia is a purposive enterprise with specific, although contestable, professional goals: advancing knowledge through research, transmitting that knowledge through teaching, and certifying competence.<sup>17</sup> These goals define the relevant standards of correctness for academic work and academic speech. “Professional correctness” refers to adhering to the established (though potentially evolving) methodologies, argumentative norms, and moral commitments constituting competent practice within a given academic field or institution.

These ways of thinking shape Fish’s distinctive view of academic freedom. For him, academic freedom of expression is not a special case of a general First Amendment right, nor is it primarily justified by its contribution to an abstract “marketplace of ideas” aimed at discovering transcendent Truth (a concept Fish rejects). Rather, academic freedom is instrumental and derivative: it is the freedom necessary for academics to perform their professional duties according to the internal standards of their disciplines without inappropriate external interference. It is the freedom to pursue research questions that have been agreed to be relevant by the discipline, to use accepted methodologies, to present findings, even unpopular ones, and to teach course material agreed to be appropriate by professional consensus – all within the bounds of professional competence and moral conduct as defined by the academic community itself.

Therefore, in Fish’s view, academic freedom of expression is inherently limited by professional correctness. It does not entail the right to say anything one pleases within

<sup>15</sup> S. Fish, *There’s No Such Thing...*, pp. 110–114. Fish argues that meaningful speech requires “intelligibility”, which depends on shared norms and constraints.

<sup>16</sup> *Ibidem*, p. 104: “Speech, in short, is never a value in and of itself but is always produced within the precincts of some assumed conception of the good to which it must yield in the event of conflict.”

<sup>17</sup> S. Fish, *Professional Correctness...*, pp. ix–x, 41–70. For a defence of the university’s limited, specific mission see also: *idem*, *Save the World on Your Own Time*, Oxford University Press, New York 2012; *idem*, *Versions of Academic Freedom. From Professionalism to Revolution*, The University of Chicago Press, Chicago – London 2014.

the university context, regardless of its relevance to disciplinary inquiry or its violation of professional standards. It does not protect incompetence, deliberate falsification, or speech that fundamentally undermines the university's core educational or research mission (as defined by the relevant academic community). The freedom is professional, not personal or broadly political. It is the freedom to do one's job properly according to the standards of the profession, not a license for unrestricted self-expression.

This set of interconnected concepts – interpretive communities providing context and conventional constraints<sup>18</sup>, anti-foundationalism rejecting abstract principles like “free speech,” the recognition of constraint as necessary for meaning, and the specific notion of professional correctness defining the goals and standards of the academic enterprise – forms the core of the Fishian lens through which this article analyses contemporary debates about academic freedom of expression. It is a lens that shifts the focus dramatically: away from abstract rights and universal principles and towards the concrete practices, institutional contexts, professional norms, and internal power dynamics that actually shape what can be said, by whom, and with what consequences within the university.

Understanding this set of interconnected concepts is crucial before proceeding to critique the inadequacies of the liberal mainstream view from this perspective. If “Truth” is unavailable as an external benchmark, the purpose of academic research shifts, in Fish's account, to the production of knowledge agreed to be significant and valid according to the specific internal standards and disciplinary protocols of the relevant academic interpretive community. This reconceptualization implies that not all forms of expression of university teachers contribute positively or neutrally to this situated disciplinary goal. Speech demonstrating methodological incompetence, ignoring established disciplinary evidence, engaging in deliberate falsification, or simply addressing questions deemed irrelevant by the community's current research paradigms does not constitute the “search for truth” (as internally defined) but actively hinders or distorts it.<sup>19</sup> Therefore, academic freedom cannot be an abstract right helping a universal quest for transcendent knowledge; rather, as Fish argues, it must be understood as freedom contingent upon adherence to the specific professional standards that make disciplined inquiry possible. I will analyse it in greater detail in section four, but first we have to apply Fish's theory to the liberal concept of freedom of speech.

<sup>18</sup> S. Fish, *Doing What Comes Naturally...*, pp. 141–160.

