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1

Think If You Should

PARADIGM SHIFTS ON CAMPUS DISCOURSE

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

—*TEXAS V. JOHNSON*, 491 U.S. 397 (1989)

Your scientists were so preoccupied with whether or not they could that they didn't stop to think if they should.

—*JURASSIC PARK* (1993)

THE QUOTATIONS ABOVE represent two central aspects of this book's subject matter: the skill of good-faith dialogue. The first is from *Texas v. Johnson*, a Supreme Court decision that struck down a criminal ban on flag desecration.¹ Mr. Johnson,

1. *Texas v. Johnson*, 491 U.S. 397 (1989).

who had burned a US flag outside of the Republican National Convention as a form of protest, was prosecuted under a law that banned burning flags. The Court ruled that the Texas flag desecration law (which permitted people to burn flags in order to dispose of them, as required by military protocol, but not in protest, as Johnson had)² violated the First Amendment right to freedom of speech. The fact that the expression was distasteful to others, the Court concluded, did not entitle the state of Texas to outlaw it.

This is the essence of expressive freedom (what is often shorthand as “free speech”): authorities may not pick and choose which speech to censor or punish based on viewpoint. And we, the people, have the freedom to express ourselves regardless of whether our ideas are popular or palatable.

The second quotation is from the 1993 movie *Jurassic Park*, in which a wealthy businessman hires scientists to develop living dinosaurs from preserved genetic material and display them in an amusement park. (Spoiler alert: it does not go well.) A mathematician hired as a consultant—after the fateful decision to reproduce prehistoric carnivores was made—observes that the scientists were so focused on what they could do, that they made a huge (and deadly) error regarding what they should do.

This quote captures what our First Amendment does not—the complex and fascinating question of how we *should* use our freedom. In this book, I propose that learning and practicing

2. Katie Lange, “How to Properly Dispose of Worn-Out U.S. Flags,” US Department of Defense, June 11, 2020, <https://www.defense.gov/News/Feature-Stories/story/article/2206946/how-to-properly-dispose-of-worn-out-us-flags/>.

good-faith dialogue is a better use of that freedom than debating, trolling, or retreating to the comfort of untested certainty. Good-faith dialogue encompasses far more than just the freedom to speak—and yet it cannot flourish without that freedom.

Academic dialogue requires both freedom and compassion to thrive. It has become conventional wisdom that these two priorities are in tension and that administrators tasked with promoting equity and inclusion are at odds with faculty, students, or politicians concerned about preserving free inquiry. But what if equity—including communicating and listening with care—was not a limitation on freedom, but rather a skill that opens doors to deeper understanding? In my experience, people have deeper, more meaningful, rigorous, and productive conversations once we understand that speaking and listening across differences is a core skill, much like writing, research, or keeping a budget.

This is the shift in thinking I ask of my students and fellow educators and that I will share with you. Dialogue is a skill that can and must be taught and practiced in an atmosphere where participants enjoy liberty, embrace personal responsibility and accountability, accept the possibility that we could be wrong, and commit to try again tomorrow where we fall short today.

Why Isn't It Enough to Learn about "Free Speech"?

This book concerns itself with expression: the act of intentionally conveying meaning through speech, actions, art, or some combination of these. Dialogue, including good-faith dialogue,

involves expression, as well as (importantly) listening and learning. Asking questions, reading assigned materials, conducting research, and listening to the people around us are all critical components of the learning process. But what most of us call “class participation” isn’t the subject of many books. In my experience, teachers and students don’t talk enough about what good class participation entails. In these pages, I will explore many communicative elements of this work, including reading, listening, formulating questions, communicating ideas orally and in writing, deploying evidence with precision, accepting feedback, and synthesizing and comparing concepts and ideas.

When we talk about “free speech,” we really mean the broader category of expression and expressive conduct (such as saluting a flag or kneeling during the national anthem). Many conversations about expression in the United States today concern themselves mostly with the question of whether anyone—for example the government, a school, or a corporation—may punish expression or stop it from happening at all. That is an important question, and I will introduce you to the rules (such as laws against harassment) and norms (such as the practice of avoiding profanity) that apply to many kinds of speech and expressive conduct. To understand matters of particular interest to higher education communities (such as invited speakers, hateful speech, student protests, and misinformation) we must explore these rules and norms.

But communication is about far more than rules. To understand this, consider one way you express yourself: clothing. When you get dressed, you probably follow certain rules, such as “no shirt, no shoes, no service.” You also follow certain practices we call norms. Casual clothes for a movie theater but

slightly nicer clothes for a date, and more formal clothes for a debate tournament or job interview. The government did not create these norms but failing to follow them can have real consequences.

