

MUDDY WATERS: AN INTERVIEW WITH STANLEY FISH

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This interview with Stanley Fish was conducted in October, 1994, when he delivered a series of lectures at the University of Iowa's Law School and English Department. Prof. Fish's numerous publications include *Surprised by Sin, Self-Consuming Artifacts, Is There a Text in This Class?, Doing What Comes Naturally, and There's No Such Thing as Free Speech*.

KS: You're presently holding a dual appointment at Duke University as Arts and Science Professor of English and Professor of Law...

...And Director of the Duke University Press. I'm also a member of the Comparative Program in Literature.

KS: Your rhetoric, and I would say your thinking in recent works, bears the mark of both law and literature. You frequently employ arguments from one field to make a point in another...

But it's the differences that interest me, not the similarities.

KS: How would you compare your crossing between fields with the interdisciplinary practices of people in literary studies like Catherine Belsey, Stephen Greenblatt, Gregory Bredbeck, or historians like Carlo Ginsburg, Natalie Zemon Davis, Guido Ruggiero, for example?

All of these people, of course, operate differently, so I don't want to make any off-the-cuff comparisons. In the sense that what I do could be thought of as interdisciplinary, it's *fractiorum*, rather than all at once. That is, on one day I'll be sitting for hours in meetings at the Duke University Press. We'll be discussing

matters like the length of print runs or pricing policies, or organizational questions having to do with the systematization of communication between production and design, on the one hand, and the warehouse and computer operations, on the other. That's a whole set of concerns which are dealt with by theories or skills or a body of expertise that must be in my control. But these are not skills or bodies of knowledge that have much to do either with the work I do when I teach Renaissance poetry, or when I teach a course in contracts or legal history. I do not think of myself as embodying many perspectives which I then put together in some creative and synthetic way to produce an interdisciplinary perspective. Rather I think of myself as someone who lives in a series of different worlds or houses, each with its own set of constitutive and normative practices.

KS: Would you refer to these as performative practices?

I don't use the word "performative" because I am a student of speech act theory. Most of the people in literary theory and cultural studies who use the terms of speech act theory haven't the slightest idea of what they're talking about. So I stay away from that language unless I'm talking about speech act theory in relation to [J.L.] Austin's work and other kinds of work in the philosophy of language. When people following [Paul] de Man start talking about performance and performativity I get off that train because they are using the vocabulary but not for any of the purposes or reasons for which it was articulated. Now I don't blame people for doing that. Intellectual work is full of the same phenomena where one quarries from another discipline a set of terms and then appropriates them for whatever use they can find for them in their own discipline, which would not be a use authorized or even recognized by the members of the discipline from which it was quarried.

KS: And you have a problem with this kind of appropriation?

I don't. I only have a quarrel with it when it's something that I'm intimately connected with. If cultural studies or literary theory people want to use speech act terminology for their own purposes, and it helps them, fine. But I'm so invested in speech act theory as speech act theory that I can't do it.

KS: To go back to the point you were making, you put on different hats in different places...

That's right, I actualize different skills. Another thing I do which is not always noted in any of these official appointments, is that I am in general an administrator. I've been an administrator for 15 or 16 years, and a lot of my thinking about questions is administrative thinking, which is still another area with its own set of problems, protocols, questions, rewards, successes and failures.

PS: If I could follow up on that, in the John F. Murray lecture in Law yesterday

you referenced Alasdair MacIntyre a couple of times. In a way you and MacIntyre come from a similar angle in that you're both critics of liberalism...

That's quite correct.

PS: ...and you talk about local practices. On the other hand, it strikes me that he would dispute your claim that local practices have integrity in the modern world—that's just the problem for him.

That's a good question. I just taught MacIntyre in a seminar. It's precisely at that point where my own statements about interpretive communities and his come together and produce this question which you just asked. So I would have to agree with MacIntyre that when one is involved in any practice or community-specific work, not only are the norms and requirements of the practice in mind; there is something else in mind which is not so much separate from but grows along with the demands of the practice. And that is a general question which he never put in this way but which I am willing to put in this way: What kind of person do you want to be? I just formulated it this summer, precisely in the course of teaching MacIntyre and responding to questions from a very, very good seminar at the Dartmouth School of Criticism and Theory. I'll use as the example my own personal case—it is always my desire or goal or purpose or hope just to be a good person. I would put it in that flat a way, aware of the easy ridicule that could be directed at such a statement. Being a good person and having in mind that you want to be may take different forms, specific to the particular enterprise—any of the ones that I'm involved in, the press, a professor of literature, a professor of law. But interacting with and shaping my understanding of the demands of the discipline, would be this continuous, carried-along-with-me sense of myself as someone who wants to be a good person. And I think that MacIntyre might agree with that.