<sup>19</sup> For overviews of liberal theories of free speech in legal sciences and legal philosophy, besides already cited work of Wojciech Sadurski (*Freedom of Speech...*); see: F. Schauer, *Free Speech: A Philosophical Enquiry*, Cambridge University Press, Cambridge – London – New York 1982; *The Oxford Handbook of Freedom of Speech*, eds. A. Stone, F. Schauer, Oxford University Press, Oxford 2021.

### 3. Dismantling the liberal vision of academic freedom of expression: A Fishian critique of mainstream free speech justifications

Having in mind the conceptual and philosophical toolkit of the American neopragmatist – his emphasis on the primacy of interpretive communities, his anti-foundationalism, his understanding of meaning as radically context-dependent, and his specific notion of professional correctness, I can now start a critical examination of the dominant liberal justifications for freedom of expression and, by extension, academic freedom of expression. The liberal tradition, in its rich and varied history, has offered several powerful rationales for protecting speech, often grounding it in abstract principles assumed to possess universal validity. However, from Fish's anti-foundationalist and contextualist standpoint, these justifications appear not as timeless truths but as specific, historically contingent rhetorical constructs, ultimately relying on the foundational assumptions his work aims to dismantle. Seen through the Fishian lens, these mainstream defences reveal their inherent fragility and philosophical irrelevancy when confronted with the realities of interpretive practice within scientific communities.

Perhaps the most iconic liberal defence rests on the metaphor of the "marketplace of ideas," most famously articulated by John Stuart Mill in *On Liberty* and echoed in American jurisprudence by Justice Oliver Wendell Holmes Jr. The core premise is that truth (or the closest approximation of truth) is most likely to emerge from the free competition of diverse viewpoints in an open forum; censorship or suppression, even of apparently false or harmful ideas, ultimately is not good for this truth-seeking process, because it prevents different opinions from being rigorously tested.

From the neopragmatist perspective of the American legal scholar, this metaphor of marketplace of ideas is fundamentally flawed, because it rests on a series of empirically and philosophically dubious assumptions. Firstly, as I have already argued above, Fish rejects the notion of objective, context-independent "Truth" as the goal of inquiry; knowledge is always relative to the standards and purposes of a particular interpretive community. Secondly, the very idea of a neutral "marketplace" is a fiction. As Fish argues that, there are no neutral spaces or procedures; every context, including the supposed marketplace of ideas, is already structured by pre-existing norms, assumptions, power relations, and definitions of relevance accepted and prescribed by the dominant interpretive community.<sup>20</sup> What counts as a legitimate "idea" worthy of entering the marketplace, what constitutes a valid "argument," and what criteria determine "truth" or "falsehood" are never established by the market but are presupposed in order for the market to function at all. The marketplace, therefore, doesn't lead to truth; it merely reflects and reinforces the currently prevailing truths of the community that regulates it. Fish critiques the marketplace metaphor by arguing it presupposes

<sup>20</sup> Fish argues all reasoning starts from partisan assumptions. See: S. Fish, *Is There a Text in This Class?...*, pp. 338–355.

the very standards of value, relevance, and argumentation it supposedly produces. The "market" is regulated by the dominant interpretive community, thus reflecting, not discovering, its "truths".

Closely related is the epistemological argument that freedom of speech is essential for the pursuit of knowledge and understanding. This justification is particularly prominent in defences of academic freedom which link academic freedom directly to the "free search for truth". Fish's anti-foundationalism views this thesis as a problematic one. If objective Truth is not the goal, then the purpose of academic inquiry shifts to the production of knowledge deemed valid according to the internal standards and disciplinary protocols of the relevant academic interpretive community. This means that not all speech contributes equally or positively to this specific goal. Speech that ignores established methodologies, misrepresents evidence according to disciplinary standards, or is simply irrelevant to the questions pursued by the community is not the "search for truth" (as defined by that community). Freedom within the discipline, for Fish, is contingent on adherence to its professional standards, not an abstract right facilitating a mythical universal quest for truth.<sup>21</sup>

