

## MONUMENTS WITHOUT FACES?

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### ABSTRACT

Monuments take many forms and can serve several purposes. Typically associated with honor and a need to commemorate significant events, monuments seem to represent the ideas of the communities which house them. However, it remains to be seen whether all monuments represent a “good” memory. In this essay, the author seeks to comment on the concept of collective memory, specifically in the context of the history and experiences of marginalized groups in the United States. The author argues that monuments are a tool of promoting a collective memory: monuments are not part of history but rather part of the creation of a particular narrative of the past. Protecting monuments from removal allows these memorials to remain prominent influences in the public spaces they inhabit – perpetuating their influence on the collective memory. The author considers whether any, some, or all Confederate monuments should be removed and the implications of such removals. Moreover, the paper explores different responses which may be pursued in response to the preservation of Confederate monuments with a focus on counter-narratives. Ultimately, the author advocates for a move away from monuments which promote a collective memory in favor of monuments which encourage questions and discourse.

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## INTRODUCTION

Why do we build monuments? Erect statues? Impress upon buildings the names of the fallen and dead? Is it just to celebrate our heroes? Or is it something more nefarious, like to whitewash? To channel thought? Public monuments represent ideas. Most statues are erected to remind us of a significant event or to honor the good work of individuals or groups. But whose ideas or heroes are, or should be, represented and remembered? Do monuments aim to create “collective memory,” to tower over space and time, then in turn to extend and solidify power? “Controlling views of the past is a consolidation of power in the present and a way of laying claim to the future.”<sup>1</sup> Heroic narratives forming collective memory help us to feel like a part of something important; markers and monuments allow the majority to feel good about their status; feel better psychologically. In some cases, they evince a shared community, declaring how we rallied to save the unfortunate, what was worth dying for. This only works, however, if there is some general agreement on the story: Why did we enter WWII—did we really care about the Jews? Was the Civil War about states’ rights or about slavery?

The concept of collective memory, on one level, is a bit concerning, as it has been a topic animating philosophers, historians, and other social scientists for some time on how history is written and interpreted and consequential power dynamics. In this essay, I will comment on the concept in the context of the history of politically marginalized<sup>2</sup> groups in this country—particularly as it pertains to the ongoing dialogues about the memorials long constructed in celebration of the Confederacy.<sup>3</sup>

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1. Darren Anderson, *Monument to Men: Ego and Stature of Solidified in Stone*, ARCHITECTURAL REV. (Mar. 12, 2020), <https://www.architectural-review.com/essays/monuments-to-men-ego-and-stature-solidified-in-stone> [https://perma.cc/Q3VA-G5ZP].

2. I mean this not as a slight, but only to refer to a cohort that has been relegated to this status by government and social policies.

3. For a deep consideration of this topic, see generally, SANFORD LEVINSON, WRITTEN IN STONE: PUBLIC MONUMENTS IN CHANGING SOCIETIES (2018). See also Shelby D. Green, *The Loud Unspoken Narratives from Confederate Monuments: How and Why We Should Quiet Them in the Public Square*, 16 ZARCH 54 (2021).

## COLLECTIVE MEMORY DEFINED

Pierre Nora, in *Between Memory and History: Les Lieux de Mémoire*,<sup>4</sup> stated:

[M]emory and history, far from being synonymous, appear now to be in fundamental opposition. Memory is life, borne by living societies founded in its name. It remains in permanent evolution, open to the dialectic of remembering and forgetting, unconscious of its successive deformations, vulnerable to manipulation and appropriation, susceptible to being long dormant and periodically revived. History, on the other hand, is the reconstruction, always problematic and incomplete, of what is no longer. Memory is a perpetually actual phenomenon, a bond tying us to the eternal present; history is a representation of the past.<sup>5</sup>

By this, it seems that Nora is speaking not only of memories that are constructed by individuals, their “personal pasts,” but also those that are commanded or propagandized by the existing power regime. Individual reconstructions of personal pasts often replicate and embrace the overarching collective myth. People try to make sense of their experiences and places in the world by constructing explanations of their own histories, in part by drawing upon prevalent narratives in public discourse, and those held by other individuals within their circles.

In the *Philosophy of History*, Hegel commented that history combines in our language the objective as well as the subjective side. It means both the things that happened and the narration of things that happened.<sup>6</sup> This suggests that memory can be disconnected from society, from the language and systems of society as developed over time. In the view of another philosopher, Maurice Halbwachs, in *Historical Memory and Collective Memory*, history aims for a universal, objective truth severed from the

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4. Pierre Nora, *Between Memory and History: Les Lieux de Mémoire*, 26 REPRESENTATIONS (Special Issue) 7 (1989).

5. *Id.* at 8.

6. GEORG WILHELM FRIEDRICH HEGEL, THE PHILOSOPHY OF RIGHT – THE PHILOSOPHY OF HISTORY 181 (T.M. Knox, trans., Encyclopaedia Britannica 1952).

psychology of social groups while “every collective memory requires the support of a group delimited in space and time.”<sup>7</sup> As collective memory may often diverge from history—instead, being grounded in personal needs and experiences and stories as told—it can be said to be a power construct. The constructed collective memory is written by those with control over the recounting of history in public spaces—both physical and literary.<sup>8</sup> The power elite manipulate the past in order to mold the present. Collective memory implies that the meanings ascribed to various events will be taken as pronounced, without examination as might be suggested by logic or fairness.

