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FOREWORD

LAW OF PROTEST

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“To protest against injustice is the foundation of all our American democracy.”

— Justice Thurgood Marshall.¹

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1. Thurgood Marshall, Hist. (Oct. 29, 2009), <https://www.history.com/articles/thurgood-marshall> [https://perma.cc/H9HK-EQD4] (last updated Mar. 5, 2025). While the exact source of this quote is unknown, it has been widely attributed to Justice Marshall. Karen J. Pita Llor, *The Expressive Fourth Amendment*, 94 S. Cal. L. Rev. 1311, 1316 & n.25 (2021).

Protests have long been part of the social and political fabric of the United States.² From the colonial era³ to the present day,⁴ protest movements have helped shape the nation's trajectory. Protest is not just an act of dissent but an essential expression and practice of democracy that challenges abuses of power.⁵ Indeed, major social justice victories—the abolition of chattel slavery,⁶ the expansion of suffrage to women,⁷ the

2. See ACLU of Ill., *Know Your Right to Protest in Chicago* 2 (2015), https://www.aclu-il.org/sites/default/files/known_your_right_to_protest_in_chicago.pdf [<https://perma.cc/TM4U-ST2Y>] (“[T]he right to protest is deeply woven into the fabric of our federal and state constitutions . . .”).

3. See, e.g., Etienne C. Toussaint, *Afrofuturism in Protest: Dissent and Revolution*, 125 *Colum. L. Rev.* 1375, 1384 (2025) (“The Stono Rebellion, also known as Cato’s Conspiracy, took place in South Carolina in 1739 and stands as one of the largest uprisings of enslaved people in British North America.”); The Boston Tea Party, *Hist.* (Nov. 24, 2009), <https://www.history.com/this-day-in-history/december-16/the-boston-tea-party> [<https://perma.cc/P2UB-L9MV>] (last updated Mar. 14, 2025) (“The midnight raid, popularly known as the ‘Boston Tea Party,’ was in protest of the British Parliament’s Tea Act of 1773, a bill designed to save the faltering East India Company . . .”); The Journey to Emancipation: The Germantown Protest, 1688, Smithsonian Nat’l Museum Afr. Am. Hist. & Culture, <https://nmaahc.si.edu/explore/stories/journey-emancipation-germantown-protest-1688> [<https://perma.cc/8BWT-82D3>] (last visited Apr. 2, 2025) (“One of the earliest recorded actions toward ending slavery was taken by a small group of Quakers in Germantown, Pennsylvania Colony, in 1688.”).

4. See, e.g., Jared Hamernick, *Toward a Nonviolent State*, 2021 *U. Ill. L. Rev. Online* 77, 78, <https://illinoislawrev.web.illinois.edu/wp-content/uploads/2021/04/Hamernick.pdf> [<https://perma.cc/VGN8-QTXN>] (discussing the “protests on an unprecedented scale . . . in all fifty states” sparked by the brutal, public killing of George Floyd on May 25, 2020); George Chidi & Andrew Roth, *Pro-Palestinian Protesters March Before Democratic Convention: ‘This Is About Morality’*, *The Guardian* (Aug. 19, 2024), <https://www.theguardian.com/us-news/article/2024/aug/19/pro-palestinian-protest-democratic-convention> [<https://perma.cc/2HPV-RJVL>]; Kelly McCleary & Holly Yan, *Protests Spread Across the US After the Supreme Court Overturns the Constitutional Right to Abortion*, *CNN*, <https://www.cnn.com/2022/06/27/us/supreme-court-overturns-roe-v-wade-monday> [<https://perma.cc/7GDX-ZVRP>] (last updated June 27, 2022).

5. See, e.g., Sarah Kunstler, *The Right to Occupy—Occupy Wall Street and the First Amendment*, 39 *Fordham Urb. L.J.* 989, 991–92 (2012) (“The idea that demonstrators were willing to literally put their lives and bodies on the line, to physically occupy Wall Street and . . . call attention to disparities in wealth and power, awakened a national discourse about the role of government To occupy these spaces was to transform them.”).

6. See Toussaint, *supra* note 3, at 1393–94 (discussing the “powerful tradition of protest” maintained by enslaved people that “contributed to the eventual dismantling of slavery”); Manisha Sinha, *The Heart of the Abolition Movement*, Yale Univ. Press (June 30, 2020), <https://yalebooks.yale.edu/2020/06/30/the-heart-of-the-abolition-movement/> [<https://perma.cc/FP9A-9ADG>] (“[T]he American abolitionist moment unfolded in a hundred-year drama in law, politics, literature, and on-the-ground activism.”).

