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PRECIOUS AND DEAR TO US IS ONLY THIS PLACE: THE
TRANSFORMATIVE POTENTIAL OF MONUMENTAL
REMNANTS

Zachary Bray*

ABSTRACT

When monuments are torn down, what remains, and what should we do with the remains? In the United States as elsewhere, recent political and social conflicts have led to the destruction or relocation of many monuments—sometimes spontaneous, sometimes carefully planned. Much attention has been focused on these processes of removal and relocation, and the laws that hinder or advance these changes. On the other hand, relatively little attention has been paid to what remains behind after monuments are removed or destroyed: the vacant spaces, empty pedestals, fragments of statues, and so forth. Sometimes these remnants are protected by laws that failed to protect the original monuments. Oftentimes what is left behind may become a monument in its own right, though it may carry very different messages than the original. This Essay explores some of the legal issues associated with monumental remnants and considers how the law can be used, and misused, to shape the repurposing of these sites.

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INTRODUCTION

Should the remnant parts of monuments that have been partially destroyed or removed continue to be the subject of monument protection laws? And can such monumental remnants serve as monuments in their own right, perhaps with messages and connotations very different than those served by the original memorials of which they were a part? These questions are not unique to American monuments. Throughout the world today, and throughout history, the supporting components of monuments frequently survive for a period of time after the central memorial disappears.¹ And these remnants of monuments that have decayed or been destroyed—pedestals, plinths, protective fencing, landscaped areas, even grassy clearings that are left behind—can take on monumental importance in their own right, and serve to focus monumental conflicts, long after the central elements of the original memorial are gone. Indeed, sometimes these remnants, originally intended as nothing more than protective elements or supporting features of the original memorial, may come to serve a memorial function even more significant than the original memorial.

One of the best examples of this phenomenon comes from one of the oldest monumental conflicts in the United States. Around its earliest park, New York has preserved the damaged protective fence that failed to keep revolutionary protesters from destroying a statue of King George III.² The gilded statue of King George—thought to be the first equestrian statue in what is now the United States—was repeatedly vandalized in the years before the American Revolution, despite a local monument-protection law that took the form of an anti-graffiti and anti-desecration ordinance.³ In 1776, the statue of King George, horse and all, was toppled and likely melted down by a revolutionary crowd, which likely also stripped the iron

1. Cf. PERCY BYSSHE SHELLEY, *Ozymandias*, in THE SELECTED POETRY AND PROSE OF SHELLEY 194 (2002) (observing that what remains of the monument to Ozymandias are “Two vast and trunkless legs of stone,” “Half sunk, a shattered visage,” and “the pedestal” that still bears an inscription, but “[n]othing beside remains”).

2. E.g., David W. Dunlap, *Greening Ye Olde Manhattan*, N.Y. TIMES (July 9, 2004), <https://www.nytimes.com/2004/07/09/arts/greening-ye-olde-manhattan.html> [<https://perma.cc/Q2JG-F9S6>].

3. E.g., HOLGER HOOCK, EMPIRES OF THE IMAGINATION: POLITICS, WAR AND THE ARTS IN THE BRITISH WORLD, 1750-1850, at 49-51 (2010).

fence of its fence-post ornaments that had royalist connotations.⁴ But while the statue was destroyed, the defaced fence survived. Although the fence was boxed up and removed during some of the intervening years, it now stands roughly where it was originally installed, and today it is listed as a New York State landmark and on the National Register of Historic Places.⁵ In other words, the remnant fence has become a monument in its own right, much more enduring than the original, and with a very different meaning for most visitors than the message originally intended to be conveyed by the golden statue of King George.

This phenomenon is in no way limited to the United States. To take another set of obvious examples, countries in eastern Europe which were subjected to repeated and successive military occupation in the 20th century often contain multiple sites that starkly reveal the legacy of monument fragments. Last century in what is now the Czech Republic, the landscaped plateau that once supported a fifty-foot tall granite statue of Stalin was known as ‘Stalin’s place’ for decades after the statue itself was blown apart by dynamite.⁶ At the same time, the remnant sites of monuments to the first president of Czechoslovakia, T.G. Masaryk, took on a very different monumental importance of their own, even though many of the statues of Masaryk were removed, hidden, or destroyed.⁷

These examples show us that monumental remnants can take on an importance of their own—even when they are not vestiges of a long-standing memorial that was destroyed or that decayed, but rather merely fragments of a memorial that was never completed. To take another example, when the town of Brno was part of Communist Czechoslovakia in the years after the Second World War, an incomplete monument to Masaryk—little more than a pedestal, ultimately surrounded by landscaping and flowers—took on a monumental focus in its own right on certain days of remembrance.⁸ During those years, a similarly incomplete monumental

4. Dunlap, *supra* note 2.

5. OPEN NEW YORK, NATIONAL REGISTER OF HISTORIC PLACES STATE DATABASE, <https://data.ny.gov/widgets/iisn-hnyv> [<https://perma.cc/4GEQ-SEBT>] (last visited Oct. 10, 2022).