#### MONUMENTS AS COLLECTIVE MEMORY: STANDING IN PUBLIC SPACES

Monuments, memorials, and statues are part of our cultural memory, but they are not history. They were part of the creation of a particular narrative. The early Congress was reluctant to appropriate funds for a monument to George Washington. In John Quincy Adams’ view, monuments were anathema to democracy. “‘True memory,’” it was claimed, lay not in a pile of dead stones but in the living hearts of the people.”<sup>9</sup> Statues are placed in public spaces. The Greeks erected statues everywhere as odes to gods, athletic heroes, and foreign kings, but also to politicians. There were perhaps 3,000 bronze statues in the cities of Rhodes and Athens alone.<sup>10</sup> They remembered the powerful, and those who had worked for the community and their subjects and were given almost god-like status.<sup>11</sup>

Many statues in Europe were erected in the late 19<sup>th</sup> century by newly independent states attempting to create a national identity, such as Belgium

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7. Maurice Halbwach, *Historical Memory and Collective Memory*, <https://marcuse.faculty.history.ucsb.edu/classes/201/articles/80HalbwachsCollMemChap2.pdf>, at 84.

8. MICHAEL KAMMEN, *MYSTIC CHORDS OF MEMORY* (1991).

9. Zachary Bray, *We Are All Growing Old Together: Making Sense of America’s Monument-Protection Laws*, 61 WM. & MARY L. REV. 1259, 1281 (2020).

10. Peter Crowhurst, *What Role Do Statues, Monuments, and Memorials Play in Modern Britain*, BRITISH EMPIRE (Aug. 2020), <https://www.britishempire.me.uk/what-role-do-statues,-monuments-and-memorials-play-in-modern-britain-.html> [<https://perma.cc/VQM8-CUDJ>].

11. *Id.*

in 1830.<sup>12</sup> Stories were woven to remember a glorious past and of the lofty values of a previous age. Between 1848 and 1914, Paris installed seventy-eight new statues, Berlin fifty-nine, and London sixty-one.<sup>13</sup> Italy, under Mussolini in the 1920s and 1930s, looked backed to ancient Rome for inspiration. Then came the Palace of the Soviets. A huge neoclassical skyscraper embracing a towering “Free Proletarian” figure was proposed, but never finished on account of the war effort against the Nazi regime.<sup>14</sup>

As they reside in the public spaces, statues and monuments take on the symbolism associated with the dominant political ideology. But when the regime is deposed, the statues often come down.<sup>15</sup> However, as described below, this did not happen with the Confederate monuments; indeed they only went up after the South had lost the war.

#### THE MONUMENTS OF AMERICA

The array of monuments in the United States is vast and celebrate heroes and those that are infamous. The Washington Monument and Lincoln Memorial sit on the Washington Mall. Mt. Rushmore is on federal lands (although still contested by the Lakota Sioux).<sup>16</sup> The Statue of Liberty embraces the hapless and promises hope and freedom at the nation’s gateway. Until recently, monuments to Confederate leaders resided in the

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12. *Id.* Such statues honored figures from the distant past such as Charlemagne, Rubens, and Vesalius who were seen to embrace typical Belgian values and to establish a link with the past. *Id.*

13. *Id.* These statues now continue to define those cities. Joan of Arc stands in the Place des Pyramides; Richard I graces the Palace of Westminster. In Berlin, Frederick the Great on Unter den Linden hovers over the Brandenburg Gate, a symbol of Germany’s changing history and a symbol of peace.

14. Anderson, *supra* note 1.

15. Crowhurst, *supra* note 10. See also Simon John, *Statues, Politics and the Past*, HISTORY TODAY, <https://www.historytoday.com/archive/behind-times/statues-politics-and-past> [<https://perma.cc/SK9W-MA23>] (noting monuments have become sites of historical conflict, revealing bitter divisions over interpretations of the past).

16. See Kimbra Cutlip, *In 1868, Two Nations Made a Treaty, the U.S. Broke It and Plains Indian Tribes are Still Seeking Justice*, SMITHSONIAN MAG. (Nov. 7, 2018), <https://www.smithsonianmag.com/smithsonian-institution/1868-two-nations-made-treaty-us-broke-it-and-plains-indian-tribes-are-still-seeking-justice-180970741/> [<https://perma.cc/5DTW-YTZU>]. See also *Sioux Nation v. United States*, 448 U.S. 371 (1980); Shelby D. Green, *Specific Relief For Ancient Deprivations Of Property*, 36 Akron L. Rev. 245 (2003) (discussing the Saga of the Sioux to reclaim native lands in the Black Hills).

Nation's Capitol<sup>17</sup> and in state legislative halls.<sup>18</sup> Military bases honor Confederate generals. The Pettus bridge in Selma, Alabama, now a National Historic Landmark as the scene of that fateful march to Selma, Alabama, is named in honor of a Grand Dragon of the KKK.<sup>19</sup> Confederate soldiers are remembered in the Confederate section of Arlington National Cemetery at the Confederate Memorial, which was unveiled June 4, 1914, by President Woodrow Wilson.<sup>20</sup> The Confederate flags, namesakes, and statues become the physical embodiments of "collective memory." The names of public buildings and other monuments symbolize the power of the dominant groups and the class nature of social subordination. And, they do much more. Their materiality prescribes an ordering of relations in society.