Your clothing choices often reflect how you want to present yourself and what you want to express. Maybe you wear a t-shirt with your favorite band's name on it to show what kind of art you enjoy. You might dress particularly carefully for a job interview to convey that you will fit in with the organization and that you take the opportunity and the occasion seriously.

A school's dress code would not give a new student any idea of how students dress in their community, nor how they can show their own personal style. If you have ever moved to a new community or school, you might have felt curious or even anxious about these unwritten norms and looked to other community members for guidance. Maybe your clothing choices made for an awkward first day at school or at an internship—overdressed, underdressed, or simply out of place.

Just as the dress code can't teach us how to fit in (or stand out), the rules governing speech and expression don't tell us how to become successful learners, effective communicators, responsible community members, or supportive friends. Copyright law says we may not pass off Beyoncé's *Renaissance* as our own—but it doesn't teach us to write songs. The First Amendment prevents the governor from censoring her challenger's political ad, but it doesn't help us determine whether claims in the ad are true. There are laws against assault and harassment but there is no law on how to be kind. That is why I often remind students that the First Amendment is only a limitation on government—not a blueprint for how to live.

Being a skilled and effective communicator means more than understanding what we are free to say. It means reflecting on what we want to communicate and why; our strengths and challenges as listeners, including listening with curiosity; becoming comfortable with questions and developing research skills to seek answers; learning how to convey our thoughts in clear and understandable ways; and receiving and responding to feedback with gratitude.

What's So Special about Good-Faith Dialogue?

College courses (and civic life) require us to practice a form of listening, speaking, and questioning that we might not have practiced much before. As you will learn in Chapter 3 of this book, students in K-12 schools in the United States have limited freedom of expression compared to college students or other adults. If you arrive at college without much practice discussing complex issues, solving challenging problems in collaboration with others, or expressing disagreement with peers or authority figures, you're not alone.

Much of the dialogue outside of academic spaces doesn't provide a great model for what we try to do in college or for when we are trying to solve problems in the public interest. By the time we reach college, most of us have been exposed to political campaigns in which candidates representing the major political parties make their case to voters. Political campaigns expose us to conflict and disagreement (also features of academic and civic dialogue), but they are fundamentally different from what we do in classes. Campaigns generally present binary possibilities. You may vote for candidate A or B, red or blue. In

academic dialogue, by contrast, there are infinite answers to the questions we explore. While a campaign asks “Who is the better choice?” in an academic dialogue, we ask “How might we better understand a problem, and what would we need to know in order to address it?”

I believe that the kind of dialogue we practice in our college classrooms is a good model for civic engagement: working collaboratively to address common problems and create practicable solutions. This is different from partisan campaigning, where the goal is not solely to solve a substantive problem, but to get a majority of voters to select one candidate (even as many candidates run for office with the objective of solving a specific problem). In academic dialogue, “winning” means coming to greater understanding.

Learning collaborative, productive dialogue in pursuit of truth and shared solutions requires us to make a paradigm shift: a change in the assumptions we make and the approaches we take. This paradigm shift is from seeing the state of college discourse as a national crisis of self-censorship, to a teaching problem that results from our extremely ambitious effort to educate the most diverse generation in recent US history at a time when polarization, disinformation, and mistrust characterize American life.

Changing our mindset from culture crisis to a matter of skills and competencies requires all of us to make three shifts in the way we imagine speech: first, de-emphasizing speech rights (even as we zealously protect them) and focusing on responsibilities. Second, responding to mistakes and harm with education and restorative measures, not with punitive reactions. And finally, seeing college as a place for collaborative inquiry, not combat and debate.

From Rights to Responsibilities

The First Amendment, by limiting government authority to regulate our speech, gives us the space to engage in deep and important conversations, even when it means sharing ideas that are challenging or disagreeable. This is, as the Supreme Court explained in *Texas v. Johnson*, a bedrock principle of our First Amendment, which protects our freedom to express ourselves even when we shock or offend our neighbors.

The First Amendment protects our freedom to learn from different or opposing views but it is up to each of us to decide how we *should* seek knowledge. Fictional works such as *Frankenstein* and *Jurassic Park* describe how science, thoughtlessly practiced, can lead to disaster. Although words are not like dinosaurs running rampant in human society, our choices about what we say have consequences. Contemporary experience shows us, for example, that misinformation can affect public health and safety.³

Even legally protected speech can have social, professional, or academic consequences. If you burn the flag in protest, your neighbor is free to disinvite you from her fourth of July party (a social consequence). If you're a political candidate, you might lose your election because you alienated voters who equate flag desecration with disrespect for our country (a professional consequence). And if you video yourself burning a flag and submit the video as a final project in a political

3. "New Analysis Shows Vaccines Could Have Prevented 318,000 Deaths," Brown School of Public Health and Microsoft AI for Health, May 13, 2022, <https://globalepidemics.org/2022/05/13/new-analysis-shows-vaccines-could-have-prevented-318000-deaths/>.

science class, you might receive a low grade—not because the professor disagrees with you, but because you were supposed to write a research paper (an academic consequence).