7. See Courtney Lauren Anderson, *Activismis*, 14 *Ne. U. L. Rev.* 185, 205 (2022) (“The Women’s Suffrage movement accomplished its goal of obtaining women’s right to vote Women in the suffrage movement . . . marched down streets during parades which they organized, held pageants, picketed the White House, and pressured not only the country’s citizens, but the government.”).

enactment of the New Deal,⁸ the passage of the Civil Rights Act,⁹ the start of the LGBTQ rights movement,¹⁰ and more—were won in large part due to protest movements that opposed the extant status quo.

Despite their foundational role, protests in this country have been met with fierce opposition, police as well as popular violence, and political backlash.¹¹ The First Amendment guarantees the rights to free speech and peaceable assembly.¹² Yet the legal history of protests and government responses to them has not always aligned with the spirit of the First Amendment: Many movements have faced suppression through state-sponsored violence¹³ as well as legal (and extralegal) restrictions.¹⁴

8. See James N. Gregory, *A Summer of Protest, Unemployment and Presidential Politics—Welcome to 1932*, *The Conversation* (July 1, 2020), <https://theconversation.com/a-summer-of-protest-unemployment-and-presidential-politics-welcome-to-1932-140918> [<https://perma.cc/3HHZ-TFHZ>] (“The early New Deal would race to provide debt relief for farmers and homeowners, jobs for the unemployed, and public works projects – part of what demonstrators had been demanding for years.”).

9. See John G. Stewart, *When Democracy Worked: Reflections on the Passage of the Civil Rights Act of 1964*, 59 *N.Y. L. Sch. L. Rev.* 145, 151–54, 171 (2014–2015) (describing the enactment of the Civil Rights Act of 1964 against the backdrop of the civil rights activism of the 1960s, in particular the March on Washington and Martin Luther King, Jr.’s “I Have a Dream” speech).

10. See Marsha Johnson, Sylvia Rivera, and the History of Pride Month, *Smithsonian* (June 7, 2021), <https://www.si.edu/stories/marsha-johnson-sylvia-rivera-and-history-pride-month> [<https://perma.cc/K78Y-A3XK>] (“The first Pride parades marked the anniversary of the Stonewall uprising, when police raided the Stonewall Inn on Christopher Street in New York City after midnight on June 28, 1969.”).

11. See Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter: From Protest to Policy*, 28 *Wm. & Mary J. Race, Gender & Soc. Just.* 103, 105–06, 145–46 (2021) (discussing public backlash on social media and regressive legislation that “followed the protest movement and the renewed demands for racial justice”); see also Stewart, *supra* note 9, at 149 (referring to the “police dogs and fire hoses” used to “dispers[e] young protestors, many of elementary-school age, coupled with mass arrests of youthful demonstrators that filled the [Birmingham] city jail”).

12. U.S. Const. amend. I (“Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

13. See Sandhya Kajeepeta & Daniel K. N. Johnson, *NAACP LDF Thurgood Marshall Inst., Police and Protests: The Inequity of Police Responses to Racial Justice Demonstrations 3–5* (2023), https://tminstituteldf.org/wp-content/uploads/2023/10/Police-and-Protests_PDF-3.pdf [<https://perma.cc/V9MN-95VU>] (discussing police responses to racial justice protests during the civil rights movement in the 1960s and the Black Lives Matter movement in 2020).

14. See Amber Baylor, *Unexceptional Protest*, 70 *UCLA L. Rev.* 716, 718–19 (2023) (discussing how antiprotest criminal laws are “often introduced in the aftermath of protests that are depicted as unsanctioned or appear to lawmakers as insufficiently controlled”); Williams et al., *supra* note 11, at 146 (“[I]t is not surprising that while the policy gains of the BLM movement have been relatively modest nationally, the influx of reactionary legislation has been comparably dramatic; this outsized reaction is not out of step with American history.”); Char Adams, *Experts Call ‘Anti-Protest’ Bills a Backlash to 2020’s Racial Reckoning*, *NBC News* (May 18, 2021), <https://www.nbcnews.com/news/nbcblk/>

True, multiple major Supreme Court decisions have protected the rights of protesters and developed a jurisprudence identifying the core, and some outer limits,¹⁵ of the right to protest.¹⁶ But existing First Amendment law remains murky and does not always provide a clear answer when it comes to an individual protester's rights.¹⁷ Furthermore, the existence of a formal legal right—even if it *might* offer retroactive relief (e.g., damages)—may not actually protect a protester against adverse state action.¹⁸

experts-call-anti-protest-bills-backlash-2020-s-racial-reckoning-n1267781 (on file with the *Columbia Law Review*) (“[T]here have been twice as many proposals to quell demonstrations in 2021’s legislative sessions than in any other year . . .”).