The National Monument Audit, a recent landmark study funded by the Mellon foundation, reviewed some 50,000 historical monuments across the country. It concluded that they "misrepresent[] our history."<sup>21</sup> The reporters set out to obtain "a panoramic view" that could show overarching patterns in the way Americans memorialized their past. There were more memorials to Abraham Lincoln than to anyone else—a total of nearly 200. George

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17. Each state is allowed to display two statues in the U.S. Capitol. One of Virginia's statues is of George Washington, the other was of Robert E. Lee. Bryan Pietsch, *Robert E. Lee Statue is Removed From U.S. Capitol*, N.Y. TIMES (Sept. 19, 2021), <https://www.nytimes.com/2020/12/21/us/robert-e-lee-statue-us-capitol.html> [https://perma.cc/4GM3-XAAU].

18. Virginia recently removed the Jefferson Davis statue from its capitol building. Gregory S. Schneider, *Confederate Memorials Quietly Removed from Virginia Capitol Overnight*, WASH. POST (July 24, 2020), [https://www.washingtonpost.com/local/virginia-politics/confederate-memorials-quietly-removed-from-virginia-capitol-overnight/2020/07/24/8d2a0dee-cced-11ea-bc6a-6841b28d9093\\_story.html](https://www.washingtonpost.com/local/virginia-politics/confederate-memorials-quietly-removed-from-virginia-capitol-overnight/2020/07/24/8d2a0dee-cced-11ea-bc6a-6841b28d9093_story.html) [https://perma.cc/49CC-ZC89].

19. Melanie Peeples, *The Racist History Behind the Iconic Selma Bridge*, NPR (Mar. 5, 2015), <https://www.npr.org/sections/codeswitch/2015/03/05/391041989/the-racist-history-behind-the-iconic-selma-bridge> [https://perma.cc/73W6-4ECT].

20. *Confederate Memorial*, ARLINGTON NAT'L CEMETERY, <https://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Confederate-Memorial> [https://perma.cc/ZQ4B-YFJ6]. The plaque on the Confederate Memorial reads, "Not for fame or reward, not for place or for rank, or goaded by necessity, but in simple obedience to duty, as they understood it, these men suffered all, sacrificed all, dared all, and died." At the top is a female figure (peace) who, looking south, holds a laurel wreath to honor the Southern sacrifice, along with a pruning hook. A plow rests at her feet. A frieze depicts rebel states, military personnel and equipment, as well as a young black slave (in CSA uniform) following his master and a black woman holding her child so a CSA officer can kiss it. Linda Wheeler, *Confederate Dead Are Still Remembered at Arlington*, WASH. POST (June 12, 2007), <https://www.washingtonpost.com/wp-dyn/content/article/2007/06/12/AR2007061201881.html>; see also Arlington National Cemetery, *The Confederate Memorial*, arlingtoncemetery.net.

21. MONUMENT LAB, NAT'L MONUMENT AUDIT 25 (2021), <https://monumentlab.com/monumentlab-nationalmonumentaudit.pdf> [https://perma.cc/WQ24-LQPL].

Washington came second, followed by Christopher Columbus, a distant third.<sup>22</sup> Casimir Pulaski, a considerably less well-known Polish cavalry officer in the Revolutionary War, was ahead of Thomas Jefferson, fifty-one to thirty-six in the number of memorials.<sup>23</sup> Joan of Arc was more popular than one of the nation's founders, Alexander Hamilton. Saint Francis of Assisi outranked Robert E. Lee.<sup>24</sup> And, there are eleven times more mermaids than congresswomen.<sup>25</sup> Confederate leaders outnumbered women by four to three.<sup>26</sup>

The imperatives of building Confederate memorials began in the late 19th and early 20th century out of nostalgia—after the South had recovered a bit from the ravages of the war—and continued to the late 20th century. Now in the 21st century, those who embrace the statues face efforts to remove them.<sup>27</sup> Most statues were commissioned by state and local governments and placed on public spaces—courthouse steps, public squares, and public parks. Others were funded by private donation from heritage groups such as the United Daughters of the Confederacy,<sup>28</sup> but were typically erected in public spaces.<sup>29</sup> In 2018, the Southern Poverty Law Center tallied up the numbers and types of public symbols of the Confederacy.<sup>30</sup> All told, there were more than 1,700 Confederate monuments, place names, and other symbols across the nation.<sup>31</sup> These include 772 monuments, 106 public schools named for Confederate icons,

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22. *Id.* at 12.

23. *Id.*

24. *Id.*

25. *Id.* at 17.

26. *Id.* at 12.

27. JAMES W. LOEWEN, LIES ACROSS AMERICA: WHAT OUR HISTORIC SITES GET WRONG 115 (2019).

28. The group, established in 1894 in Nashville Tennessee, “is dedicated to the purpose of honoring the memory of its Confederate ancestors; protecting, preserving and marking the places made historic by Confederate valor; collecting and preserving the material for a truthful history of the War Between the States . . . .” *Reaffirmation of the Objectives of the United Daughters of the Confederacy*, UNITED DAUGHTERS OF THE CONFEDERACY, <https://hqudc.org/> [<https://perma.cc/ZEZ6-R47R>].