Sometimes we are willing to pay a cost for exercising our freedom of expression. Generations of activists have risked arrest and imprisonment for choosing to violate unjust laws (such as laws mandating segregated lunch counters). And politicians sometimes take unpopular stands knowing that they are likely to lose public support or professional allies and thus eventually, perhaps inevitably, their jobs. This book will not presume to tell readers there is one right way to exercise our freedom of expression or when to engage in civil disobedience. Instead, it will encourage you to understand the speech rights that our system of government protects and to consider the responsibilities that come with being the kind of student and civic participant you aspire to be.

From Punitive to Restorative Responses

Many American children are taught to respond to insults by saying “sticks and stones may break my bones, but words can never hurt me.” This saying is meant to undermine the power of bullies by showing them that their taunts have no effect. I’ll leave it to you to consider whether this strategy actually works and whether to encourage your own children or younger siblings to deploy it when faced with hurtful words.

It might be comforting, but the sentiment is not, strictly speaking, true. Words can do harm. The First Amendment protects some speech that inflicts emotional harm on individuals (including so-called hate speech) or expressions that harm society, such as by misinforming us about matters of public

concern. Words can damage relationships, and relationships are necessary if we are going to address society's biggest problems, or just be happy people.

What we should do about the harm our speech might cause is a hard question worth considering. Many of us expect transgressions to result in punishment. In primary and secondary schools, rule-breakers face punishments such as detention, suspension, or even expulsion. including for speech that violates rules. As I will explain in Chapter 3, K-12 schools have a great deal of power to limit and punish student expression. Those of you who experienced primary and secondary education more recently than I did might have fresh memories of teachers or administrators wielding this authority. As you read this text and develop an impression about the relationship between expressive freedom and education, I encourage you to consider whether you agree with the system of limitations imposed earlier in your education. In the meantime, this text will help you understand and adopt the mindsets and practices that characterize scholarly inquiry and communication.

A community of inquiry, a place where adult learners recognize what they do not know, explore challenging questions, and try to solve seemingly intractable problems together, benefits from a different approach. In an academic community we presume all members are acting in good faith. When people are making good-faith efforts to learn and solve problems together, a community of inquiry responds to errors and transgressions with more inquiry, more speech, and more opportunities to learn and grow. Each member learns to show grace, and benefits from receiving grace as we strive and stumble through our journey to better understanding. We approach one another as

colleagues, not competitors, and offer and receive the help we all need to develop our skills. Sincere apology, commitment to do better, shared responsibility, and deep listening—not punishment—together constitute a restorative approach.

From Debate to Inquiry

College discourse requires us to shift from a mindset of debate to inquiry. Debate involves opposing arguments being put forward and defended, often for an audience. In college classrooms, we are not opponents competing for voters' approval nor combatants in a judged performance. College classes are places for inquiry, which is a process of questioning. To be a student is to ask questions about the world around us; to question our own preformed opinions; and to interrogate our community's prevailing ideas and values. To debate is to prove that we are right. Inquiry requires us to understand what we do not yet know with certainty, and to entertain the idea that we might be wrong.

In short, being a scholar (and, I would argue, an engaged member of society) requires us to try to love the questions and learn to live in a state of curious uncertainty.

What Does It Take?

To develop a mindset of inquiry and build your skills as a reader, listener, and communicator, you will need to:

1. Learn to love the questions and to seek answers with integrity
2. Understand the rules and norms that apply to your conversations

3. Listen and read with a mindset of informed generosity and grace
4. Communicate to be understood
5. Engage in self-reflection

This book won't tell you what's okay to say and what isn't. Instead, as you explore these pages you will become more familiar with the rules and norms that govern academic and civic discourse—including the discourse of writing—and acquire tools to guide how to use your freedom and build your skills.

What's In It for Me?

The responsibilities that come with academic dialogue can seem very costly. Expressive freedom, by which I mean minimal regulation and restriction on what may be said, often requires us to be confronted by ideas we don't like and share space with people who don't like us. Restorative approaches to transgression can feel at odds with our social reality that conditions us to believe “justice” requires punishment. The exercises of inquiry and collaborative problem solving deny us the instant gratification that comes from certainty and winning an argument. As anyone who has spent time on social media can tell you, exercising intellectual humility and communicating with compassion are not a recipe for going viral. So why learn to love the questions themselves and try to master the skill of collaborative inquiry and responsible communication?