Another major strand of liberal justification centres on individual autonomy. Drawing often on Kantian ethics, proponents of the liberal version of freedom of speech argue that freedom of expression is essential for respecting individuals' dignity and rational agency, allowing them to form their own beliefs, express their convictions, and act as autonomous agents.<sup>22</sup> Fish's works challenge these autonomy-based arguments on multiple fronts. Firstly, his critique of the abstract liberal subject posits that the "autonomous individual" preceding social context is an illusion; subjects are always already constituted by the norms and language of their communities<sup>23</sup>. Therefore, grounding rights in an abstract, pre-social autonomy is philosophically incoherent. Secondly, Fish argues that the very nature of speech is inherently non-neutral and persuasive. When we speak seriously, we almost always intend to affect the beliefs and actions of others to convince them of our viewpoint – an act which, from a certain perspective, could be seen as aiming to alter their current state of "autonomy" rather than simply respecting it.<sup>24</sup> For Fish, the idea of purely expressive speech that makes no claim on the listener is largely irrelevant to the kinds of speech typically at stake in political, legal and academic debates.

<sup>21</sup> Fish argues that excluding "unprofessional" speech is necessary for disciplines to function. It will be discussed in section four.

<sup>22</sup> The Kantian basis for autonomy as a justification for free expression stems from Immanuel Kant's emphasis on rational agency and respect for persons as ends in themselves. See: I. Kant, *Groundwork of the Metaphysics of Morals*, 1785. Liberal legal theorists like Joseph Raz have built upon this; see: J. Raz, *The Morality of Freedom*, Oxford University Press, New York 1986, pp. 369–430, arguing that freedom of expression is crucial for personal autonomy.

<sup>23</sup> S. Fish, *Doing What Comes Naturally...*, pp. 436–467.

<sup>24</sup> S. Fish, *There's No Such Thing...*, pp. 105–110.

Perhaps the most important principle in modern liberal free speech jurisprudence, particularly in the United States, is the demand for state (or institutional) neutrality: the idea that regulations of expression and speech should not discriminate based on the message or ideology being expressed. Fish dismisses this principle as not only practically difficult but logically impossible.<sup>25</sup> He argues that any regulation of speech, any delimitation of a space for speech, inevitably rests on a prior, non-neutral determination of the purpose of that space and the values it serves. The very definitions of what constitutes "speech" versus "conduct," what counts as "harm," or what level of "disruption" is unacceptable, are themselves interpretive judgements based on substantive assumptions.<sup>26</sup> A university deciding which speakers to invite, or which research to fund, or what constitutes plagiarism, is not being neutral; it is making choices based on its specific educational and scholarly mission. For Fish, the appeal to neutrality is a powerful rhetorical strategy used to mask the inevitable partiality of any regulatory framework, often serving to protect the currently dominant ("normal") forms of speech by presenting them as viewpoint-neutral.

Finally, Fish's anti-foundationalism challenges conceptions of free speech as a fundamental right that "trumps" other considerations, such as public order or collective welfare, a view famously associated with Ronald Dworkin's theory of rights.<sup>27</sup> For Fish, "rights," like all other abstract principles, are not pre-existing entities with inherent force but are contingent products of interpretation within specific legal and political communities.<sup>28</sup> Their meaning, scope, and weight are constantly being negotiated and redefined through interpretive practice. To treat "free speech" as an absolute "trump card" is to engage in a form of conceptual essentialism that ignores its status as a historically specific, community-relative value whose application always depends on interpretation in context. The invocation of a "right" to free speech is, again, a powerful rhetorical move within an argument, not an appeal to an external, objective standard that definitively settles the issue.

The consequences of this Fishian argumentation might be helpful for dismantling the abstract, principle-based justifications that form the bedrock of mainstream liberal thinking about freedom of expression. Mill's "marketplace", the objective pursuit of truth, the autonomous individual, institutional neutrality, rights as trumps – all are revealed as resting on shaky philosophical ground, unable to withstand Fish's relentless anti-foundationalist and contextualist scrutiny. If these traditional justifications fail, does this mean academic freedom is indefensible? Not necessarily for Fish, but

<sup>25</sup> *Ibidem*, pp. 111–115, explicitly criticizing the logical coherence of viewpoint neutrality.