29. For a tally of all the monuments in public places, see *Whose Heritage? Public Symbols of the Confederacy*, S. POVERTY L. CTR., (Feb. 1, 2019), <https://www.splcenter.org/20190201/whose-heritage-public-symbols-confederacy>. Also, in 2017, Alabama enacted the Alabama Memorial Protection Act, Ala. Code §41-9-230, which bars the removal or renaming of memorials located on public property for forty years or more.

30. *Whose Heritage? Public Symbols of the Confederacy*, S. POVERTY L. CTR., (Feb. 1, 2019), <https://www.splcenter.org/20190201/whose-heritage-public-symbols-confederacy> [<https://perma.cc/6ULS-5MKF>].

31. *Id.*

eighty counties and cities and ten US military bases named for Confederate leaders, nine observed state holidays in five states. Public buildings, bridges, and highways also give honor to the Confederates.<sup>32</sup>

#### KEEPING THE MONUMENTS IN THEIR PLACES

From the standpoint of collective memory, the constancy and omnipresence of a monument in a particular area makes it culturally imposing. The size, mass, and materiality monopolize the dialogue and suggest eternity.<sup>33</sup> Their immortality is supported by state and federal financial support. According to a 2018 Smithsonian Magazine story,<sup>34</sup> the state of Virginia budgeted tens of thousands of dollars for the maintenance of Confederate graves—more than \$1.6 million since 1996. The State of Mississippi earmarks \$100,000 a year for preservation of Beauvoir, a privately-owned and operated park dedicated to the Sons of Confederate Veterans.<sup>35</sup> “Though Alabama state parks often face[d] budget cuts—one park had to close all its campsites in 2016—Confederate Memorial Park received some \$600,000 that year. In the past decade, the state ha[d] allocated more than \$5.6 million to the site.”<sup>36</sup> The federal government has spent at least \$40 million on Confederate monuments and “groups that perpetuate racist ideology” in the last decade—some under Federal

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32. *Id.* Data for the report was collected from federal, state and private sources, including the National Register for Historic Places (National Register), the National Park Service, the Smithsonian Art Inventory, Sons of Confederate Veterans and Daughters of the Confederacy. *Id.* The study did not include local, state or nationally listed historic sites or parks, the 2600 markers, battlefields, museums, cemeteries and other sites of historical significance. *Id.* The study specifically focused on Confederate symbols which were commemorative or honorific in nature, rather than those which marked, represented or interpreted actual historical events or places. *Id.*

33. The most conspicuous of all of these sites is Stone Mountain Park, a 3200-acre state park on the outskirts of Atlanta, Georgia. This enormous stone carving depicts three icons of the Confederacy: Confederate President Jefferson Davis, General Robert E. Lee and General Thomas ‘Stonewall’ Jackson. The relief is the main attraction in the park of Stone Mountain Park. The park is the site of the re-founding of the Ku Klux Klan in 1915. The project, initially organized and funded by the United Daughters of the Confederacy, was begun in 1923 and completed in 1972. The resulting sculpture is 400 feet high and spans three acres of the mountain. It is larger than the depictions of the four presidents on Mount Rushmore. The site was purchased by the State of Georgia in 1958. See ATL. HIST. CTR., A CONDENSED HISTORY OF THE STONE MOUNTAIN CARVING, [https://www.atlantahistorycenter.com/app/uploads/2022/11/WEB\\_StoneMountain\\_CondensedHistory.pdf](https://www.atlantahistorycenter.com/app/uploads/2022/11/WEB_StoneMountain_CondensedHistory.pdf).

34. Brian Palmer & Seth Freed Wessler, *The Costs of the Confederacy*, SMITHSONIAN MAG., Dec. 2018, <https://www.smithsonianmag.com/history/costs-confederacy-special-report-180970731> [<https://perma.cc/J5GA-N8FH>].

35. *Id.*

36. *Id.*

Emergency Management Agency funds for “protective measures” and others from Hurricane Katrina aid to restore damaged property.<sup>37</sup>

The inevitability and perpetuity of these monuments is also assured by a host of legal mechanisms, including state statue statutes that prohibit individuals and local communities from removing, altering, and even contextualizing them.<sup>38</sup> Seven states have enacted such legislation.<sup>39</sup> The laws of property and gifts also operate as impediments to their legal removal, ensuring that they will forever stand to speak their stories.<sup>40</sup>

#### SHOULD WE REMOVE ALL OF THE STATUES?: WHAT THE CONFEDERATE MONUMENTS SAY

Would it be an erasure of history? Many claim that these statues represent us in all of our aspects—the honorable and the not so honorable. Would tearing them down help us come to terms with the mistakes of our past? Would there be a stopping point? All mortals are flawed—some more than others. What amount of human failings can we overlook, or not, for purposes of deciding worthiness for honor or ignominy?<sup>41</sup> Even as we believe statues and memorials should reflect current values and reflect who