PS: It strikes me as an important difference that MacIntyre thinks there needs to be an independent standard of rationality or norms...

It's not clear to me that he believes there needs to be an independent standard of rationality.

PS: Community-specific, perhaps?

Well, so do I for that matter. No part of my argument has ever privileged individual norms and standards. In fact, in my writings I always call into question ideas like individual norms and standards. One of the criticisms you could make of my work is that it leaves too little room for the individual, and to be more specific doesn't seem to have any genuine place for the notion of choice.

KS: I'd like to get some clarification on this point. I'm thinking of your article

“Change” where you’re looking at interpretive communities as the site or engine of “orderly” change. It didn’t really become clear to me what were the mechanics of change, how it happened and whether it squared with things like individual agency and individual responsibility.

Good question. Let’s take them in order. Change can happen in almost any way, and one of the things I say in that essay is that you can never tell in advance what in fact will be the agency of change. My only argument that is strongly made in that essay is that change will never come from the outside. It is always made possible by something already internal to practices which enables an “external” phenomena to trigger change. The best example I have recently come upon of this model of change was of a former white supremacist—an articulate defender of his position and always around to talk to the news media—who was instantly changed when he heard listed among the people whose removal would be a first order of business when the white supremacists won, people with hairlips, cleft palates. His daughter was in fact a person with a cleft palate, and that was instant conversion. It’s a good example for me because it’s obviously the case that you cannot say that most people in a group will have a daughter with a cleft palate.

KS: Would that kind of instant conversion affect the communicative web of the group?

No, not at all, because they would see him as just someone who was insufficiently committed to the enterprise. But it works as an example of why change can’t come from the outside. Persuasion was a function of a particular fact about him, which led him I guess to just snap out or catapult himself out of a set of assumptions within which he had been proceeding. Now that leads me to another point I made in the essay, which is that the mind, or consciousness, is not a set of items that is arranged in some static fashion. Rather, the mind is a dynamic, interacting infinity of commitments, beliefs, convictions, some of which can at points rise up to challenge some other. This language is of course too anthropomorphic to bear very much scrutiny. And it is a question, as I put it in that essay, of a nexus of beliefs and commitments. So presumably what this example reveals for this particular person was that his commitments to his family and his daughter were finally going to override his commitments to the philosophy of white supremacy that he had been disseminating and defending for a long time.

PS: Yesterday you mentioned that among the fragments that are in your head is Augustine, and I wonder if that is an Augustinian notion of re-direction of loves?

Yes, that’s right. I say this when someone tries to describe me as some kind of Leftist radical, which is one of the most absurd descriptions that one could imagine. But I describe myself as a radical conservative composed in some sense of equal parts of Augustine and Thomas Hobbes, which is not such a bad combination if you think about it.

KS: And Milton?

Well, that's just like breathing after 33 years. It would be hard to imagine myself, quite literally, independently of my thoughts about Milton.

PS: One more question about philosophical allegiances. I recently taught your essay, "There's no such thing as free speech, and it's a good thing too," and we read it after we read Bentham and MacIntyre on rights. Some of my students wanted to say that you were a utilitarian, some wanted to say that you were a kind of communitarian, and I wonder if you count yourself as a pragmatist.

Fascist. Of course I give a deliberately provocative answer to a generously-posed question. Since I re-identify speech harms as injuries which will appear to be injuries only to certain persons and not to other persons, my recommendation is that, because universal agreement as to what does or doesn't constitute injury will never be achieved, what you want to do is get hold of the machinery that will be defining what is and is not injury. And make sure that the speech you favor gets into the category of "protected," and that the speech you disfavor gets into the category of "available for regulation." That's going to sound like, and in fact is, an argument that you should get the power, so you can arrange the relevant structures in society to the advantage of your agenda. And to a lot of people, that sounds something like fascism.

PS: That also sounds utilitarian, that interests are sort of the hard nut on top of which a superstructure is built.

Well, utilitarian—which utilitarian? Not the greatest good for the greatest number. Maybe you're thinking of instrumental.

PS: Bentham wrote that rights are "nonsense on stilts" and that what we really have are interests of various sorts.