15. See, e.g., *Hill v. Colorado*, 530 U.S. 703, 714 (2000) (upholding a law creating buffer zones around healthcare facilities that restricted sidewalk counseling about abortion and abortion alternatives); *Feiner v. New York*, 340 U.S. 315, 317–18, 321 (1951) (declining to reverse a “conviction in the name of free speech” when the defendant twice ignored police officers’ requests to stop delivering an inflammatory speech and they arrested him in order to “prevent it from resulting in a fight” (internal quotation marks omitted)).

16. See Rachel Moran, *Overbroad Protest Laws*, 125 Colum. L. Rev. 1197, 1206 nn.40–45 (2025) (compiling Supreme Court cases recognizing “protest activity—by both individuals and crowds and in the form of picketing, marches, boycotts, placards, flag-burning, and more—as a form of protected expression” (footnotes omitted)).

17. See Justin Hansford, *Lecture, The Sankofa Principle in Protest Law*, 125 Colum. L. Rev. 1029, 1030 (2025) (“First Amendment jurisprudence is complex and often obscure . . .”); Steven J. Heyman, *The Dark Side of the Force: The Legacy of Justice Holmes for First Amendment Jurisprudence*, 19 Wm. & Mary Bill Rts. J. 661, 663 (2011) (describing “something deeply paradoxical about modern First Amendment jurisprudence” in which constitutional free speech protections promote fundamental values in some cases while undermining those same values in others); Urooba Abid & Vera Eidelman, *The Supreme Court Declined a Protestors’ Rights Case. Here’s What You Need to Know*, ACLU (Apr. 22, 2024), <https://www.aclu.org/news/criminal-law-reform/the-supreme-court-declined-a-protestors-rights-case-heres-what-you-need-to-know> [https://perma.cc/D5AM-LVUB] (analyzing the legal implications of the Supreme Court’s denial of an appeal in a case brought by a police officer against DeRay Mckesson, a prominent civil rights activist).

18. See, e.g., Mark Berman & Emily Wax-Thibodeaux, *Police Keep Using Force Against Peaceful Protesters, Prompting Sustained Criticism About Tactics and Training*, Wash. Post (June 4, 2020), https://www.washingtonpost.com/national/police-keep-using-force-against-peaceful-protesters-prompting-sustained-criticism-about-tactics-and-training/2020/06/03/5d2f51d4-a5cf-11ea-bb20-ebf0921f3bbd_story.html (on file with the *Columbia Law Review*) (“While some incidents have led to discipline for officers involved, the wave of episodes has just as often gone unpunished and prompted still more criticism of law enforcement and questions about why they have reacted by firing gas, rubber bullets and driving into protesters.”); *A Look at the People Ensnared in Trump’s Campaign Against Pro-Palestinian Activism at US Colleges*, AP News (Apr. 1, 2025), <https://apnews.com/article/immigration-detainees-students-ozturk-khalil-78f544fb2c8b593c88a0c1f0e0ad9c5f> (on file with the *Columbia Law Review*) (“Since President Donald Trump took office, the U.S. government has used its immigration enforcement powers to crack down on international students and scholars at several American universities who had participated in pro-Palestinian demonstrations or criticized Israel over its military action in Gaza.”).