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37. *Id.*

38. See Aneil Kovvali, *Confederate Statue Removal*, 70 STAN. L. REV. ONLINE 82, 82 (2017); Kasi E. Wahlers, *North Carolina’s Heritage Protection Act: Cementing Confederate Monuments in North Carolina’s Landscape*, 94 N.C. L. REV. 2176, 2181– 82 (2016); Alfred Brophy, *North Carolina Heritage Protection Act*, THE FACULTY LOUNGE (July 16, 2015, 12:14 AM), <http://www.thefacultylounge.org/2015/07/north-carolina-heritage-protection-act.html> [https://perma.cc/TNQ6-T67R]; David A. Graham, *Local Officials Want to Remove Confederate Monuments—but States Won’t Let Them*, ATLANTIC, (Aug. 17, 2017), <https://www.theatlantic.com/politics/archive/2017/08/when-local-officials-want-to-tear-down-confederate-monuments-but-cant/537351/> [https://perma.cc/9PPP-Q44F]. See also GA. CODE ANN. § 50-3-1(b) (2018); ALA. CODE § 41-9-231(6) (2017); MISS. CODE ANN. § 55-15-81 (2018); N.C. GEN. STAT. § 100-2.1 (2018); S.C. CODE ANN. § 10-1-165 (2022); TENN. CODE ANN. § 4-1-412 (2018); VA. CODE ANN. § 15.2-1812 (2018). *State v. City of Birmingham*, 299 So.3d 220, 237 (Ala. 2019) (upholding statue law and ruling that cities have no constitutional rights to contravene statute).

39. See state statutes cited *supra* note 38.

40. See, e.g., *Tenn. Div. of the United Daughters of the Confederacy v. Vanderbilt Univ.*, 174 S.W.3d 98 (Tenn. App. 2005).

41. The debate extends beyond these statues. NASCAR has banned the confederate flag from its events. The U.S. Army has said it will consider renaming bases bearing the names of Confederate leaders (though President Donald Trump indicated he plans to block such discussions). Protestors in both the United States and other countries are tearing down statues themselves, from Christopher Columbus to colonialists to men who participated in the slave trade.

we are and who we want to be, how do we know when we have reached this point?<sup>42</sup>

Whether we remove them may depend in part on the intent behind their construction—why they were built<sup>43</sup> and what they spoke and continue to speak. The Confederate Monuments are odes to the “Lost Cause Narrative,” an apology—not in the sense of making amends, but as a rationalization and justification for engaging in that so devastating contest. There were more casualties—600,000 lives lost between the two armies—than in any other American armed conflict.<sup>44</sup> There was near-total devastation on the southern economy—agriculture and commercial markets destroyed, much of it from the “total war,” carried out by Union general William T. Sherman, who burned and ravaged the ground as a military tactic to conquer and demoralize.<sup>45</sup> The South also lost the economic advantage of the free labor of their former slaves. And, significantly, whites formally lost their high place in the hierarchy of political and social relations under the Civil War Amendments, which ostensibly guaranteed equal rights for all. However, when Reconstruction ended, the now-deposed southern power employed various measures to reassert political hegemony through Black Codes, which imposed on the former slaves onerous conditions for work, on where to live, to travel freely, and to marry, and, through literacy tests and the legally sanctioned terror of the Ku Klux Klan, attempted to prevent voting. This dominance and oppression was reinforced through monuments designed to speak the narrative of the wronged, but honorable people for eternity.<sup>46</sup>

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42. The Romans routinely destroyed statues of enemies of the state and disgraced rulers. Crowhurst, *supra* note 10. See also ROBERT BEVAN, *THE DESTRUCTION OF MEMORY: ARCHITECTURE AT WAR* (2016) (Discussing the destruction of the evidence of culture as a military tactic).

43. Noah Kelly, *Why Build a Statue*, HISTORYHUB.INFO (June 17, 2020), <https://historyhub.info/why-build-a-statue/> [<https://perma.cc/4TEK-W2ZM>] (exploring the intended messages—both harmful and positive—behind monuments).

44. Bob Zeller, *How Many Died in the American Civil War? The U.S. Civil War was the nation's deadliest conflict, but debate remains over the total estimate of fatalities*, HISTORY (Jan. 6, 2022), <https://www.history.com/news/american-civil-war-deaths>; But see David Hacker, *Recounting the Dead* N.Y. TIMES (Sept. 20, 2011), <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2011/09/20/recounting-the-dead/#more-105317> (reassessing the number of war dead). For an interesting accounting of the losses from the southern perspective by the preeminent civil war historian, see Eric Foner, *The South's Inner Civil War*, 40 AMERICAN HERITAGE, issue 2 (1989).

45. This practice was also seen in World War II. See BEVAN, *supra* note 42, at 89, 102, 111.

46. For a good treatment of the Lost Cause myth, see generally, Caroline E. Janney, *The Lost Cause - Encyclopedia Virginia*, <https://encyclopediavirginia.org/entries/lost-cause-the/> [<https://perma.cc/Q7VA-SKUD>].

