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### Foreword

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# FOREWORD

M. Elizabeth Magill<sup>†</sup>

It is an honor to have been asked to provide the Foreword to this Special Issue of the *Stanford Journal of Civil Rights and Civil Liberties* on the theme “Countering Hate in America.” Perhaps the greatest pleasure of being a law school dean is interacting with our students. It is even more gratifying to have the rare opportunity to contribute, even in a small way such as this, to our students’ efforts. And I am particularly delighted that this Special Issue contains the work of one of our very own students, Adrienne Pon, published alongside distinguished academics and practitioners.

We are, like other times in our history, in a moment of political upheaval. This period has many features—pitched battles over policy change; deep disagreement about rhetoric and language; competing claims about legal constraints on the executive; and every form of activism, from the homespun grassroots protest to the highly organized political rally to the digital organizers who orchestrate while sitting in their study. Moments like this are destabilizing, but they also bring something important—greater engagement by the populace on matters of significance to the country. Among the striking features of our current moment of activism is this: Many who have never been spurred to act in their lives are now engaged. A recent poll by the *Washington Post* and Kaiser Family Foundation found that one in five Americans have attended a protest or a rally in the last two years, and nineteen percent of those who attended said they had never attended a protest or rally before 2016.<sup>1</sup> This Special Issue zeroes in on the many complexities that lie underneath these facts: What form is this activism taking? How can we, and should we, rethink traditional approaches to change?

Two authors, Professors Steven Shapiro and Camille Rich, examine the ACLU’s struggle with its approach to hate speech after Charlottesville. Professor Shapiro considers whether the Constitution’s robust protection of speech

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<sup>†</sup> Richard E. Lang Professor of Law and Dean, Stanford Law School. Many thanks to Susan Fleischmann of Stanford Law and the exceptional and thoughtful editors of this Special Issue, especially Lauren Border, Caroline Cohn, Melissa Cornell, Rachel Green, and Rebecca Wong. Errors are my own.

1. Mary Jordan and Scott Clement, *Rallying Nation: In reaction to Trump, millions of Americans are joining protests and getting political*, WASH. POST (Apr. 6, 2018), [https://www.washingtonpost.com/news/national/wp/2018/04/06/feature/in-reaction-to-trump-millions-of-americans-are-joining-protests-and-getting-political/?utm\\_term=.f9b367cab253](https://www.washingtonpost.com/news/national/wp/2018/04/06/feature/in-reaction-to-trump-millions-of-americans-are-joining-protests-and-getting-political/?utm_term=.f9b367cab253).

generally should continue to extend to hate speech, and whether our historical protection of hate speech is truly necessary to our democracy. He ultimately argues in the affirmative, reasoning that any exception for hate speech would then allow suppression of protest in support of progressive causes. Professor Rich<sup>2</sup> highlights the role of hidden gender norms in our approach to the rights of speech, assembly, and protest. She argues that the history of the First Amendment reveals a masculine approach to these questions, and that approach threatens the full exercise of all citizens' freedoms. Turning to Charlottesville, she examines the relationship between gender, protest, and violence in American society. The harms that flow from intimidation, in her view, should be central in First Amendment analysis.

Professor Miriam Gohara focuses on recent, national changes to criminal justice policy, which she predicts will dramatically increase incarceration rates. She urges those who resist these moves to focus their attention on local, rather than national, actors. Changed course in criminal justice policy, she argues, can best be resisted by those at the local political level, who have the best understanding of the drivers of violent crime and the consequences of incarceration.

Professor Marisol Orihuela and Adrienne Pon address activism in the immigration sphere. Orihuela writes of the power of specific types of language—and the emotion that language can evoke—in the sanctuary and Dreamer movements. She argues that language describing positive emotions like love has been important to the growth of these movements and can continue to provide energy to social and political activism. Pon focuses on the Dreamer movement, arguing for a more inclusive approach to immigration reform. Reminding us of the divisions that existed in historical social movements, she identifies the echoes of these divisions that we can see in today's Dreamer movement, particularly in the opposition to the name of the movement itself. She argues that advocates should carefully frame the narrative describing Dreamers, with language chosen to ensure that the movement has as much effect as possible.

I appreciate the opportunity to introduce this Special Issue. These thoughtful contributions will no doubt inform our understanding of change as we move forward.

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2. Note: This Foreword was written based on a synopsis of Professor Rich's forthcoming Essay.