Consider the history of protest at this university. Columbia University has a long tradition of both protests and protest backlash.¹⁹ Columbia students have used their voices to take on global issues, including the Vietnam War, South Africa's apartheid regime, sexual and gender-based violence, and climate change.²⁰ One of the most significant moments in Columbia's history came in 1968, when students occupied several campus buildings to protest U.S. participation in the Vietnam War and the construction of a university gymnasium in Morningside Park that the local community opposed.²¹ In 2024, evoking parallels to 1968,²² pro-Palestine, antigenocide²³ students at Columbia organized mass pro-

19. Isha Banerjee & Emily Pickering, What Makes Columbia the 'Activist Ivy?', *Colum. Spectator* (May 6, 2025), <https://www.columbiaspectator.com/news/2025/05/06/what-makes-columbia-the-activist-ivy> [<https://perma.cc/2YC8-YQVU>] ("The cycle of encouraging activism and then cracking down on it has made Columbia the epicenter of student movements throughout history." (internal quotation marks omitted) (quoting Maryam Alwan, Columbia undergraduate student)).

20. See Mark Prussin, Columbia University Has a Long History of Campus Protests. Here's a Look Back at Some of Them., *CBS News* (Apr. 22, 2024), <https://www.cbsnews.com/newyork/news/columbia-past-protests/> [<https://perma.cc/NR6A-3ESW>]. As Mahmoud Khalil, a Columbia alumnus who was targeted and detained by federal immigration officials for his participation in pro-Palestine protests, explains:

If anything, my detention is a testament to the strength of the student movement in shifting public opinion toward Palestinian liberation. Students have long been at the forefront of change – leading the charge against the Vietnam war, standing on the frontlines of the civil rights movement, and driving the struggle against apartheid in South Africa. Today, too, even if the public has yet to fully grasp it, it is students who steer us toward truth and justice.

Mahmoud Khalil, Opinion, I Am a Palestinian Political Prisoner in the US. I Am Being Targeted for My Activism, *The Guardian* (Mar. 19, 2025), <https://www.theguardian.com/commentisfree/2025/mar/19/mahmoud-khalil-statement> [<https://perma.cc/PYB8-DZPA>].

21. See Prussin, *supra* note 20; Jennifer Schuessler, At Columbia, Revisiting the Revolutionary Students of 1968, *N.Y. Times* (Mar. 21, 2018), <https://www.nytimes.com/2018/03/21/arts/columbia-university-1968-protest.html> (on file with the *Columbia Law Review*) (describing student activists as "united by opposition to plans to build a university gym in a nearby public park and by Columbia's involvement in weapons research").

22. See Bill Chappell, In Columbia University's Protests of 1968 and 2024, What's Similar—And Different, *NPR* (Apr. 26, 2024), <https://www.npr.org/2024/04/26/1247527512/columbia-university-protests-1968-2024-history> [<https://perma.cc/W9NL-5Z6V>] ("A takeover of Columbia University's South Lawn by pro-Palestinian students last week is drawing comparisons to 1968 — another time when police were called to clear protesting students from the campus."); Azad Essa, Columbia University Students Stage Vietnam-Era Anti-War Protests for Gaza, *Middle E. Eye* (Apr. 17, 2024), <https://www.middleeasteye.net/news/columbia-university-students-stage-vietnam-style-anti-war-encampment-gaza> (on file with the *Columbia Law Review*).

23. See Essa, *supra* note 22 ("The Gaza solidarity encampment is the latest student-led action at Columbia geared to force administrators to divest from companies and institutions they deem to be profiteering from Israel's 'apartheid, genocide and occupation' in Palestine."); see also Amnesty International Investigation Concludes Israel Is Committing Genocide Against Palestinians in Gaza, *Amnesty Int'l* (Dec. 5, 2024),

tests, held classroom sit-ins, constructed two encampments, and occupied a campus building.²⁴

At times during its history, Columbia University has taken aggressive action to suppress student dissent.²⁵ In 1936, Columbia expelled Robert Burke and two other students who led an anti-Nazi demonstration.²⁶ Burke stated that his expulsion presented the question of “whether the president, dean and trustees of Columbia will tell me what to think and do or whether I shall do what I think is right.”²⁷ In 2024, then-Columbia President Minouche Shafik suspended students participating in a pro-Palestine encampment and subsequently authorized the New York Police Department to forcibly sweep the encampment and arrest over 100 students.²⁸ These two episodes, nearly a century apart, demonstrate how

<https://www.amnesty.org/en/latest/news/2024/12/amnesty-international-concludes-israel-is-committing-genocide-against-palestinians-in-gaza/> [https://perma.cc/DKC4-6QPZ] (“Amnesty International’s report demonstrates that Israel has carried out acts prohibited under the Genocide Convention, with the specific intent to destroy Palestinians in Gaza. These acts include killings, causing serious bodily or mental harm and deliberately inflicting . . . conditions of life calculated to bring about their physical destruction.” (internal quotation marks omitted) (quoting Agnès Callamard, Sec’y Gen. of Amnesty Int’l)).