6. Paul Wilson, *Victims, Not Victors? The Uniquely Czech Debate over How to Memorialize the Velvet Revolution*, GUARDIAN (Dec. 2, 2019), <https://www.theguardian.com/cities/2019/dec/02/thirty-years-after-the-velvet-revolution-will-prague-finally-erect-a-monument> [<https://perma.cc/WK5K-EBPR>].

7. *Id.*

8. *The Story of Two Monuments: Brno Opts for Masaryk, Snubs Red Army*, OSA CATALOG: RECORDS OF RADIO FREE EUROPE/RADIO LIBERTY RESEARCH INSTITUTE 2-3 (March 23, 1953)

pedestal just a few hundred feet away, intended to host a larger sculptural memorial to the Red Army, also served as a monument in its own right, as well as a focus for very different memories and public messages in a contested public space.⁹ In other words, the dueling Brno sites show us that public memory and history can give meaning and significance to monumental remnants that were never intended to carry much memorial content, even if the *original* intended monument was never completed.

Although this is not a new phenomenon, the number of monumental remnant sites has increased in the United States and elsewhere in recent years, as popular backlash has led to the spontaneous destruction, defacement, or removal of many civic monuments to historic discrimination. In the United States, some of these sites once hosted statues or other representations of specific historical officials or idealized anonymous figures associated with the Confederacy.¹⁰ But many other memorials in the United States,¹¹ and elsewhere,¹² have been destroyed by protesters because of their monumental connection with patterns of systematic injustice that have relatively little to do with honoring Confederate figures or the rise of Jim Crow. And while many of these recently destroyed, defaced, or removed monuments were created decades or centuries ago, some of the monuments that have been swiftly altered or abandoned in recent years were relatively new, barely completed, or incomplete.¹³

Although there are wide-ranging historical, aesthetic, and cultural differences between many of the monuments that have been destroyed,

[hereinafter *The Story of Two Monuments*], <https://catalog.osaarchivum.org/catalog/osa:4ec4f0ac-097f-433a-9f27-7b69baca168b> [<https://perma.cc/AQP6-F3U9>].

9. *Id.*

10. For a relatively recent list of monuments associated with the Confederacy that have been removed, and those that remain, see generally *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/WZF8-LK38>].

11. *E.g.*, Nico Savidge et al., *Statues of Junipero Serra, Ulysses S. Grant Toppled at Golden Gate Park*, MERCURY NEWS (June 22, 2020), <https://www.mercurynews.com/2020/06/20/junipero-serra-statue-toppled-at-golden-gate-park/> [<https://perma.cc/YU94-ARXD>].

12. *E.g.*, Eve Fairbanks, *The Birth of Rhodes Must Fall*, GUARDIAN (Nov. 18, 2015), <https://www.theguardian.com/news/2015/nov/18/why-south-african-students-have-turned-on-their-parents-generation> [<https://perma.cc/YJ89-HPED>].

13. *E.g.*, Leyland Cicco, *Canadian City Pulls Bison Sculpture in Row Over Representation of Colonialism*, GUARDIAN (Sept. 2, 2022), <https://www.theguardian.com/world/2022/sep/02/edmonton-pulls-bison-sculpture-colonialism-ken-lum> [<https://perma.cc/V535-QQMC>].

defaced, or removed in recent years, many of these monumental sites share similarities. Just as the destruction, damage, or abandonment of monuments to King George III, or Stalin, or Masaryk, or the Red Army left behind fences, pedestals, plinths, and landscaping that came to take on their own monumental importance,¹⁴ so too the recent destruction, damage, or abandonment of monuments to Confederate generals, colonial administrators, and slave traders frequently have left behind remnants that have taken on some new monumental importance in their own right.¹⁵

The remainder of this Essay will proceed in two parts. Part I will explore the objections many have raised to these remnant monumental sites—including but not limited to objections raised by those who wish to defend or restore previously destroyed, defaced, or removed monuments—and evaluate these objections. Part II of the Essay will examine the ways in which monumental remnants can have positive memorial effects, while also discussing some of the ways in which different monument protection laws can complicate spontaneous movements and local government planning regarding these sites, as well as other related potential complications for these remnant or vestigial monumental sites.

I. ARE WE TAKING BEAUTY OUT OF OUR CITIES? THE ARGUMENTS AGAINST PRESERVING DESTROYED MONUMENTAL REMNANTS

Much like the neighboring pedestals in Brno became competing monumental anchors in a contested public space, other monumental remnants of destroyed, defaced, or removed monuments can and do become sources for contested narratives about public memory in their own right. Sometimes this occurs because people wish to restore monuments that have been lost. At other times, this occurs when people deplore what has been left behind because they miss what has been damaged or removed.