<sup>26</sup> S. Fish, *Professional Correctness...*, pp. 85–103. Fish argues that distinctions essential to free speech laws (e.g., speech vs. conduct, harmful vs. harmless speech, permissible regulation vs. censorship) are not derived from neutral principles but are interpretive constructs reflecting the underlying values and goals of the regulating community.

<sup>27</sup> R. Dworkin, *Taking Rights Seriously*, Harvard University Press, Cambridge 1977, pp. xi, 184–205.

<sup>28</sup> S. Fish, *Doing What Comes Naturally...*, pp. 87–102.

it requires a radical reframing. Instead of grounding it in universal liberal principles, Fish seeks to ground it immanently, within the specific purposes, practices, and professional standards of the academic interpretive community itself. The critique of liberalism thus serves not as an endpoint, but as a necessary clearing of the ground, preparing the way for reconstructing a conception of academic expression based on the internal logic of the “academic game.” How Fish attempts this reconstruction, and the implications of his “professional correctness” model, will be the focus of the next section of my paper.

#### **4. The academic game and its (hidden) rules: Fish’s alternative – freedom in professional constraints**

Having demonstrated the philosophical vulnerabilities of mainstream liberal justifications for freedom of expression, I will now look for a positive programme to conceptualize freedom of expression of university teachers in Stanley Fish’s neopragmatism. The American neopragmatist, emphasizing the primacy of practice,<sup>29</sup> offers a radical redefinition of the concept of freedom, particularly academic freedom. It is not based on abstract, universal principles but on the academic enterprise’s concrete, situated and constitutive conventions. If “free speech” as a transcendent principle “does not exist”, meaningful analysis – Fish insists – must shift from abstract “rights-talk” to an examination of the specific “speech situation” in question, identifying its intrinsic goals and the forms of expression.<sup>30</sup>

For Fish, the university, far from being a “miniature, metaphorical public square” or an open marketplace for all ideas, is a highly specific interpretive community (or a complex network of overlapping disciplinary communities), defined by a distinct set of professional objectives and standards. These objectives and standards, collectively termed “professional correctness”, provide the only coherent basis for understanding and delimiting academic freedom (of expression).

The first step in my analysis is to firmly reject the notion of the university as a space dedicated to unrestricted expression. Its primary, defining purposes are specific and limited: the advancement of knowledge through disciplined research and the dissemination of that knowledge through structured teaching, along with associated functions like credentialing and preserving disciplinary memory.<sup>31</sup> These are not vague ideals but concrete tasks performed according to internalized, professionally validated methods and protocols. Consequently, speech within the university context derives

<sup>29</sup> *Ibidem*, pp. 141–160. Stanley Fish emphasises practice over abstract rules here.

<sup>30</sup> S. Fish, *There’s No Such Thing...*, pp. 110–114. He consistently argues that speech is only valuable in relation to a purpose.

<sup>31</sup> S. Fish, *Professional Correctness...*, pp. ix–x, 41–44. Fish explicitly contrasts the university’s mission with seeking social justice or political change directly, see: S. Fish, *Save the World...*

its value and justification instrumentally, based on its perceived contribution to these specific academic goals, not from any intrinsic right to self-expression or its supposed role in a general marketplace of ideas, which Fish already dismissed as illusory.

The professional correctness of different disciplines defines those academic goals. These standards are not static, they evolve over time and vary between disciplines. Crucially, however, they are conventional, established and maintained through the ongoing practices, debates, and gatekeeping mechanisms (peer review, hiring, tenure) of the professional community itself, not derived from external authorities like the state, the church, public opinion, or even the abstract philosophical reason.<sup>32</sup> They represent the implicit “rules of the game” that participants must master and adhere to in order to be recognized as competent players.