24. See, e.g., Sarah Huddleston & Maya Stahl, Pro-Palestinian Protesters Repitch Encampment on South Lawn During Annual Alumni Reunion, *Colum. Spectator* (May 31, 2024), <https://www.columbiaspectator.com/news/2024/05/31/pro-palestinian-protesters-repitch-encampment-on-south-lawn-during-annual-alumni-reunion/> [https://perma.cc/2UE5-UZHQ] (last updated June 1, 2024) (describing the two encampments on Columbia’s campus, which “spark[ed] worldwide protests on University campuses,” and pro-Palestine protesters’ occupation of Hamilton Hall); Rebecca Massel, Dozens of Pro-Palestinian Protesters Picket on First Day of Classes, *Colum. Spectator* (Sept. 4, 2024), <https://www.columbiaspectator.com/news/2024/09/04/dozens-of-pro-palestinian-protesters-picket-on-first-day-of-classes/> [https://perma.cc/T49S-2KN8] (describing a picket and classroom sit-in students organized).

25. Columbia is not the only university that has acted against its student protesters. See Sunita Patel, Policing Campus Protest, 125 *Colum. L. Rev.* 1277, 1297–317 (2025) (chronicling actions taken against student protesters at numerous universities across the country, including U.C. Berkeley, Dartmouth, and North Carolina A&T University). This Foreword spotlights Columbia because its attempts to suppress student dissent have garnered national attention, see, e.g., *infra* notes 26–28 and accompanying text, and because it is where this Symposium was hosted, see *infra* text accompanying note 30.

26. See Columbia Hears Plea for Expelled Student, *N.Y. Times* (Sept. 25, 1936), <https://timesmachine.nytimes.com/timesmachine/1936/09/25/87998077.html?pageNumber=19> (on file with the *Columbia Law Review*).

27. *Id.* (internal quotation marks omitted) (quoting Robert Burke).

28. Maya Stahl, Sarah Huddleston & Shea Vance, Shafik Authorizes NYPD to Sweep ‘Gaza Solidarity Encampment,’ Officers in Riot Gear Arrest Over 100, *Colum. Spectator* (Apr. 18, 2024), <https://www.columbiaspectator.com/news/2024/04/18/shafik-authorizes-nypd-to-sweep-gaza-solidarity-encampment-officers-in-riot-gear-arrest-over-100/> [https://perma.cc/C75W-9FGB] (last updated Apr. 19, 2024) (“This is the largest instance of mass arrests to be made on campus since 1968, when the NYPD arrested hundreds of students occupying Hamilton Hall and used excessive force in detaining students protesting against the Vietnam War and the planned construction of a gymnasium in Morningside Park.”).

Columbia has at times deployed both internal disciplinary processes and external governmental actors against its students.²⁹

Against this backdrop, the editors of the *Columbia Law Review* convened a Symposium on the law of protest.³⁰ This Symposium brought together legal scholars, practitioners, students, and community members to critically examine the current legal and political frameworks that shape protest law, reflect on how these frameworks have developed, and imagine possibilities for future change. The day-long conference on November 15, 2024, featured four panels and was bookended by two keynote speakers.³¹ The event opened with a lecture from Professor Justin Hansford, who discussed his experience as a legal observer during the protests following the 2014 killing of Michael Brown in Ferguson, Missouri.³² Hansford then drew on two critical race theory concepts—interest convergence and the “critique of neutrality rhetoric”—using them as a lens to better understand protest law.³³

Next, Professors Tabatha Abu El-Haj, Evelyn Douek, Jeremy Kessler, and Eugene Volokh, as well as Charles F. Walker, a former law firm partner and pro bono co-chair, discussed “Protests and the Constitution,”