Both types of complaint—objections to the perceived loss of aesthetic appeal, or the alleged negative effects on nearby property values, arising

14. See *supra* notes 2-9 and accompanying text.

15. See, e.g., Kim Gurney, *Zombie Monument: Public Art and Performing the Present*, 77 *CITIES* 33, 33, 36 (2018) (describing the ways in which an empty pedestal, which once held the monumental statue of Cecil Rhodes at the University of Cape Town, has taken on an “intriguing performative life of its own”).

from remnants or vestiges left behind after hasty monument removal—can be a powerful rallying cry in larger debates about monument preservation and monument preservation law. Take, for example, President Trump’s commentary on Twitter and elsewhere about the spontaneous protests across the United States in 2017, which resulted in damage, defacement, or removal of many Confederate monuments by groups of protesters.¹⁶ Among other claims, Trump argued that “[t]he beauty that is being taken out of our cities, towns and parks” by the protesters removing or destroying Confederate monuments, and leaving behind empty pedestals or defaced statues, “will be greatly missed and never able to be comparably replaced!”¹⁷

These arguments are not unique to President Trump. In recent years, many others have made similar claims about the ugliness, or the unsuitability of remnants left behind by the spontaneous or swift destruction or removal of monuments, Confederate or otherwise. For example, the Monument Fund, a 501(c)(3) organization created to protect and defend historic monuments and memorials—particularly the embattled Confederate monuments in Charlottesville, Virginia—justified its efforts in part by suggesting that removing the statues and leaving behind vacant pedestals, open lawns, or “empty expanse[s],” would in turn lead to vacated history, “empty minds, and a city less than it was.”¹⁸ Many of the critics of the monument damage and removal in Richmond, Virginia, have used similar language. Some have lamented the senseless “eradicat[ion]” of a “superb urban tableau” that was left by the “now-dismembered” architectural backdrops and “now-naked pedestal[s]” that once framed monuments to Jefferson Davis and others.¹⁹ Others have complained that

16. See, e.g., Michael D. Shear and Maggie Haberman, *Defiant, Trump Laments Assault on Culture and Revives a Bogus Pershing Story*, N.Y. TIMES (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/us/politics/trump-charlottesville-confederate-statues.html> (quoting President Trump as well as other critics and supporters of Confederate monument protests) [<https://perma.cc/2EA8-P6J6>].

17. *Id.*

18. THE MONUMENT FUND, *Frequently Asked Questions*, <https://www.themonumentfund.org/faq> (last visited Oct. 10, 2022) [<https://perma.cc/R6GC-2VRC>].

19. Catesby Leigh, *Richmond’s Rage of the Woke*, CITY JOURNAL (Apr. 11, 2021), <https://www.city-journal.org/confederate-monuments-richmond-virginia> [<https://perma.cc/H6JU-XF4S>]. In this piece, Leigh also laments the graffiti and other defacement of Richmond’s pedestal to the Lee monument before both it, the Lee statue, and many of the other Richmond pedestals were removed, noting that Lee’s “majestically rusticated, 40-foot-tall granite pedestal has been hideously defaced by Black Lives Matter agitators’ spray-painting.” *Id.*

what remains at many of the former monumental sites in Richmond is an “eyesore,” and some of these critics initially supported removal of the Richmond monuments.²⁰ The empty pedestals left behind when other Confederate monuments have been removed in other states have been described in similar ways: to take another example, city officials in New Orleans described a vacant pedestal left behind when a monument to P.G.T. Beauregard was removed as an “eyesore,” in large part because it had become a target for unwanted graffiti.²¹

Although the vestiges of Confederate monuments have been frequent sources of conflict in recent years, there also have been many controversies about the remnants of damaged or destroyed memorials that have little or nothing to do with the Confederacy. For example, during and after the period of national unrest following the death of George Floyd, a number of monuments in Portland, Oregon, were toppled by angry protesters. Some of the statues toppled in Portland, as in other cities, were memorials to figures of national importance, like George Washington, Thomas Jefferson, Abraham Lincoln, and Theodore Roosevelt.²² Others were figures of regional or state significance, depictions of settlers, and statues of wildlife.²³ Moreover, while many of the statues tended to be destroyed, toppled, or so badly damaged that subsequent removal was required, their pedestals remained—some of which later became sites for subsequent protests, graffiti, and other artistic expression.²⁴

20. E.g., Tyler Lane, *Some Richmonders Upset Lee Circle Barricades Won't Be Removed Until Fall*, WTVR CBS 6 (June 22, 2022), <https://www.wtvr.com/news/local-news/some-richmonders-upset-about-lee-circle-barricades> [<https://perma.cc/27WH-WSMZ>]; see also Joseph R. Stromberg, *A Suburb to Nothing*, ABBEVILLE INSTITUTE PRESS, <https://www.abbeyvilleinstitute.org/a-suburb-to-nothing/> [<https://perma.cc/2XQX-PYWZ>] (last visited Oct. 10, 2022) (arguing that transforming Richmond's Monument Avenue into “Bare Plinth Alley” “may well border on criminal stupidity”).

21. WWL Staff, *Crews Removing Pedestal Former P.G.T. Beauregard Monument*, 4WWL-TV (July 25, 2018), <https://www.wvltv.com/article/news/local/orleans/crews-removing-granite-from-former-pgt-beauregard-monument/289-577279377>.

22. See, e.g., Amanda Arden, *Plan for Toppled Portland Statues Still Yet To Be Decided*, KOIN.COM (Oct. 11, 2022), <https://www.koin.com/local/plan-for-toppled-portland-statues-still-yet-to-be-decided/amp/> [<https://perma.cc/4KCW-8PKP>] (noting that in addition to the statues of the former presidents and the statue of former Oregonian editor Harvey Scott, known to oppose women's suffrage, the damaged and removed monuments also included a statue of an elk).