Rights, that's something we haven't gotten into. But in the context of free speech, it's quite clear that the notion of rights produces a situation in which only speakers have rights. Hearers don't. The idea of receiving something doesn't seem to involve any hard problems, and that's because people assume that what you hear or what you see or what's put before your eyes couldn't possibly harm you because you're a rational person invested with the power of choice, and you can push away what you don't like, or turn the dial, or not go on the street where the pornography is sold or pull your window shade and all that. In effect that says that only speakers or purveyors of print have rights, because they're the ones who are doing something. Whereas you have the total control over whether or not what they do in any way affects you. I simply don't believe that. It seems to me that the kind of culture one inhabits will impinge on one in all kinds of ways, restrict forms of thought, make you into the kind of person who sees this way

rather than that way. Cultural studies people need to decide the question of whether or not cultural work works, whether you think that in fact the images and words that are put out in the world make a difference—a difference which is not always in our control to monitor. I think that is the case, and therefore a view of speech rights which gives the privilege to expression seems to me to necessarily legitimate all kinds of harms which are not recognized because of the assumption that you can always avoid them by just walking away.

PS: Let me ask you a question about reason. Both in your talk at the law school yesterday and in There's No Such Thing as Free Speech, you attack liberalism's ideals of reason and justice as fundamentally flawed. Both attacks hinge on liberalism's aspiration to conceive of a universal reason and justice independent of particular, partisan interests and concerns.

That's correct.

PS: This argument parallels a number of your other writings, where you defend the local and embedded realm of particular interests against abstract or universal claims made by friends of things like foundationalist theory or literal meaning.

Or Habermassian public forum arguments.

PS: I wonder if there isn't a middle realm that these dichotomies smooth over. For example, part of the Scottish Enlightenment supported contingent rationality which depended upon people adhering to certain substantive beliefs. It was neither necessary and universal nor was it radically local and a matter of what we call "rhetoric" now. What would you say about this middle realm?

I would say that it's our old familiar friend, Aristotelian practical reasoning, but I would say that I don't see much of a distinction between that and my own form of thought. So "radically local" is not necessarily a description that I would fix to my own views, although you might say more about what you mean by "radically local."

PS: When I read statements of yours like "we have difference all the way down..."

Now that I think is true. But of course, in the following sense. By that I mean no more than what C.S. Peirce means when he talks about "the tenacity of belief." There comes a point when the usual gestures of accommodation and civilized deference no longer do the job of keeping some elemental or fundamental conflict from rising. And at that point, there is nothing more to say.

I would use an illustration from Augustine's *On Christian Doctrine*. Augustine makes a series of statements, which usually have this form: "No one

would be so unreasonable as to think” or “Every reasonable person would say,” and then something follows. Now what follows is some statement about the existence of God, or the nature of the Trinity, or the obligations of man in relation to an all-powerful God. It becomes quite clear that what Augustine means by a reasonable person is one who accepts unquestioningly a certain set of axiomatic propositions. What *we*, as post-Enlightenment rationalists, mean by a reasonable person is someone who is willing, in fact eager, to submit any and all of his or her views, beliefs, commitments to something called “rational critique” or the deliberative process. That’s a huge divide. That divide cannot be mitigated, reconciled, worked through, found to meet on a middle ground, or any of those things. That’s why liberalism has so much difficulty, which I think is defining of it, in taking religious thought seriously. Religious thought is simply the necessarily-suppressed “other” in liberal thinking. So when Stephen Carter writes *The Culture of Disbelief* or George Marsden writes *The Soul of the American University* and they attempt to argue that the liberal majority should take religious thinking more seriously, they have themselves in making that argument fallen back into liberal notions of rationality and the possibility that by sympathetically considering the other fellow’s position you could in fact come to understand what he or she is about. I don’t believe that for a second, which is the content of “difference all the way down.”

I think of civilization or society as a series of attempts which always have to be redone or refashioned to build fragile structures which stand between us and that moment of confrontation with the large and ultimate differences between our points of view. In that sense the historical emergence of liberalism as a form of government is a response to this very awareness of how elemental conflicts over substantive matters, if they are unchecked or somehow not bracketed, will lead to bloodshed. The impulse of liberal authority is generous and with a very wide and just appeal—it’s anti-war, it’s anti-bloodshed. But then the question turns at a certain point. You could mark it with any number of historical analyses—of course everyone uses Nazi Germany, but you could use Rwanda or Bosnia. I ask the question about the point at which the spirit of accommodation, deference, avoidance in fact produces greater evils than the evils you wish to avoid by instituting a sense of liberal procedural government. That’s my sense of “difference all the way down.” Of course like anyone else who likes to lead the pleasant life, I don’t go around looking for elemental conflicts that can be raised to the level of social consciousness so that my life and the life of the person to whom I am opposed become unbearable.