In relation to these internal professional standards Fish redefines academic freedom. In his provocative formulation, academic freedom is not freedom from constraint, but freedom to practice one’s profession correctly according to its own internally generated and validated standards, without interference based on external, non-professional criteria.<sup>33</sup> For example, it is the freedom for a historian to pursue research using accepted methods and evidence, even if the findings challenge popular beliefs or political orthodoxies; it is the freedom for a biologist to teach evolutionary theory according to the standards of the discipline, even if it offends certain religious groups; it is the freedom for a literary critic to employ a specific theoretical framework recognized within the field, even if their colleagues prefer another one. Academic freedom, in this view, primarily protects the autonomy of the professional academic community to regulate its own inquiries according to its own standards, shielding it from political, religious, economic, or administrative pressures that seek to impose external agendas or criteria of truth.

This reconceptualization has important implications for the limits of freedom of expression of university teachers in times of culture wars. If freedom is tied to professional correctness, then it does not extend to speech or conduct that violates those professional standards. So, to infer a few obvious conclusions, we have to state that the observations below have to be true.

Firstly and most importantly, incompetence is not protected. All kinds of acts of expression of a university teacher (practically, of course, I think mainly about academic speech) that demonstrate a fundamental lack of understanding of the subject-matter, ignore established data and scientific consensus, use flawed methodologies rejected by

<sup>32</sup> This conventionalist view of standards echoes Thomas Kuhn’s description of “normal science” operating within an accepted paradigm. T. Kuhn, *The Structure of Scientific Revolutions*, University of Chicago Press, Chicago 1962. Fish emphasises the interpretive and rhetorical nature of paradigm maintenance more than Kuhn.

<sup>33</sup> S. Fish, *Professional Correctness...*, pp. 102–114. Protection means primarily protection against non-academic criteria being imposed. See also: R. Post, *Democracy, Expertise...*, p. 64, who similarly emphasises protection for professional competence but within a framework closer to democratic legitimacy.

the discipline, or are simply irrelevant to the ongoing scholarly conversation are not an exercise of academic freedom of expression or but a failure of professional competence.

Secondly, academic misconduct is not protected. Plagiarism, data fabrication, or other research ethics breaches clearly fall outside the scope of academic freedom of expression because they directly violate the core principles upon which the academic enterprise relies.

Thirdly, speech unrelated to the professional role is not protected. While academics retain their rights as citizens, expression outside their area of expertise or unrelated to their professional duties (e.g., purely personal political pronouncements, non-scholarly opinions on unrelated matters) cannot claim the specific protection under academic freedom of expression, even if delivered on campus. Academic freedom protects the scholar against another scholar, not the citizen against the citizen within the university walls.

Fourthly and finally, all “disruptive” forms of expression are not protected either. Speech or conduct that fundamentally prevents the academic enterprise from functioning (e.g., persistently disrupting classes, preventing others from speaking at academic events) also falls outside protection, as it undermines the very conditions necessary for professional practice.

The crucial point for Fish is that the arbiter of what constitutes “professional correctness” versus incompetence, misconduct, or disruption is, and must be, the relevant professional academic community itself, operating through its established mechanisms (peer review, departmental governance, professional associations). There is no external standard. Neither abstract free speech principles nor governmental decree can legitimately override the collective judgement of the profession regarding its own standards and goals.

This reliance on the self-regulating professional community is both the strength and the most controversial aspect of Fish’s model. Its strength lies in providing a strong defence against external interference, against politicians or administrators who cannot legitimately dictate research findings or teaching content based on non-academic criteria. It grounds academic freedom in expertise and disciplinary purpose, potentially offering a more resilient justification than abstract rights in an era where those rights are heavily contested. It also offers a potentially more realistic description of how academic fields often do regulate themselves through internal norms and peer evaluation. This model raises, however, serious concerns.

First of all, we have to remember about the risk of orthodoxy and stagnation. We must ask ourselves, who defines the “community” and its standards? What prevents established figures or dominant paradigms from using “professional correctness” as a tool to suppress dissent, marginalise innovative research that challenges existing assumptions,<sup>34</sup> or exclude scholars from underrepresented groups whose perspectives

<sup>34</sup> Paradigm shifts, as defined by Kuhn.

might question the field's foundations? Fish's faith in the internal corrective mechanisms of professional debate can seem overly optimistic or even complacent about the power dynamics within academia.