23. *Id.*

24. See, e.g., Erika Bolstad, *In Replacing Monuments, Communities Reconsider How the West Was Won*, PEW STATELINE (May 23, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/05/23/in-replacing-monuments-communities-reconsider-how-the-west-was-won> [<https://perma.cc/JNY7-8Q5E>] (noting that “[c]reative reuse already is a part of Portland's art

Portland's response to these events, particularly the city's relative tolerance of both the empty pedestals and the subsequent graffiti they attracted, found many critics. Some argued that the city's failure to restore the monumental statues, combined with its tolerance of the graffiti and other "vandalism" associated with the pedestals and other monumental vestiges, amounted to the endorsement or encouragement "of lawless behavior," which would impair the local government's ability to focus on "reclaiming the city" and "rebuilding civic pride and prosperity."²⁵ Other critics focused on Portland's "Open Call for Public Pedestals," which invited ideas from regional and national artists about how best to redevelop the remaining monumental pedestals to be shared with community leaders and the public.²⁶ For some such critics, the future potential of the "pedestals proposal," the city's current tolerance for empty pedestals and other monumental remnants, and the city's acceptance of graffiti and other forms of protest around these remnants all add up to an aesthetically indefensible abandonment of the city's valuable monumental landscape, as "[g]rotesque diversity kitsch increasingly replaces the old settler history aesthetic in Portland."²⁷

The kinds of complaints about monumental remnants outlined above can be rhetorically powerful, at least superficially. This is because these complaints may seem to offer at least two different sets of reasons—beyond cultural grievance, historical nostalgia, or other still-less-appealing narratives—for restoring destroyed or removed monuments associated with patterns of discrimination, or for removing new monuments arising

landscape" as pedestals and other monumental remnants are being reused, sometimes in contested ways, by protesters, artists, and community groups).

25. James L. Huffman, *Restoring Toppled Monuments Would Symbolize Restoring Portland's Civic Pride*, THE HILL (Oct. 15, 2021, 2:30 PM), <https://thehill.com/opinion/criminal-justice/576604-restoring-toppled-monuments-would-symbolize-restoring-portlands/> [https://perma.cc/DCW5-ZTFM].

26. Dennis Dale, *Commentary: Robbing America of Her Core Values*, THE TENN. STAR (Dec. 18, 2021), <https://tennesseestar.com/2021/12/18/commentary-robbing-america-of-her-core-values/> [https://perma.cc/WU9Z-YM2W].

27. *Id.* See also *What's Next for Monuments and Memorials*, PORTLAND.GOV (Dec. 16, 2021), <https://www.portland.gov/omf/news/2021/12/16/whats-next-monuments-and-memorials> [https://perma.cc/BTD6-P652] (describing the process that the city plans to engage in to consider the monumental sites and how they might be redeveloped). More than aesthetics and related concerns about property values and even civic lawlessness may be at work in Dale's critique; elsewhere in this piece he claimed that Portland's actions constitute the "betrayal" of the city's "founders and settler stock, with the comfortable decadents of the present distastefully tossing aside [the founders' and settlers'] sacrifice and giving their legacy over to the malicious and impressively mediocre." Dale, *supra* note 26.

spontaneously from monumental remnants. It has become increasingly difficult for many supporters of old monuments associated with systematic injustice to argue for their restoration, or against the spontaneous patterns of memorial that are emerging at monumental remnant sites, because to do so risks association with ideas that now seem indefensible to many. Put another way, it has grown increasingly more difficult in recent years to argue that there are important historical associations and values worth preserving through past monuments to discrimination.²⁸ And so, for those who wish to preserve or restore some of the monuments that have recently been destroyed, the following two types of arguments against the new memorial efforts that are emerging at many monumental remnant sites may be useful. First, many of these complaints are ostensibly about the dangers of underenforcement: about all the other problems that may arise when local governments fail to enforce existing controls against graffiti, “other” types of vandalism, or other types of unlawful activity allegedly associated with empty pedestals and other types of monumental remnant sites.²⁹ Second, many of these complaints sound in nuisance, articulating nuisance-like reasons for removing new monuments, or for restoring destroyed or removed monuments, by focusing on the potential impacts on neighbors and community property values of sites that have become “eyesores” or worse.³⁰

What both types of arguments have in common is that they are independent—again, at least superficially—from the historical meaning and discriminatory baggage associated with the destroyed, damaged, or removed original monuments. Upon closer inspection, however, neither of these types of arguments is particularly effective. Or, at least, they do not necessarily provide good reasons to restore destroyed or removed monuments, nor to remove monumental remnants that are now freighted with different memorial meaning.

What can be said about the underenforcement argument: the “broken windows” style of arguments in favor of restoring old monuments and against spontaneous memorial activities at monumental remnant sites? To begin, we should note that the graffiti, the other types of spontaneous artistic

28. E.g., Devan Cole, *Condoleezza Rice Says Confederate Statues Are Indefensible But That Calls to Tear Down Other Monuments Have 'Gotten a Little Out of Control,'* CNN: POLITICS (Aug. 4, 2020), <https://www.cnn.com/2020/08/04/politics/condoleezza-ice-confederate-statues/index.html> [https://perma.cc/XPT6-LVLA].