PS: I think another nice example of that is in the preface to the section about you and Dinesh D’Souza in There’s No Such Thing as Free Speech. You and he had a series of heated debates during your 1991-92 lecture tour, but you noted that offstage your interactions were always cordial—you ate together, played tennis, and enjoyed each other’s company.

Well, I’m uneasy about that. One of my best students called me on that. He said,

“I think that that preface is wrong. That preface is precisely a concession to the kind of liberal sentimentalism that you are arguing against.” I didn’t have an answer for him. And I still don’t.

PS: I read it as an illustration of your claim that theory has no consequences, that there can be an underlying civility between you and him in social settings, and the principles that you espouse in a different forum make little difference.

Well actually in that particular case that’s not true. I can think of few books making more difference in a material way than Dinesh’s book having to do with the educational system. Any book that sells in the hundreds of thousands and is carried around by students as if it were a Bible has some influence. Dinesh’s book is an extremely good book. I don’t like most of it. It’s extraordinarily sneaky and Jesuitical in its strategies—he did have a Jesuit education, by the way. But it was extremely well done, and the worst thing that the progressive Left in the academy did during the reviewing of *Illiberal Education* was to hold it out as though it were a piece of smelly garbage and review it in that vein. That just played right into the game. It validated one of his theses, which was that academics are a bunch of disdainful elitists who don’t want to talk to anyone but themselves and are playing their own little game at your expense. And along come these highly indignant high profile academic reviewers who demonstrate this disdain. They were paid agents as far as I can tell. But I always took him seriously.

PS: Let me get back to the liberalism question and the idea that toleration can extend too far. Another problem that’s been noted many times is liberalism’s ethical evisceration.

It’s a brief against commitment as I like to put it.

PS: You claim that values only grow in particular political commitments and that they wither in abstractions like reason, merit or fairness. This seems to me to overlook the very real work that principles like fairness can do within the context of the everyday, for example, when we are grading our students. At times, you seem to attack the idea of fairness on epistemological or maybe ontological grounds—that we all necessarily have only partial and hence political views. But it seems to me that fairness is often a moral maxim which serves to limit or restrain our actions. Do you see no place for it even in those contingent circumstances?

I certainly have never said not to use the word or the maxim. What I am saying is that as a moral maxim “be fair” is more or less on the level of a maxim that I wish I could live up to, “be perfect.” The problem with these maxims is that you must put them into action in relation to some notion of perfection which is itself going to be disputable. So the idea of being fair, if by “fair” you mean evenhanded in relation to no underlying substantive presuppositions, is not

cashable, to use a Rortyism. The idea of being fair in relation to the goals or teleology of the practices or lifeworld you're inhabiting seems to me to be a perfectly good idea. But when the word "fair" is used as it has been in the recent arguments about, say, affirmative action or canon revision or faculty hiring practices, the word is not used in a serious way. It is used as a weapon, just as the word "merit" is used as a weapon in order to discredit what might be called efforts at reform, but which are now described peremptorily in a quick knockout move as being in violation of merit. So when I attack a term like "merit" or "fairness" or "colorblind" or "principles," I am attacking those terms because of the bad work I see them doing in discourse attached to agendas I despise and propagated by persons that I believe to be dishonest, disreputable, and evil.

KS: Let me ask a local question. In your lecture at the Law School yesterday you summed up persuasively the pragmatic effect of (most) speech acts, "Speech chills, well, that's it's job." I want to refer you to the University of Iowa's policy on professional ethics and academic responsibility. As you may know, it was in effect imposed on the academic community by the State Board of Regents and subsequently reworded by the President of the University. In my mind the effect of this policy is to make speech acts, if they happen in the classroom, lukewarm.

Lukewarm how?

KS: By taking the rhetorical edge off speech acts.

Why does that follow?

KS: It frames class materials in a particular way. For example, if you're dealing with alternative lifestyles, it frames them with the phrase "unusual or unexpected" which puts them in the same context over and over again; they are always "unusual and unexpected."