To be sure, statues are toppled—in the course of rebellion, protest and change of regime. During the French Revolutions, angry mobs knocked down statues representing past kings of France.<sup>47</sup> After World War II, all Nazi monuments were taken down and Nazi paraphernalia was made illegal by the German government, and this occurred after Allied soldiers and German citizens had done similar work of monument removal.<sup>48</sup> In Russia, the monuments to the Tsars were bludgeoned and Lenin’s monument was hanged.<sup>49</sup> In recent years, throughout the United States and across the world, monuments to bad men are being toppled, dragged by the neck, and dumped into the seas by angry and offended people.<sup>50</sup> The State of Virginia, the capital of the Confederacy, has taken significant steps to remove monuments to Confederate “heroes” from public spaces and these measures have been upheld by its highest court.<sup>51</sup>

MOTIVATION TO REVENGE OR TO DO GOOD OR FOR  
BETTER: “THE THOUSAND INJURIES OF FORTUNATO I HAD  
BORN AS I BEST COULD, BUT WHEN HE VENTURED UPON  
INSULT I VOWED REVENGE.”<sup>52</sup>

Remembrance is a two-edged sword—it can inspire us to do good, but it can also appeal to our darker selves. Memory of offense can lead us to vengefulness and enmity, then to war and denigration of others, to right our

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47. Crowhurst, *supra* note 10.

48. *Id.*

49. *Id.*

50. HOW STATUES ARE FALLING AROUND THE WORLD, N.Y. TIMES (June 24, 2020), <https://www.nytimes.com/2020/06/24/us/confederate-statues-photos.html> 1/12; *see also* Audra D. S. Burch, *How a National Movement Toppled Hundreds of Confederate Symbols*, N.Y. TIMES (Feb. 28, 2022), <https://www.nytimes.com/interactive/2022/02/28/us/confederate-statue-removal.html> [<https://perma.cc/73AS-L8M5>]. In 1999, Congress took the extraordinary step of advising the National Park Service to re-evaluate its Civil War sites and do a better job of explaining “the unique role that slavery played in the cause of the conflict.” But vestiges of the Lost Cause still haunt park property. In rural Northern Virginia, in the middle of a vast lawn, stands a small white clapboard house with a long white chimney—the Stonewall Jackson Shrine, part of the Fredericksburg & Spotsylvania National Military Park.

51. *Taylor v. Northam*, 862 S.E.2d 458 (Va. 2021).

52. EDGAR ALLAN POE, *THE CASK OF AMONTILLADO* 4 (1846).

perceived wrongs, both real and imagined. We hold our memories, even as they have become discredited by fact and reason.<sup>53</sup>

Recognizing that collective memory is contrived may serve as the predicate for dialogue on uncomfortable topics. As this rethinking threatens to disrupt the order of things and long-held places in society, angry and ridiculous propositions are being thrown out, rather than aiming for conciliation, particularly over American slavery.<sup>54</sup> Indeed, some school districts are questioning the value of teaching about the evils of that “peculiar institution”<sup>55</sup> as well as the Holocaust. There was one proposal to ban the word “slavery,” instead substituting “involuntary relocation.”<sup>56</sup> One elementary school teacher resigned when school officials removed from his classroom photos of Martin Luther King Jr., Harriet Tubman, George Washington Carver and former Secretary of State Colin Powell, on the asserted ground that the images were not age-appropriate.<sup>57</sup>

Determining what should be commemorated has never been a democratic process. It is political and deliberate. This is because commemoration does not only look back to assess honor, but forecasts, instructs and guides behavior going into the future. As the art historian Kirk Savage has observed, memorials “do not arise as if by natural law to celebrate the deserving; they are built by people with sufficient power to

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53. Many of the rioters invading the Capitol Building on January 6, 2021 wore Confederate hats, carried Confederate flags and had Nazi Swastikas emblazoned on their garb, not yet reconciled with the contemporary calls of humanity.

54. Some educators in Texas proposed to substitute “slavery” with “involuntary relocation.” State education board members pushed back on proposals to use “involuntary relocation” to describe slavery. See Brian Lopez, *State education board members push back on proposal to use “involuntary relocation” to describe slavery*, THE TEXAS TRIBUNE (June 30, 2022, 6: 00 PM), <https://www.texastribune.org/2022/06/30/texas-slavery-involuntary-relocation/> [https://perma.cc/7B6N-G743]. See also Devan Cole, *Tom Cotton describes slavery as a ‘necessary evil’ in bid to keep schools from teaching 1619 Project*, CNN POLITICS (July 27, 2020, 11:11 PM), <https://www.cnn.com/2020/07/27/politics/tom-cotton-slavery-necessary-evil-1619-project/index.html> [https://perma.cc/59TT-NKKE] (detailing Senator Tom Cotton’s description of slavery as “a necessary evil”).

55. KENNETH STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* (1956).

56. Adela Suliman, *Texas Education Board Rejects Proposal to Call Slavery ‘Involuntary Relocation’*, WASH. POST (Jul. 1, 2022, 8:10 AM), <https://www.washingtonpost.com/nation/2022/07/01/texas-board-education-slavery-involuntary-relocation/> [https://perma.cc/3T5P-ENEY] (The Texas Board of Education rejected the proposal).

57. Minyvonne Burke, *Florida Teacher Says He Quit After the Staff Removed Photos of Black Leaders*, MSNBC NEWS (Aug. 16, 2022, 8:35 AM), <https://www.nbcnews.com/news/us-news/florida-teacher-says-quit-staff-removed-photos-black-leaders-rcna42658> [https://perma.cc/S9BY-86AA].

marshal (or impose) public consent for their erection.”<sup>58</sup> They are erected to deliver a particular message. Over time, the messages and causes for commemoration have been both laudable and ignoble. Ancient Greeks realized the importance of publicly honoring (commemorating) or disparaging acts performed ostensibly in the public interest. The Greeks reasoned that actions deserved praise when they served noble causes. The granting of an honor (or suffering scorn) not only served to commemorate a specific act, but also affirmed the moral worthiness of that act as strategic narrative continuity. Isocrates presumed “that a discourse of praise can lead men to moral excellence.”<sup>59</sup> The Washington Monument does this. Can this be said of Confederate Monuments?