29. See, e.g., Huffman, *supra* note 25.

30. See *supra* notes 19-21 and accompanying text.

activity, and the recurring public assemblies or protests that may arise around monumental remnant sites are often different, and are often treated differently by prosecutors and courts, than the kinds of spontaneous protest activity that has led to so many monuments actually being damaged or toppled in recent years. For example, in allegedly lawless Portland—although it is true that graffiti, other types of artistic activity, and protests at monumental remnant sites have been broadly tolerated—prosecutors have charged and a grand jury has indicted individuals accused of damaging or destroying some of the statues that once stood at these monumental sites.³¹

The point here is not to defend Portland's tolerance of the activity around its empty pedestals. Nor is the point to urge prosecutors to arrest and prosecute more of the individuals responsible for tearing down the statues that once stood atop today's empty pedestals. Rather, the point here is only to show that 'under'-enforcement of the law with respect to graffiti and other types of protest activity occurring around the Portland pedestals need not lead to the sort of slippery slope often associated with broken-windows type arguments. Indeed, it is perfectly possible for a city like Portland to prosecute people who tear down statues while remaining relatively tolerant of those who then spray-paint the pedestals.

Like the arguments analyzed above, nuisance or nuisance-like arguments for restoring pre-existing monuments, or for getting rid of monumental remnant sites, are much weaker on closer inspection than they may initially appear. This is especially true if the original monuments were closely associated with patterns of discrimination or institutionalized systematic injustice, as so many Confederate monuments are. As some recent work has shown, monuments systematically associated with past patterns of discrimination—including, especially, many existing Confederate monuments—perhaps ought to be considered nuisances themselves.³² As a baseline for nuisance analysis, which is of course dependent on context and place,³³ monumental remnant sites ought to be

31. E.g., Jaimie Ding, *Grand Jury Indicts Suspect in Toppling of Theodore Roosevelt Statue in Portland Protest*, OREGONIAN (Mar. 12, 2021), <https://www.oregonlive.com/portland/2021/03/grand-jury-indicts-driver-in-toppling-of-theodore-roosevelt-statue.html> [<https://perma.cc/Y6U6-93AB>].

32. See Emily Behzadi, *Statues of Fraud: Confederate Monuments as Public Nuisances*, 18 STAN. J. CIV. RTS. & C.L. 1, 12-13, 48 (2022) (noting that “[s]ome localities have used public nuisance [claims]] to successfully remove” prominent monuments associated with longstanding discrimination, and endorsing the practice).

33. See, e.g., *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) (noting that

compared to the monuments that once stood in their place, which until recently, by their very nature, served to focus oppression as well as conflict.³⁴ Put another way, because so many recently destroyed monuments themselves unreasonably and substantially interfered with the public's right to health, safety, and the enjoyment of public spaces,³⁵ arguments sounding in nuisance about their monumental remnants should be treated with caution at best.

II. NO MONUMENT SHALL OUTLIVE THIS RHYME: THE POTENTIAL VALUE OF PRESERVING OR REDEVELOPING MONUMENTAL REMNANTS

Not all monumental remnant sites are perfectly rosy: many present immediately pressing problems that can and should be addressed, as the potential for individual and collective danger is always present in passionate conflicts over public memories and about public spaces.³⁶ But as with claims sounding in nuisance, and without minimizing the loss and the violence that have erupted at some monumental remnant sites, the appropriate standard of comparison in the current moment is with the conflict, loss, and oppression fostered by previous monumental sites. Set against this baseline, and contrary to the criticisms reviewed in Part I above, many of the monumental remnant sites that are themselves becoming sites for public memory and monumental expression have much to offer their communities. Some of these remnant sites, and their associated new forms

“whether a particular thing is a nuisance, is to be determined, not by an abstract consideration . . . of the thing considered apart, but by considering it in connection with the circumstances and the locality . . . like a pig in the parlor instead of the barnyard.”).

34. See, e.g., Zachary Bray, *From 'Wonderful Grandeur' to 'Awful Things': What the Antiquities Act and National Monuments Reveal about the Statue Statutes and Confederate Monuments*, 108 KY. L.J. 585, 588-90 (2020) (gathering recent and historic sources detailing the ways in which Confederate monuments served and continue to serve as sources of oppression and discrimination); see also Jess R. Phelps & Jessica Owley, *Etched in Stone: Historic Preservation and Confederate Monuments*, 71 FLA. L. REV. 627, 627-640 (2019) (describing the history of Confederate monuments and noting that they are particularly problematic for preservationists).

35. Behzadi, *supra* note 32, at 35-36.

36. See, e.g., Austin Fisher, *Return of Oñate Pageantry Inflames Debate Over Colonial Memory in NM*, SOURCE NM (July 12, 2022), <https://sourcenm.com/2022/07/12/return-of-onate-pageantry-inflames-debate-over-colonial-memory-in-nm/> [<https://perma.cc/9QPR-W7PS>] (describing the recurring unrest, lack of dialogue, repeated violent acts, and death associated with protest activity at monumental sites and monumental remnant sites in New Mexico).

of expressive activity, historical re-interpretation, and public memorialization already have proved to be relatively ephemeral in their own right; indeed, some of these efforts have been intentionally limited in time.³⁷ Others may prove longer lasting. But however long they may last, many of these remnant sites have proven to be far more than nuisances or magnets for criminal activity, and in many cases they are much more deserving of protection than the monuments to discrimination and injustice that preceded them. Part II of this Essay will survey some of the potentially valuable forms of new memorial expression emerging around these monumental remnant sites while also providing an overview of some of the legal issues that may constrain or frustrate new memorial activity around some of these sites.