Therefore they are, by definition, oddly situated in relation to mainstream thought.

KS: Exactly. How would you comment on this policy in terms of your views of free speech and professionalism?

First of all, I would say that I don't know enough about the case, and that my very commitment to local sites of knowledge and practice makes me generally loathe to walk into a situation and comment on it. Having tried to protect myself by making this statement, what this section of the policy touches is the question of academic freedom which only came up tangentially yesterday. Academic freedom is an extremely complicated topic. There are at least two kinds. On the one hand, there is the freedom of a university or college from outside interference, be it from regents or legislators. On the other, one often thinks of academic

freedom as the freedom of the individual instructor or student *within* a particular educational structure. Obviously it's not going to take too long before these two come in conflict, before some faculty member appeals to an outside authority in the name of academic freedom which he thinks has been violated by his institution, and asks the outside authority to violate the academic freedom of the institution to protect his individual academic freedom. So, it doesn't seem to me that academic freedom is a clear-cut concept, and that when it's waved around as a marker it isn't extremely helpful, although it may be rhetorically effective, and in fact often *is* rhetorically effective.

In a case like this, I would want to take a look at the position of the University, about which I know nothing, and ask how this action fits into a pattern? To what history, if any, does it connect? If we, as the university community, resisted that action, would it be at a price that in the fairly near future would bring to us worse troubles than what we now see? Or rather, is it the case that we can, using a notion like "academic freedom" as a vehicle, riding it as it were, at this moment so protect this that we can emerge relatively unscathed? So it would seem to me to be a practical problem of calculation in relation to both the short and long term interests of the university.

KS: In other words, you're saying that "academic freedom" is a concept very much like "liberalism"...

Yes, that's right. Academic freedom as a real principle is silly. What does that mean? Could it really mean that a professor who got a degree and an appointment can say anything he likes in a department that found his views objectionable, unprofessional, disruptive; that they have no recourse because he is credentialed? That seems highly unlikely. Does it mean, for example, that history departments must seriously consider Holocaust deniers who present themselves as serious historians and say that what they're doing is revisionist history, just as there are people who are now questioning the English Civil War or the Middle Ages. "All of these modes of thinking are part and parcel of academic work," say the Holocaust deniers, "therefore why can't we legitimately have our place in the university structure?" If you accept that deeply relativistic and skeptical argument, then of course you have no answer. At which point the whole notion of "academic freedom" as a real entity that can be invoked with full force disappears. "Academic freedom" turns out to mean the freedom to pursue avenues of research within those parameters that a discipline defines as acceptable and appropriate. *That's* academic freedom.

The idea that every time an outside agent, be it your Department Chair, your Dean, or even your Board of Regents, sets some limits to or becomes part of an effort to scrutinize your classroom procedures your academic freedom has been violated—this just doesn't hold water. That makes it into a pragmatic question in relation to the goals and purposes to which you feel yourself committed. It becomes a question of *ad hoc* balancing. What's at stake here? Is this the kind of act where if we let this one go, then down the road they'll be

writing our book lists for us? Or is this just political window dressing, and if we allow it, it will result in our budget being increased by 4 million dollars? Those are the kind of questions that I want to ask, and if I decided that this is the kind of thing that we, the university, could win at little cost, then I would rev up the “academic freedom” machine and see how far it might take one.

Another way of thinking about academic freedom which is particularly appropriate for this policy has to do with an argument about whether universities should be regarded primarily as large free speech forums or as workplaces. Of course, the answer to that question is that both analogies make sense, and they are figured or weighed differently in different parts of the university at different times. But the reason that I favor the workplace as an analogy is that the people who are invoking the open free speech forum model are doing so in an effort to stop sexual harassment policies from being enacted, to stop any effort by universities to regulate the speech of homophobes, anti-Semites, etc. Those forces who are pointing to the university as a free-speech forum are doing so in relation to ends and purposes I despise. Whereas the people who are pointing to the university as a workplace are trying to tie the university to Title VII, anti-discrimination policies, and therefore introduce strongly into the university the notion that everyone who is in a university has the right to move around in an atmosphere that is not hostile, intimidating, and threatening. That seems to me to be a good thing, and therefore I’m on that side in this particular choice. I can easily imagine a case where I would be on the other side, when the policies, views, or practices that I supported were being threatened somehow by the workplace analogy. And I would start yelling “free speech,” although I would probably have to distance myself about 10 years from my present writing in order to make it credible.