Secondly, we have to acknowledge the problem of interdisciplinarity and boundaries. How does the model handle work that crosses disciplinary boundaries or challenges the very definition of a field? Whose "professional correctness" applies when standards conflict? Fish's emphasis on distinct disciplinary games might be an obstacle to crucial interdisciplinary dialogue and critique.

Thirdly, we need to tackle the "who guards the guardians?" problem. If the profession is the ultimate arbiter of its own standards, what recourse exists when those standards themselves become instruments of exclusion, bias, or intellectual stagnation? Fish offers little help beyond the hope that internal debate will eventually correct such excesses.

Fourthly, we will not escape the problem of defining the "academic mission". Stanley Fish assumes the university has specific, identifiable professional goals. But these goals are themselves often fiercely contested, especially in the humanities and social sciences. Debates about curriculum, research relevance, and the university's social role are precisely what fuel many "culture war" conflicts. Whose definition of the "academic mission" should prevail when defining the limits of academic freedom? Fish's model seems to presuppose a level of consensus that may not exist in academia.

Responding to the above criticisms and problems was not my goal and goes beyond the scope of this article. This is an invitation to discussion, including within the Central European and Polish academic community, as the problems facing Polish academia are becoming increasingly similar to those in the US, and Fish's perspective has not yet been used in our discussions.

Despite the above challenges, Fish's framework forces a crucial shift in perspective. It invites us to move beyond the abstractions of liberal rights discourse and confront the concrete realities of academic practice as a situated, conventional, and purposive activity. Even if one rejects Fish's ultimate conclusions about the limited scope of freedom or the self-regulating virtue of professional communities, his insistence on analysing speech in relation to specific institutional contexts and goals provides an indispensable analytical starting point.

Furthermore, Fish's emphasis on convention and rhetoric offers insights into how academic debates, even those concerning freedom of expression itself, actually function. Arguments about academic freedom are not simply appeals to principle but rhetorical interventions aimed at persuading specific academic audiences by invoking shared (or contested) understandings of the university's mission and professional standards. Understanding the rhetorical strategies accepted by different sides in university speech controversies becomes as important as analysing the abstract principles they assume. For instance, appeals to "open inquiry" might function rhetorically to defend established disciplinary boundaries against challenges, while appeals to "harm"

or “safety” might function rhetorically to demand a redefinition of those boundaries based on different community values. Fish’s framework encourages a focus on these performative dimensions of the debate.

It is also very important to recognize that while appearing potentially conservative in its defence of professional autonomy, Fish’s model contains a radically democratic element in its anti-foundationalism. By denying any external source of authority (God, Truth, Nature, Reason, Text), Fish ultimately locates authority solely in the contingent agreements and ongoing practices of human communities.

To summarize the above arguments, Stanley Fish offers a coherent and challenging alternative concept of academic freedom of expression, rooted in his broader neopragmatist philosophy. Rejecting universal liberal principles, he grounds academic expression in the academic interpretive community’s specific goals and conventional standards (“professional correctness”). Freedom is thus reconceived not as freedom from constraint, but as freedom to engage competently in the professional practices of research and teaching, protected from external, non-academic interference, yet subject to internal, professional judgment.

## **5. Conclusions. Navigating the blurry, interpretative battlefields of culture wars: Academic freedom of expression after Fish**

When we apply these arguments to the current culture wars, we may conclude that many conflicts are fundamentally disputes over the definition and application of professional correctness itself. When debates erupt over curricula, research methodologies, speaker invitations, or classroom conduct, they often represent clashes between different factions within (or aspiring to influence) the academic community, each seeking to establish its own vision of disciplinary goals and standards as the legitimate one. The discourse of “free speech” versus “harm” or “inclusivity,” while prevalent, often functions, in Fishian terms, as rhetorical weaponry deployed in this underlying struggle over the rules of the academic game.<sup>35</sup> Fish’s analysis forces us to look past the surface rhetoric of rights and principles and into the power dynamics and competing professional visions at play within the institution of the contemporary university. It suggests that resolving these conflicts requires not an appeal to external authorities or abstract justice, but internal negotiation and persuasion according to the (often contested) norms of the relevant academic community itself.