Many monumental remnant sites involve new expressive activity, artistic or otherwise, on or around what remains after the original monument is damaged, destroyed, or replaced. But some monumental remnant sites are deliberately left “empty” or “bare,” without any new physical or artistic additions, instead utilizing a newly empty pedestal, niche, or grassy space as a physical and virtual monument to remember neglected narratives and the victims of past discrimination. And so, for example, the former niche that once held a nearly life-size statue of Robert E. Lee on the steps of the chapel at Duke University has, after substantial deliberation and consultation with faculty and students, been left empty, a reminder of the university’s troubled history with chattel slavery and racism, but also a deliberate focus for education and community engagement about how to address these historic scars.³⁸

Other monumental legacy sites have been reinterpreted with new forms of artistic expression, ranging from graffiti to replacement memorials, incorporating the vestiges of destroyed or removed monuments to past discrimination in a new monumental form. Sometimes these efforts have been relatively spontaneous, as in the case of the graffiti and other forms of public art around the pedestals that were temporarily left on Richmond’s monument avenue, and then ultimately dismantled.³⁹ At other times, these

37. See, e.g., Bolstad, *supra* note 24 (noting how some creative reuse of Portland remnant sites was deliberately ephemeral, while other reuse efforts have been altered or contested or subsequently destroyed themselves).

38. Jasmine Weber, *Duke University Decides to Leave Former Site of Robert E. Lee Memorial Vacant*, HYPERALLERGIC (Aug. 22, 2018), <https://hyperallergic.com/456755/former-robert-e-lee-memorial-duke-university/> [<https://perma.cc/8EXA-UJGX>].

39. Gregory S. Schneider, *Protesters Transformed Richmond’s Robert E. Lee Memorial*. Now

efforts have been relatively coordinated. For example in Baltimore, taking inspiration from Shakespeare's plays and sonnets referring to the impact and ultimately fleeting nature of monuments,⁴⁰ the Chesapeake Shakespeare Company staged "The Monument Project," a series of monumental photos and displays on the remnant pedestals left behind after a series of monuments in that city were torn down by protesters in 2017.⁴¹ To take another example, in New Orleans, around the remnant base and column that used to hold a monument to Robert E. Lee, the city has installed temporary displays of celebrated artwork, in a deliberate attempt to reject the symbolism of the past monument, while seeking to encourage "new monuments to emerge from artist practices, the public's imagination, the work of activists, and the breadth of cultural practices that define" a diverse and modern city.⁴²

Beyond the examples above, some monumental remnant sites have themselves been the source of subsequent conflict, as new memorial activity or construction associated with earlier monumental remnants is destroyed, damaged, or removed. Perhaps the best example of such a series of monument conflicts comes from Portland and the site of a monument originally dedicated to local newspaper editor and opponent of women's suffrage Harvey Scott, which was alluded to above.⁴³ The original monument featured a statue of Scott, crafted by Gutzon Borglum, the sculptor who worked on Mount Rushmore, set on top of a pedestal in a park. At some point in the fall of 2020, after statues in Portland of Theodore Roosevelt, Abraham Lincoln, and others were toppled, Scott's statue was also knocked to the ground, although the pedestal for Scott's statue was left

They Mourn the Loss of Their Most Powerful Icon of Resistance, WASH. POST (Dec. 11, 2021, 4:00 PM), <https://www.washingtonpost.com/dc-md-va/2021/12/11/richmond-lee-statue-pedestal-dismantled/> [https://perma.cc/CL3L-WVTB].

40. See, e.g., WILLIAM SHAKESPEARE, "Sonnet 55," SHAKESPEARE'S SONNETS: THE COMPLETE GUIDE 134, <https://books.google.com/books?id=bSWHDp3HrsgC&printsec=frontcover#v=onepage&q&f=false> ("Not marble, nor the gilded monuments / Of princes, shall outlive this powerful rhyme ...").

41. Reginald Allen II, *The Monument Project Repurposes Empty Confederate Pedestals in Baltimore*, AFRO NEWS: THE BLACK MEDIA AUTHORITY (Mar. 25, 2021), <https://afro.com/the-monument-project-repurposes-empty-confederate-pedestals-in-baltimore/> [https://perma.cc/EL9E-9ZEQ].

42. Benjamin Sutton, *Simone Leigh Statue of African Deity Installed at Former Site of Confederate Monument in New Orleans*, ART NEWSPAPER (Jan. 24, 2002), <https://www.theartnewspaper.com/2022/01/24/simone-leigh-statue-new-orleans-confederate-monument> [https://perma.cc/XQ2E-MNNH].