29. Between 1968 and 2024, Columbia did not involve external law enforcement when responding to student protesters. See David Pozen, Norm Breaking at Columbia, Balkinization (Apr. 19, 2024), <https://balkin.blogspot.com/2024/04/norm-breaking-at-columbia.html> [<https://perma.cc/WA4R-CA9X>] (arguing that “President Shafik’s decision to invite the NYPD on campus to arrest students” in 2024 broke with “a norm of police noninvolvement” that had persisted since 1968 despite “scores” of student protests throughout that period). Columbia still utilized internal disciplinary processes against student activists between 1968 and 2024. See *id.* (“Some of these [post-1968] protests led to disciplinary code charges. None elicited a criminal law enforcement response.”); see also Sarah Huddleston & Maya Stahl, Inside Columbia’s Surveillance and Disciplinary Operation for Student Protesters, *Colum. Spectator* (Sept. 12, 2024), <https://www.columbiaspectator.com/news/2024/09/12/inside-columbias-surveillance-and-disciplinary-operation-for-student-protesters-3/> [<https://perma.cc/WF69-Q3CQ>] (describing “some of the many ways Columbia and Barnard have employed surveillance measures to identify and discipline dozens of students accused of violating University policies for participating in campus protests”).

30. Behind the Scenes: ‘*Columbia Law Review*’ Symposium Explores the Law of Protest, *Columbia L. Sch.* (Feb. 26, 2025), <https://www.law.columbia.edu/news/archive/behind-scenes-columbia-law-review-symposium-explores-law-protest> [<https://perma.cc/E2S9-UW8P>] [hereinafter Behind the Scenes].

The editors of the *Review* are themselves no strangers to protest. See Ayaan Ali, *Columbia Law Review* Student Editors to Strike After Directors Intervene With Article on Nakba, *Colum. Spectator* (June 7, 2024), <https://www.columbiaspectator.com/news/2024/06/07/columbia-law-review-student-editors-to-strike-after-directors-intervene-with-article-on-nakba/> [<https://perma.cc/5JEH-LSTK>].

31. Behind the Scenes, *supra* note 30.

32. See *id.* Professor Hansford’s Lecture is published as part of this Symposium Issue. Hansford, *supra* note 17.

33. See Hansford, *supra* note 17, at 1030, 1032, 1040 (“[W]e can clarify our understanding by framing our reading of protest law with fundamental critical race theory concepts.”).

focusing on the First Amendment. This panel addressed the Amendment's speech-conduct distinction, hate speech, online content moderation, and the regulation of public versus private universities. The panelists also reacted³⁴ to Abu El-Haj's Symposium piece, *A Right of Peaceable Assembly*, in which she proposes an independent Assembly Clause doctrine, distinct from the existing free speech doctrine derived from the First Amendment's Speech Clause.³⁵ She argues assembly doctrine provides a more apt framework for balancing protesters' rights against social costs by recognizing that the public's act of gathering and taking up space itself possesses political value, separate from the protest's expressive message.³⁶

The second panel examined "Protests Through History."³⁷ Professors Deborah Dinner, Bernard E. Harcourt, Karuna Mantena, Dylan C. Penningroth, and Etienne Toussaint discussed common trends in racial justice, gender equality, and anti-war movements, as well as the lessons that can be drawn from historical protest movements and the responses they encountered. Toussaint's Symposium piece, *Afrofuturism in Protest: Dissent and Revolution*, chronicles the history of Black protest movements in the United States from the colonial era to the twenty-first century and examines these movements' philosophical underpinnings.³⁸ He argues that the Black radical tradition reveals protest to be not just a right, but a moral imperative, and illustrates how modern protest movements can draw inspiration from that tradition.³⁹

Professors Grant Christensen, Elora Mukherjee, Karen J. Pita Loor, and Gali Racabi, as well as law student Kevin McCarthy, spoke together on the third panel, titled "Who Protests, and Where? Examining Protest Spaces."⁴⁰ Each panelist offered their perspective on a particular type of protest or protester: Christensen discussed protests on indigenous reservations; McCarthy discussed protests by incarcerated individuals; Mukherjee discussed the unique considerations noncitizen protesters must face; Loor discussed racial justice protests and policing; and Racabi

34. See Behind the Scenes, *supra* note 30 ("The panels not only offered dynamic conversations and Q&As for an audience of students and academics, but also provided valuable feedback for the authors, whose pieces were still in the process of being edited.").

35. Tabatha Abu El-Haj, *A Right of Peaceable Assembly*, 125 Colum. L. Rev. 1049, 1096 (2025) ("An independent Assembly Clause doctrine would not just be consistent with the text and the Founders' original understanding but would allow for the development of a coherent jurisprudence capable of distinguishing between protected and unprotected assemblies in relation to assembly's distinct contribution to self-governance.").