#### COUNTER-NARRATIVES AND BACK TALK?

James E. Young speaks of “counter-monuments,”<sup>60</sup> in post-war Germany, erected with the intention of casting the process of memorialization in a critical light.<sup>61</sup> One example is called a “Monument Against Fascism” erected by conceptual artists Jochen and Esther Gerz in a suburb of Hamburg in 1986. Visitors were invited to inscribe their names on the surface of the thirty-six-foot-high, lead-covered column. After each reachable section was completely inscribed, the column was lowered into the ground until it completely disappeared. There were two aims of the installation; first, to stand against fascism (with all its undemocratic dimensions and oppression) and second, to spark dialogue on the desire to forget the painful past.”<sup>62</sup>

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58. Kirk Savage, *The Politics of Memory: Black Emancipation and the Civil War Monument*, in *COMMEMORATIONS: THE POLITICS OF NATIONAL IDENTITY* 135 (John R. Gillis ed., 1994).

59. Takos Poulakos, *Isocrates's use of narrative in the Evagoras: Epideictic rhetoric and moral action*, 73 *QUARTERLY J. OF SPEECH* 317, 317 (1987).

60. For example, a monument to Nat Turner alongside Robert E. Lee, one of the Lakota alongside Custer.

61. James E. Young, *The Counter-Monument: Memory Against Itself in Germany Today*, 18 *CRITICAL INQUIRY* 267, 273 (1992).

62. Tom Wilkinson, *Trenchant Criticism: On Poppies, Cenotaphs and Other Memorials*, *ARCHITECTURAL REV.* (Nov. 6, 2014), <https://www.architectural-review.com/essays/trenchant-criticism-on-poppies-cenotaphs-and-other-memorials> [<https://perma.cc/PT6P-HWMS>].

The controversial *1619 Project* is a counter-narrative.<sup>63</sup> It purports to expose the idea of collective memory, as it pertains to our slave history, as fallacious. The project, a historical analysis of how slavery has shaped American political, social and economic institutions, is named for the year in which slavery was first introduced in North America.<sup>64</sup> It is a collection of essays, written with the purpose of thrusting the subject of slavery to the forefront of our national narrative.<sup>65</sup> Viewed from the perspective of those historically denied the rights enumerated in the founding documents, the project reveals a deeply flawed American narrative. One continuing theme is that the legacies of slavery persist to define today's race relations and deprivations—from housing access to presumptions of intellectual inferiority.<sup>66</sup> The project offers an assessment of slavery in the politics of the nation's development not only as the cause of the Civil War, but also as a reason for fighting the Revolutionary War. England, at the time, was moving toward abolition.<sup>67</sup>

The project has been met with both praise (many school systems incorporated it into their curricula) and castigation (many others have banned its teaching). Adam Serwer, in an Atlantic Monthly article, *The Fight Over the 1619 Project Is Not About the Facts*, found disagreements about the work was not about historical fact, but about the sincerity of Americans, from the Founders to the present day, regarding public commitments to the ideals of fairness and equality.<sup>68</sup> Serwer believes that the reluctance to teach slavery in schools stems from the “deep abiding American need to conceive of and understand our history as ‘progress,’ as

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63. Nikole Hannah-Jones et al., *The 1619 Project*, THE N. Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html> [<https://perma.cc/FF5X-A47H>].

64. *Id.*

65. *Id.*

66. The emerging “replacement theory,” and the claim of being “legacy Americans” well reveals these legacies. *See, e.g.*, THE ECONOMIST, WHAT IS THE “GREAT REPLACEMENT” RIGHT-WING CONSPIRACY THEORY?, <https://www.economist.com/the-economist-explains/2022/05/16/what-is-the-great-replacement-right-wing-conspiracy-theory> [<https://www.economist-explains/2022/05/16/what-is-the-great-replacement-right-wing-conspiracy-theory>] [<https://perma.cc/K6PD-UB8V>].

67. Nikole Hannah-Jones et al., *supra* note 63.

68. Adam Serwer, *The Fight Over the 1619 Project Is Not About the Facts*, THE ATLANTIC (Dec. 23, 2019), <https://www.theatlantic.com/ideas/archive/2019/12/historians-clash-1619-project/604093/>. *See also* Adam Serwer, *Why Conservatives Want to Cancel the 1619 Project*, THE ATLANTIC (May 21, 2021), <https://www.theatlantic.com/ideas/archive/2021/05/why-conservatives-want-cancel-1619-project/618952/> [<https://perma.cc/CJY2-EXR4>].

the story of a people and a nation that always sought the improvement of mankind, the advancement of liberty and justice, the broadening of pursuits of happiness for all.”<sup>69</sup> The worry by the critics of the project was that demanding a new narrative about the enslavement of black people and white supremacy, would diminish American history.<sup>70</sup>