This perspective offers a powerful critique of simplistic solutions that are often proposed by both the “left” and the “right” sides in culture war debates. It challenges those who would invoke abstract “free speech” principles to defend any form of expression, regardless of its professional incompetence or irrelevance, forcing them to articulate

<sup>35</sup> See for example: M. Jay, *The Weaponization of Free Speech* [in:] *idem, Genesis and Validity. The Theory and Practice of Intellectual History*, University of Pennsylvania Press, Philadelphia 2022.

how such expression serves the specific purposes of the academic enterprise. At the same time, this perspective challenges those who would seek to regulate academic speech based only on external political pressure, subjective feelings of offence, or demands for social justice outcomes that override established disciplinary standards, reminding them that the university's legitimacy (in Fish's view) rests on its adherence to its specific professional mission, not on becoming a direct instrument of broader political agendas.

The deep connection to hermeneutic universalism is crucial here. Hermeneutic universalism's denial of objective foundations compels Fish to turn to community conventions as the sole source of stability and constraint. If meaning and validity are always relative to an interpretive framework, then the standards governing academic speech must be those generated within the academic framework itself. This explains why Fish is so resistant to imposing external criteria (be they political, moral, or even based on other academic disciplines) onto a specific field's practice. Each "game" has its own rules, derived from its own history and purposes.

Fish's scepticism about the role of theory raises questions about the purpose of his own analysis. If theory cannot change practice, what is the point in revealing the conventional nature of academic freedom of expression? Fish might answer that the goal is simply a more accurate description<sup>36</sup>. Yet, such descriptive stance can feel unsatisfying, particularly when confronted with perceived injustices or dysfunctions within academic practice. It seems to offer little guidance for solving the internal struggles over professional correctness or resisting external pressures, beyond appealing to the very professional norms whose definition might be the object of the struggle.

Perhaps, then, Fish's framework is best understood not as a complete normative solution, but as a necessary, although uncomfortable, diagnostic tool. It forces us to abandon simplistic universalism and confront the situated, conventional, and political nature of academic expression and its regulation. It accurately captures the feeling of constraint experienced by academics operating within established norms and highlights the centrality of community agreement (or disagreement) in shaping academic reality. However, to address the normative questions – about justice, fairness, inclusion, and the moral responsibilities accompanying interpretive power – we may need to look beyond Fish's neopragmatic conventionalism.

Ultimately, the "culture wars" on campus reflect deep societal divisions about knowledge, values, identity, and power. As Fish rightly demonstrates, theory cannot offer simple solutions or resolve these conflicts by appealing to abstract principles. However, theory can help us understand the nature of these conflicts more clearly and reflect more critically on the frameworks we use to tackle them. Fish's neopragmatism, grounded in the insights of hermeneutic universalism, provides an indispensable contribution in this task. It forces a realism about the limits of liberal "idealism".

<sup>36</sup> S. Fish, *Doing What Comes Naturally...*, pp. 341–348.

## References

Dworkin R., *Taking Rights Seriously*, Harvard University Press, Cambridge 1977.

Fiorina M.P., Abrams S.J., Pope J.C., *Culture War? The Myth of a Polarized America*, 3rd ed., Longman, London 2010.

Fish S., *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*, Duke University Press, Durham – London 1989.

Fish S., *Is There a Text in This Class? The Authority of Interpretive Communities*, Harvard University Press, Cambridge, MA 1980.

Fish S., *Professional Correctness: Literary Studies and Political Change*, Harvard University Press, Cambridge, MA – London 1999.

Fish S., *Save the World on Your Own Time*, Oxford University Press, New York 2012.

Fish S., *The Trouble with Principle*, Harvard University Press, Cambridge, MA 1999.

Fish S., *There's No Such Thing As Free Speech and It's a Good Thing, Too*, Oxford University Press, New York – London 1994.

Fish S., *Versions of Academic Freedom. From Professionalism to Revolution*, The University of Chicago Press, Chicago – London 2014.

Hartman A., *A War for the Soul of America: A History of the Culture Wars*, The University of Chicago Press, Chicago 2016.

Hunter D., *Culture Wars: The Struggle to Define America*, Basic Books, New York 1991.