36. See *id.* at 1054 ("Freed of the wholly expressive account of assembly, it becomes possible to understand why an independent Assembly Clause doctrine is warranted and could make a material difference for those who gather in public.").

37. Behind the Scenes, *supra* note 30.

38. Toussaint, *supra* note 3, at 1382–83.

39. *Id.* at 1453–64.

40. Behind the Scenes, *supra* note 30.

discussed labor strikes and workers as protesters. The panelists compared how protests in different spaces are regulated and examined what makes each type of protest more likely to shift public sentiment or secure institutional concessions. Christensen's Symposium piece, *The Right to Protest in Indian Country*, asserts that between the three potential sovereigns implicated by protests on indigenous lands—the tribe, the state government, and the federal government—tribal governments should be the sole regulator of these protests.⁴¹ He then explores how tribes have historically regulated protests and argues for tribes to take a measured approach to protest regulation despite not being bound by U.S. constitutional restraints in the same way as a state or federal government.⁴²

The fourth and final panel, "Policing Protests," featured Professors Amber Baylor, Jenny Carroll, Rachel Moran, and Sunita Patel as well as Nick Robinson, a senior legal adviser at the International Center for Not-for-Profit Law.⁴³ The panelists discussed the regulation and policing of protests, including the passage of new antiprotest laws as a reaction to protest movements, the disproportionate impact that protest laws have on marginalized people, and the legal remedies available when protest regulators violate protesters' constitutional or statutory rights. The panelists also commented on Moran's⁴⁴ and Patel's⁴⁵ Symposium pieces. Moran's piece, *Overbroad Protest Laws*, examines the First Amendment's overbreadth doctrine as it applies to protest laws and identifies the harms of overbroad protest laws.⁴⁶ She also enumerates five characteristic features of potentially overbroad protest laws and uses them to analyze the constitutionality of several recent protest laws.⁴⁷ Patel's piece, *Policing Campus Protest*, discusses the various approaches universities have taken to regulating campus protests throughout history, identifying internal and external pressures on university regulators and analyzing three recurring tactics that campus police use when policing protests.⁴⁸ Near the end of the piece, she shares some historical examples of when campus administrators opted to negotiate with, rather than punish, student

41. See Grant Christensen, *The Right to Protest in Indian Country*, 125 Colum. L. Rev. 1139, 1153–78 (2025).

42. See *id.* at 1178–91.

43. *Behind the Scenes*, *supra* note 30.

44. Moran, *supra* note 16.

45. Patel, *supra* note 25.

46. Moran, *supra* note 16, at 1204–06.

47. *Id.* at 1217–24 (identifying the five features); see also *id.* at 1255–61 (applying the five "features of overbroad protest laws . . . [to] four laws enacted since 2020 to assess them for potential overbreadth").

48. Patel, *supra* note 25, at 1293–317.

protesters, suggesting that these moments might provide a lesson for universities going forward.⁴⁹

The conference concluded with a keynote address by Derecka Purnell, a movement lawyer and activist.⁵⁰ Purnell explored the relationship between movement lawyering and out-on-the-street activism, identifying a tension between working within a system and seeking to radically change a system from the outside.⁵¹

This Symposium Issue of the *Columbia Law Review* features the five pieces described above, as well as Hansford's lecture. The Issue intentionally places these six works of scholarship, each examining aspects of protest law, in dialogue with each other. A few examples help illustrate this. Abu El-Haj, Hansford, and Moran each take different approaches to addressing shortcomings in existing First Amendment doctrine.⁵² Patel and Toussaint both turn to history as they illustrate how campus protest policing and the Black protest tradition developed.⁵³ Christensen, Moran, and Patel address the issue of protest regulation—discussing *who* should regulate protests and *how* they should do so.⁵⁴ Abu El-Haj and Toussaint both propose new frameworks for understanding protests as a part of our society: the political value of a public assembly and protest as

49. Id. at 1373 (“[Some university presidents] knew headlines, criticism, and potentially more demonstrations would follow massive police repression, so they chose negotiation over crackdown. These historic examples could serve as lessons for today’s university presidents and students.”).

50. Behind the Scenes, *supra* note 30.

51. See id. For more about Purnell’s journey and insight as a protester, specifically within the police abolition movement but also in support of a wide variety of causes, see generally Derecka Purnell, *Becoming Abolitionists: Police, Protests, and the Pursuit of Freedom* (2021).