These are questions I particularly love, and which are at the core of my work on productive dialogue:

- Why does the First Amendment protect even unkind and cruel speech, and why should academic communities do the same (even in cases when they don't have to)?⁴
- Why take a restorative rather than punitive approach to speech that is “bad” or “wrong?”
- Why try to communicate responsibly and with compassion when sensationalism, name-calling, and inciting anger can lead to commercial and electoral success?

You and I might come to different conclusions about these questions. But I hope that you engage deeply with them as you read this book, and that you continue to consider them throughout college and life. I promise my students I won't grade them on the opinions they hold or the way they vote. And my hope is that this value comes through in your experience with this book. A thoughtful reading could lead you to conclude (as I have) that rules against profanity are silly. But maybe you will conclude that people who resort to profanity give insufficient weight to their responsibilities as communicators (if so, I hope you'll send me your thoughts; I am still a learner too, after all).

But I do know that this thing I'm encouraging you to try—to learn and practice productive civic dialogue—competes for attention with other priorities in our lives. You have other reading assignments, papers, jobs, and internships. The alluring sirens of censorship and performance, with their easy answers and quick rewards, are loud. So just this one time, as we get started, I'll explain why I think it's worth protecting expressive freedom; why I prefer grace to punishment; and why I believe we should

4. In Chapter 3 we will explore how public and private universities differ, and how context (classrooms, residence halls, online) affects the nature and extent of expressive freedom.

practice inquiry responsibly and kindly, rather than wield our expressive freedom like a club.

Why Protect Expressive Freedom and Practice Informed Generosity?

To quote Supreme Court Justice Anthony Kennedy, “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.”⁵ Humans are imperfect. We can be hampered by the limits of our experience, and even our good-faith solutions to intractable problems can prove, upon further examination, to be wrong. In fact, often it’s the things we all agree on that we get the most wrong.

Take, for example, our nation’s policy response to drug addiction. In the 1970s through 1990s, the United States and many states enacted laws that led to mass incarceration. Support for these laws was bipartisan.⁶ Arguably, to borrow Justice Kennedy’s phrase, times blinded politicians across the political spectrum to the dangers of criminalizing addiction. Later generations have come to see that some of our laws in this realm are indeed oppressive. Today, drug law reform is becoming an uncommonly bipartisan area of interest,⁷ even in our extremely polarized times.

5. *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003).

6. The 1994 crime bill passed the US Senate by a vote of 95–4. “Roll Call Vote 103rd Congress—1st Session,” United States Senate, https://www.senate.gov/legislative/LIS/roll_call_votes/vote1031/vote_103_1_00384.htm (accessed June 16, 2023).

7. “The State of Justice Reform 2018,” Vera, <https://www.vera.org/state-of-justice-reform/2018/bipartisan-support> (accessed June 16, 2023).

If we are to understand the limitations of our wisdom, we need dialogue. Granting authorities the power to restrict criticism of dominant ideas can lead us to make even more mistakes—from unjust laws to unjust wars. If the passions of a moment can blind us to truth, we must rely upon each other to help us learn when and where we have been wrong. This requires freedom of expression.

In my own experience, hard conversations across principled differences have been some of the most rewarding in my life. There is no greater threat to excellent writing than unearned certainty; everything I have ever written—from my constantly evolving course syllabi to this book—has benefited from critical dialogue. It is the tough conversations (as distinguished from the mean or dishonest ones) that produce the best ideas.

Why Grace Rather Than Punishment?

Let's be honest (dishonesty is inherently uncivil).⁸ It feels good to see bad guys get punished. Anyone who has watched a movie can tell you that. Perhaps it's human nature to cheer for the bad guy to go to jail, or to be humiliated, or to face steep consequences by other means. Perhaps it's baked into our consciousness as members of a society that incarcerates an extraordinary percentage of its citizens.⁹

8. Dishonesty hinders productive inquiry and problem solving.

9. Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2022," Prison Policy Initiative, March 14, 2022, <https://www.prisonpolicy.org/reports/pie2022.html>.

Regardless of how satisfying or appealing it is to punish and shame transgression, I would posit that punishment is not the best answer to hurtful speech—even intentionally hurtful speech that falls short of harassment and threats. My primary reason for believing this is the same as my reason for teaching: I believe human beings are capable of learning what they didn't know and therefore capable of changing. And I believe college students in particular want to learn. The opportunity to learn means the opportunity to do better next time.