Despite the pushback by the critics, there have been overt expressions of contrition by some states. Perhaps the greatest one, the National Memorial for Peace and Justice, which opened in 2018 in Montgomery, Alabama, apparently aims to cause deep thinking about the evils of slavery and its aftermath through the many sculptures that depict lynchings.<sup>71</sup> In 2014, civic leaders in Charleston, South Carolina, dedicated a statue to honor Denmark Vesey who was hanged for leading a slave rebellion.<sup>72</sup> On the federal level, U.S. Highway 80 in Alabama, the route of the 1965 voting rights march from Selma to Montgomery, was recently designated a “National Historic Route.”<sup>73</sup> And, in celebration of a long-uncelebrated heroine, President Barack Obama proclaimed the Harriet Tubman national monument under the authority conferred by the Antiquities Act of 1906.<sup>74</sup>

“THE KEY IS TO CONSTRUCT MONUMENTS THAT ENCOURAGE QUESTIONS RATHER THAN IMPOSE SINGULAR ANSWERS”<sup>75</sup>

Should some or all of the old monuments be destroyed or removed? The Mellon Foundation plans to spend more than \$250 million toward projects for the removal of Confederate monuments and for rethinking what forms monuments can take and what communities want from them; that is, what

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69. *Id.* (quoting David Blight, *Introduction* to Kate Shuster, *Teaching Hard History*, SOUTHERN POVERTY LAW CENTER (Jan. 13, 2018), <https://www.splcenter.org/20180131/teaching-hard-history#introduction> [<https://perma.cc/6PUT-8S4D>]).

70. *See Serwer, supra* note 68.

71. Equal Justice Initiative, Museum and Memorial, <https://museumandmemorial.eji.org/> [<https://perma.cc/WM52-FZSP>].

72. Hampton Park, *Denmark Vesey Monument*, PRESERVATION SOCIETY OF CHARLESTON (last visited Dec. 2, 2022), <https://www.preservationsociety.org/locations/denmark-vesey-monument/> [<https://perma.cc/HH9N-LT3Y>].

73. Alabama: Selma to Montgomery National Historic Trail: Selma To Montgomery National Historic Trail, <https://www.nps.gov/places/selma-to-montgomery-national-historic-trail.html> [<https://perma.cc/W229-K4AA>].

74. Proclamation No. 8943, 78 Fed. Reg. 18763, 18765 (Mar. 25, 2103).

75. Anderson, *supra* note 1.

stories do they think should be told.<sup>76</sup> All of this raises questions. To what extent should the state have any role in erecting statues? Is the whole idea of commemoration just too fraught with contention and distortion? The historian, James Young, who has written extensively about Holocaust memorials, described the process as a primal struggle between remembering and forgetting. He wondered if monuments may act to displace the responsibility of remembering from the living and actually serve the purpose of forgetting.<sup>77</sup> By necessity, however, monuments do both. Memorials are incomplete in that they can only make partial selections from the whole cloth of the past. They are biased as abstracting leads to positions that are partial to one side over other, sometimes to competing memories.

In the years after World War II, when Yugoslavia fell into a dictatorship in a one-party state, at a time when progress in culture and art seemed stalled by Stalinism, something truly odd emerged. That nation quietly shifted from statues of Tito, to a landscape of modernist abstractions. Monuments to events of the Second World War, in futuristic, brutalist, abstract and cubist forms, were born.<sup>78</sup> The monuments do not depict the circumstances of the event memorialized, only that the event was worthy of remembering. But can any monument fully memorialize mass crimes, a millennium of abuse and terror? There are political advantages to abstract modernism—they are occasions for serious debates and competition of ideas and interpretation.

Statues should embody our highest values and principles, whether we have achieved them or are still striving toward them. Those that offend and denigrate, oppress and exclude, have no place in public spheres. The Vietnam Veterans Memorial, the Holocaust Memorial in Berlin, and the Famine Memorial in Dublin, unquestionably serve the important function of remembering and learning from the remembrance. And they are admirable works of art. But judging those that may fall in between these two

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76. *The Monuments Project*, MELLON FOUNDATION: INITIATIVES, (last visited Dec. 2, 2022), <https://mellon.org/initiatives/monuments/> [https://perma.cc/49QQ-9D4S].

77. James E. Young, *The Texture of Memory: Holocaust Memorials in History*, in ASTRID ERLI, ANSGAR NÜNNING, SARA YOUNG, AND ANSGAR NÜNNING, *CULTURAL MEMORY STUDIES : AN INTERNATIONAL AND INTERDISCIPLINARY HANDBOOK* 360 (2008).

78. Dusan Velickovic and Donald Niebyl, *Monuments and Memory*, *THE WILSON QUARTERLY* (2020), [www.wilsonquarterly.com/quarterly/the-ends-of-history/monuments-and-memory](http://www.wilsonquarterly.com/quarterly/the-ends-of-history/monuments-and-memory) [https://perma.cc/43NS-FTQC].

poles is proving difficult in the sometimes rancorous public discourse. Could abstract monuments, those without faces, be the way forward?<sup>79</sup>

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79. *Id.*; see also Siddhartha Mitter, *Evoking Our Past for the Public to See*, NEW YORK TIMES (Oct. 7, 2022), <https://www.nytimes.com/2022/10/07/arts/design/charles-gaines-governors-island-public-art-chains.html?searchResultPosition=1> [<https://perma.cc/FL7P-SXZD>] (exemplifying an art installation that speaks volumes without faces).