Jabłoński P., Kaczmarek P., Wojtanowski M., *Wolność ekspresji sędziego w czasach kryzysu kultury politycznoprawnej*, Wydawnictwo Naukowe Scholar, Warszawa 2024.

Jay M., *The Weaponization of Free Speech* [in:] *idem, Genesis and Validity. The Theory and Practice of Intellectual History*, University of Pennsylvania Press, Philadelphia 2022.

Kant I., *Groundwork of the Metaphysics of Morals*, 1785.

Kuhn T., *The Structure of Scientific Revolutions*, University of Chicago Press, Chicago 1962.

Lukianoff G., Haidt J., *The Coddling of the American Mind. How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure*, Penguin Books, New York 2018.

Łakomy J., *Critique of legal interpretation: Hermeneutic universalism, interpretive communities, and the political* [in:] *Legal scholarship and the political: In search of a new paradigm*, eds. A. Sulkowski, R. Mańko, J. Łakomy, C.H. Beck, Warszawa 2020, pp. 95–116.

Łakomy J., *Hermeneutic universalism: A post-analytical inquiry into the political of legal interpretation* [in:] *A Post-analytical Approach to Philosophy and Theory of Law*, eds. A. Bator, Z. Pulka, Peter Lang, Berlin 2019, pp. 39–56.

Łakomy J., *Polityczność (teorii) wykładni prawa: perspektywa neopragmatyzmu Stanleya*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2018, no. 3, pp. 24–37.

Mańko R., *Judicial decision-making, ideology and the political: towards an agonistic theory of adjudication*, "Law and Critique" 2022, vol. 33, pp. 175–194, <https://doi.org/10.1007/s10978-021-09288-w>.

Mill J.S., *On Liberty*, London 1859.

Post R., *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State*, Yale University Press, New Haven – London 2013.

Raz J., *The Morality of Freedom*, Oxford University Press, New York 1986.

Sadurski W., *Freedom of Speech and Its Limits*, Kluwer Academic Publishers, Dordrecht – Boston – London 1999.

Schauer F., *Free Speech: A Philosophical Enquiry*, Cambridge University Press, Cambridge – London – New York 1982.

Shusterman R., *Pragmatist Aesthetics: Living Beauty, Rethinking Art*, 2nd ed., Rowman & Littlefield INC, New York – Oxford 2000.

Stone A., Schauer F. (eds.), *The Oxford Handbook of Freedom of Speech*, Oxford University Press, Oxford 2021.

Thomson I.T., *Culture Wars and Enduring American Dilemmas*, University of Michigan Press, Ann Arbor 2016.

Zimmerman J., *Whose America? Culture Wars in the Public Schools, Second Edition*, The University of Chicago Press, Chicago 2022.

## Abstract

*Jakub Łakomy*

### **Academic Freedom on the Frontlines of Culture Wars: Stanley Fish and the Freedom of Expression of a University Teacher**

Academic freedom of expression today is caught in the crossfire of many intense culture wars. Traditional liberal defences of free expression and freedom of speech seem to be insufficient. This paper argues that we need a fresh theoretical lens to understand and solve these conflictual situations in which university teachers often find themselves. Adopting an analytical and philosophical approach grounded in legal theory, my paper uses Stanley Fish's neopragmatist, anti-foundationalist framework to reconceptualize academic freedom of expression. The central thesis of my article is that academic freedom is not an absolute individual right to say anything one pleases but a context-bound freedom defined by academia's internal norms and purposes. In contrast to liberal theories that invoke universal principles, such as Mill's "marketplace of ideas" or broad "First Amendment" rights, Fish's perspective insists that all speech is constrained by its interpretive community. This paper critically evaluates liberal justifications for free academic expression, showing how these rely on abstract foundations that Fish's neopragmatism calls into question; it reconstructs a Fishian account of academic freedom based on "professional correctness," the idea that scholars are free only to the extent that their different forms of expression are coherent with the specific professional objectives and standards of scholarly inquiry.

**Keywords:** academic freedom, freedom of expression, neopragmatism, liberalism and law