Beyond that, I have a very practical reason for opposing punishment for most hurtful speech: I believe society is better off if people continue to try to learn and work together in places like universities—even when they disagree—than if the people most in need of exposure to diverse human perspectives are exiled to places where they are unlikely to find them. I hope we can all spend more time exposed to the good-faith inquiry and dialogue that characterizes academic life.

A restorative approach is not without cost—particularly to those who are the most likely targets of hate or recipients of unwitting ignorance, people often from minoritized or marginalized groups. Reducing that cost is an important responsibility that students, faculty, and administrators should all make our mission.¹⁰

10. Like many advocates for expressive freedom, I am also conscious that speech restrictions adopted to make a school or society more inclusive can be used to suppress speech that people in power are opposed to.

Why Does Practicing Responsible Speech Make for a Better You, a Better University, and a Better World?

Learning is the engine of human progress. Freedom is essential to learning, but a learning community without academic standards ceases to be a learning community at all. Schools are, by definition, places that evaluate ideas. When I select a peer-reviewed journal article but not a conspiracy theory website for a course reading, I am expressing a core function of a university: to promote knowledge.

A learning community where some members know they are unwelcome cannot call itself a place for the free and robust exchange of ideas. When some members of the community are denigrated, when they must divert their energy to protecting themselves and educating peers, their opportunity to thrive diminishes—and with it, the community's access to their contributions diminishes too. Communicating in a way that respects all community members is essential to ensuring a truly open, productive dialogue.

Furthermore, the skill of communicating to be understood is an essential one beyond college. Whether we are representing a business to clients and customers, advocating for political change, providing medical advice and care, or navigating personal relationships, the capacity to communicate respectfully and effectively is essential.

Although to my knowledge most colleges do not have a civil discourse major or a required class on productive dialogue, inquiry and dialogue skills are fundamental to being an excellent

college student and writer. Some of the most challenging aspects of college writing—including posing and answering original questions and deploying credible evidence accurately—are elements of constructive dialogue as well.

Finally, at a time when students (and teachers!) are burned out from standardized tests, building resumes, and intense competition, I am suggesting an approach that encourages you to find ways to seek joy, excitement, and personal investment in what you are learning. When we love to learn, when we feel at ease with uncertainty, when we can see our classmates as fellow adventurers—not adversaries—we can love more than the questions. We can love our college experience. It is my hope that you find some ideas—and questions—to love on these pages.

Let's get started.

Discussion Questions and Classroom Exercises for Chapter 1

- What are your responsibilities as a class discussion participant? What are the professor's responsibilities? How do we support one another in meeting those responsibilities?
- What is the purpose of punishment in general? What is the purpose of punishment in a school setting?
- Under what circumstances is punishment the right response to student speech?
- Is there a topic related to this class that you would like to know more about?
- How hard is it for you to ask questions or say you don't know in a classroom space like this one?

- Practice saying “I don’t know.”
- An “I don’t know” ice breaker: Student 1 asks a question that no other student could answer (e.g., what book am I reading for pleasure right now; what was my high school softball team’s win-loss record) and calls on student 2. Student 2 answers “I don’t know.” It is now student 2’s turn to ask a question and call on student 3. The exercise is complete when everyone has asked a question and responded “I don’t know” in front of the class.

Writing Exercises for Chapter 1

- Imagine your ideal learning community. How would people treat one another? How would they handle disagreement? What would they accomplish in collaboration with one another? How would they address mistakes? How would they handle problems? What voices would you want to hear there? How would you bring those voices in?
- Who do you want to make proud? Picture the person you want to make proud—whether a parent, a mentor, a friend, or yourself. What would it take to make them proud? What will be challenging about that, for you? Are there times when being that best vision of yourself becomes harder?
- Write a mission statement for yourself. What do you want for yourself? What will you ask of yourself? How does your time in class fit into this mission?
- Consider a time when you have been wronged. Did you hope the wrongdoer was punished? What did you want to see happen? What was the resolution? If you had the

power to address the issue, what would you want? What would justice look like to you?

- Now consider a time when you violated a rule or wronged someone else. What were the consequences, if any? Do you think justice was served? If you were judging your own case, would you have ordered a punishment? Would you take some other approach?
- Select a topic about which you consider yourself reasonably well informed. What more could you learn or do you still need to know? What does it take to be an expert on this topic? Consider a question in your field of interest where many well-informed people disagree. Ask yourself: What would you—or someone new to the topic—need to know in order to form an opinion on the dispute?
- Set a goal for your reading, listening, and communicating this semester. What do you want to work on? What would success look like to you?

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