43. See *supra* notes 24, 31, 37 and accompanying text.

largely intact.⁴⁴ A few months after Scott's statue was toppled, it was replaced by a large bust of York, the first African American to cross the North American continent and reach the Pacific Ocean, crafted by an initially anonymous artist.⁴⁵ The installation of York's bust on the monumental remnants of the Scott monument were celebrated by many in Portland, including the head of the city's parks department, who described it as a compelling departure in both its subject and appearance from traditional monuments that have often tended to reinforce patterns of discrimination in Portland and everywhere.⁴⁶

But although the new monument to York was popular with many Portland residents, it also proved to be a source of controversy with those who were sorry to see the monument to Scott go in the first place. And, like the original monument to Scott, the monument to York was toppled a few months after its installation, though its pedestal (originally created for the Scott monument) remained in place.⁴⁷ What happened next will perhaps not be surprising: the pedestal left behind after Scott's and York's monumental statues were destroyed became a site for spontaneous protests, assemblies, and artistic expression, as members of the public left hand-crafted memorials to York and the Black Lives Matter movement around the vacant pedestal's base.⁴⁸ But this was not the end of the story either; in recent months, yet another monumental statue has gone up on the empty pedestal that once supported Scott as well as York, this one of a crow, holding aloft

44. Jim Ryan, *Statue of Harvey Scott, Former Editor of The Oregonian, Torn Down in Mount Tabor*, OREGONIAN (Oct. 20, 2020), <https://www.oregonlive.com/portland/2020/10/harvey-scott-statue-atop-mount-tabor-torn-down.html> [<https://perma.cc/99NS-FDRD>].

45. Associated Press, *Sculpture of Enslaved Explorer Mysteriously Appears in Oregon Park*, WASH. POST (Feb. 28, 2021), https://www.washingtonpost.com/lifestyle/kidspost/sculpture-of-enslaved-explorer-mysteriously-appears-in-portland-oregon-park/2021/02/26/4be43a06-77ad-11eb-8115-9ad5e9c02117_story.html [<https://perma.cc/8EX7-NF7D>].

46. *See id.* (noting also that many Portland residents had "flocked" to York's bust and that the new monument, built on remnants of the past, had led many to study more about York's personal story and their community's larger history).

47. Aaron Mesh, *"Put York Back": Portlanders Leave Messages Where a Broken Sculpture Once Stood*, WILLAMETTE WEEK (Aug. 10, 2021), <https://www.wweek.com/news/city/2021/08/10/put-york-back-portlanders-leave-messages-where-a-broken-sculpture-stood/>. The destruction of Portland's York monument occurred just a few days after a mural in Portland to George Floyd, Breonna Taylor, and Ahmaud Arbery was defaced with racist and white supremacist graffiti, leading many to conclude that the destruction of York's monument was also motivated by resentment and racism. *Id.*

48. *Id.*

what would be its middle finger, if it had hands instead of talons, along with a plaque with a lengthy message for the residents of Portland.⁴⁹

It would be a mistake to conflate what happened to the Scott and York monumental statues. The former was destroyed amid wide-ranging protests against memorials widely understood to be reinforcing patterns of past and present discrimination. The latter was created on the monumental remnants of the former in an attempt to provide messages of diversity and inclusion to a local monumental landscape. And it was then destroyed at the same time racists and white supremacists defaced other memorials to recent victims of discrimination. One can condemn what happened to York's monument regardless of how one feels about Scott's monument and what happened to it. But considering the fate of both monuments together, as well as the evolution of what is now the monumental remnants of both monuments can provide some important lessons.

As previous work has noted, and as the fate of both Scott's and York's statues tends to reinforce, existing laws may be insufficient to protect the monuments they purport to protect.⁵⁰ This is good news for local governments and others who have, in many cases, been able to remove or modify monuments intertwined with patterns of discrimination. But it is bad news for local governments and others who may wish to protect new and diverse forms of memorial expression, especially those, like York's memorial, which are built on the monumental remnants of what has come before.

The relative weakness of many American monument-protection laws is far from the only legal issue relevant to the creative redevelopment of monumental remnants left behind when memorials to past injustice are destroyed and removed. For example, the redevelopment of monumental remnant sites may be complicated by the presence of human remains deliberately buried in pedestals or other supporting materials that are left

49. Lizzie Acker, *Bird Flipping the Bird Takes Up Residence at Site of Former York Statue on Mount Tabor*, OREGONIAN (Nov. 22, 2021), <https://www.oregonlive.com/living/2021/11/bird-flipping-the-bird-takes-up-residence-at-site-of-former-york-statue-on-mount-tabor.html> [<https://perma.cc/2B6J-VS86>].

50. See, e.g., Zachary Bray, *We Are All Growing Old Together*, 61 WILLIAM & MARY L. REV. 1259, 1308-1313 (2020) (comparing the National Historic Preservation Act ("NHPA") to state statue statutes, noting the many weaknesses of the state statutes, as well as the ways in which the NHPA's monument protections are limited); see also Zachary Bray, *Monuments of Folly: How Local Governments Can Challenge Confederate 'Statue Statutes'*, 91 TEMPLE L. REV. 1, 20-44 (2018) (detailing the many weaknesses of the state statutes).

behind when the main monument is destroyed or removed.⁵¹ And this Essay has already noted the ways in which nuisance law has and likely will continue to intersect with the development of monumental remnants,⁵² especially when they are developed in spontaneous ways as part of larger protest movements. But the weakness of American monument-protection laws is probably the most significant legal issue that activists, artists, community leaders, and local governments must reckon with if they wish to encourage, support, or even patiently observe the wide-ranging efforts to develop the remnants of past monuments to discrimination into new memorials with a more inclusive message. Of course, all monuments are temporary and susceptible to change: metal corrodes; stone weathers; the heroes of today are forgotten, or discredited, and replaced tomorrow. This essential mutability in time, and the ways in which it reflects communities' ever-evolving public memory, is the key feature of monuments—not their permanence, for they are not permanent. And in the end, for all their potential value, many of the redeveloped monumental remnants that serve as new memorials may be among the most fragile, and least permanent monuments of all.