52. See Abu El-Haj, *supra* note 35, at 1096–122 (developing “[a]n independent Assembly Clause doctrine”); Hansford, *supra* note 17, at 1030–31 (employing “critical race theory concepts” to “illuminate . . . a framework for effectively analyzing the past, present, and future of First Amendment law regarding protests”); Moran, *supra* note 16, at 1217–24 (identifying “five features of potentially overbroad laws drawn from the [Supreme] Court’s overbreadth jurisprudence”).

53. See Patel, *supra* note 25, at section 1293–305; Toussaint, *supra* note 3, at 1381–82 (“By examining historical instances of Black resistance, from slavery revolts to contemporary movements, and analyzing them through an Afrofuturist lens, this Piece reveals three core dimensions of Black protest . . .”). Perhaps these scholars are employing the Sankofa principle Hansford writes about. See Hansford, *supra* note 17, at 1032 (“The Sankofa principle counsels the wisdom of predicating future action on past patterns.”).

54. See Christensen, *supra* note 41, at 1153–78 (surveying the “three competing sovereigns: tribes, states, and the federal government” and arguing “only Indian tribes . . . [should] govern[] protests that occur in Indian country”); Moran, *supra* note 16, at 1261–68 (discussing the “harms of overbroad laws in the context of protest-related arrests and prosecutions”); Patel, *supra* note 25, at 1335–65 (discussing “features of campus policing in response to protests”).

a moral imperative.⁵⁵ This list of connections and throughlines is not exhaustive. Each scholar's contribution seeks to spur further thought, discussion, and scholarship in the field of protest law.

Finally, in addition to engaging with pressing legal and philosophical questions surrounding the law of protest, this Symposium fostered a sense of community among the scholars, practitioners, students, and activists it brought together.⁵⁶ In that way, the Symposium mirrored the protests it examined: Protesters come together with a shared goal—to challenge injustice and demand accountability—and in doing so, they, too, develop a feeling of community.⁵⁷ That feeling is one of the most powerful, inspiring, and sustaining aspects of any protest.⁵⁸ There is an energy that emanates from collective action, reverberating through chants and slogans, transcending differences in background, ideology, or personal experience. Protesters forge connections with one another that are not simply tactical but deeply empathetic, human, and long-lasting.⁵⁹ Ultimately, protests reinforce the notion that no one is alone in their struggle: Together, in solidarity, all share a commitment to making the world better today and for future generations.

55. See Abu El-Haj, *supra* note 35, at 1053 (“Being together physically and socially contributes to democracy in ways that are distinct from the contribution of public discourse.”); Toussaint, *supra* note 3, at 1422 (“[R]esistance is not just a right but a duty—a necessary response to systemic injustice.”).

56. Behind the Scenes, *supra* note 30 (describing “how a symposium can bring people together to talk and [show] how scholarship can be collaborative and purposeful” (internal quotation marks omitted) (quoting Shaunak Puri, *Symp. & Book Rev. Ed.*, *Colum. L. Rev.*)).

57. See Angela Y. Davis, *Freedom Is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement* 1–2 (Frank Barat ed., 2016) (discussing the “dangers of individualism” and the strength of collective action in “[p]rogressive struggles”).

58. See Radhule Weininger, *Do Demonstrations Make a Difference?*, *Santa Barbara Indep.* (Apr. 10, 2025), <https://www.independent.com/2025/04/10/do-demonstrations-make-a-difference/> [<https://perma.cc/Y2UQ-ERQP>] (“[Political and social demonstrations] build solidarity and community, making us feel connected and less afraid.”); see also, e.g., Emily Chen & Joyce Zhang, ‘Solidarity Materialized’: A Look Into the Art and Community Born Out of the ‘Gaza Solidarity Encampment’, *Colum. Spectator* (Apr. 28, 2024), <https://www.columbiaspectator.com/arts-and-culture/2024/04/28/solidarity-materialized-a-look-into-the-art-and-community-born-out-of-the-gaza-solidarity-encampment/> [<https://perma.cc/S43S-BJYG>].

59. See Deepa Iyer, *We Too Sing America: South Asian, Arab, Muslim, and Sikh Immigrants Shape Our Multiracial Future* 167 (2015) (“Many racial justice activists say that engaging in conversations and dialogues with one another about our experiences with racial identity, oppression, and injustice can help us understand that we have linked fates and futures.”).