CONCLUSION

Early in the Introduction, this Essay considered the dueling Red Army and Masaryk monumental fragments in mid-20th century Brno as an example of the potential impact of monumental fragments, and the ways in which they can come to serve as monuments in their own right—more powerful, perhaps—than the monuments that they come to replace. Here, at the end of this Essay, these examples can help to reinforce some of the

51. For example, the presence of Confederate general A.P. Hill's remains complicated, though it did not ultimately prevent, the City of Richmond's plans for the redevelopment of the site where his monument once stood. *E.g.*, Gregory S. Schneider, *Two Years After Protests, Some of Richmond's Confederate Monuments Remain*, WASH. POST (July 24, 2022), <https://www.washingtonpost.com/dc-md-va/2022/07/23/richmond-confederate-statues-stonewall-hill/> [<https://perma.cc/VED8-WCHS>]. The presence of the remains of Nathan Bedford Forrest and his spouse similarly complicated, though it did not ultimately prevent, the city of Memphis's plans for the redevelopment of the site where his monument once stood. *E.g.*, Brad Broders, *Tensions Rise as Removal of Nathan Bedford Forrest's Remains Begins at Health Sciences Park in Memphis*, ABC 24 (June 2, 2021), <https://www.localmemphis.com/article/news/local/work-remove-nathan-bedford-forrests-remains-from-tennessee-park/522-e3c8d0d5-d776-49b8-a337-ab3d5de61c07>.

52. *See supra* notes 32-35 and accompanying text.

conclusions discussed above about the challenges associated not only with monumental remnants but also their potential power, even if—perhaps, sometimes, especially if—their physical presence is limited in space or time. To do this we need to spend just a bit more time with the history of these monuments.

Recall that in the years after World War II, incomplete pedestals to both the Red Army and T.G. Masaryk, the first Czechoslovak president, faced each other in a public square in Brno. On state holidays in the years after the war, the incomplete memorial to the Red Army in Brno's square would be decorated periodically with flags and banners set up by the local government.⁵³ But despite this lavish state-sponsored decoration (or perhaps in part because of it), the monumental fragment in Brno dedicated to the Red Army received little public attention or support, even during holidays to commemorate the defeat of the Nazis and the end of the town's occupation by the Germans.⁵⁴

During most of the year the monumental fragment of the never-completed Masaryk monument in Brno received little to no apparent attention from the public either. But on the anniversary of the foundation of the Czechoslovak First Republic, and on Masaryk's birthday, things were very different.⁵⁵ On these dates, flowers would appear around the pedestal to Masaryk's incomplete monument, and crowds would gather nearby, milling about, singing quietly, and exchanging poetry; all by way of giving voice to a quiet, almost surreptitious protest against the Soviet domination of Czechoslovakia.⁵⁶

These spontaneous, quiet, infrequent, but recurring protests around the Masaryk monument fragment were met with hostility, surveillance, and arrests by the state authorities. The state authorities tried to enforce bans on the recurring protests, then re-designed the square to make access to the pedestal difficult, then eventually completed the Red Army memorial, and finally simply removed the Masaryk monument's pedestal and foundation stone.⁵⁷ In other words, like so many of the monumental remnants

53. *The Story of Two Monuments*, *supra* note 8, at 2.

54. *Id.*

55. *Id.* at 2-3.

56. One such poem, placed at the foot of the Masaryk pedestal but alluding to both it and the then-incomplete Red Army monument and pedestal, read (in translation) as follows: "Of all the places around these ways, precious and dear to us is only this place." *Id.* at 3.

57. See, e.g., *Laying of the Foundation Stone for the Monument to T.G. Masaryk*, INTERNETOVÁ

repurposed to serve new memorial functions discussed above, the Masaryk pedestal's time was short; its physical presence minimal; it was squashed, in the end, by monument controls that did what other laws could not accomplish.

But was its significance any less for all that? After all, as the poet reminds us, no marble monuments shall outlive a rhyme.⁵⁸

ENCYKLOPEDIÉ DĚJIN BRNA (Oct. 26, 2021), https://encyklopedie-brna-cz.translate.google.com/home-mmb/?acc=profil_udalosti&load=222&x_tr_sl=cs&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc [<https://perma.cc/Y89L-2HA>] (noting that the foundation stone of the incomplete Masaryk monument “became a place to express symbolic opposition to the regime” and that it was, therefore, “removed and destroyed in the mid-1950s”).

58. See SHAKESPEARE, *supra* note 40 and accompanying text.