

Rethinking the Role and Values of Monuments

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Zachary Bray, [*We Are All Growing Old Together: Making Sense of America's Monument-Protection Laws*](#), 61 **Wm. & Mary L. Rev.** 1259 (2020).

Despite their solid, lifeless guise, monuments speak. But whose stories do they relate? Recently, there has been much debate about the role and purpose of monuments; which monuments or memorials deserve protection and which ones should be removed.

In *We Are All Growing Old Together: Making Sense Of America's Monument-Protection Laws*, Professor Zachary Bray, aims to help us see that the views on these issues do not align nicely between North and South, conservative or progressive. Instead, the issue is much more multi-dimensional.

Professor Bray offers an analysis of the issue largely in the context of Confederate statue protection statutes and federal preservation laws.

While these monuments have stood boldly in the public spaces for many decades, recent events have caused us as a nation to look and ask what we are celebrating by their construction. Particularly, the Charlottesville protests of 2018 operated to thrust monuments, long in the open, into light.

Since Charlottesville, there have been many battles over all types of monuments and memorials, including namings (bridges, forts, highways and schools) and not just those celebrating the Confederacy, but also to events, persons and attitudes about industry and national fortitude and those celebrating natural areas (Bears Ears National Monument in Utah and the Owyhee Canyonlands in Oregon).

The country is now pondering the value of these in many ways—some people are violently toppling and defacing monuments; others are suing in court for their removal. In his article, Professor Bray explores what these monuments and these new contests signal about larger issues of liberty and law in the country.

He sees part of the problem as legal and the other part has to do with stories associated with the monuments—some truthful, some contrived, and others imagined. He points out wide-ranging love and antipathy for monuments, depending on a host of factors—whether one lives in the area of a national monument (those residents feeling put upon by outside power) or in former Confederate states (those still clinging to the Lost Cause narrative).

As both natural and manmade monuments are imbued with a degree of permanence (by their protection against development and by their mass), so too do their messages take on such a character. Interestingly, preservation of some monuments with objectionable or unpopular messages are sometimes independently claimed to be worth saving on account of architectural merit. But, can we really separate those features?

Noting this conflict exists in other countries as well as here in America, Professor Bray maintains that there is yet something unique about America that makes the issue particularly intractable.

Given our colonial history, the early idea that erecting statues to war heroes (George Washington, being the first considered) was worryingly reminiscent of the monarchy just overthrown. In the words of John Quincy Adams, “Democracy has no monuments.” Congress rejected the idea of a mausoleum to Washington and the suspicion of built memorials endured.

But, there was a gradual shift in attitudes leading to the creation of rural cemeteries in the nineteenth century that commemorated events of the lives of the most significant events in the early history of the country. This shift in turn led to the filling up of public spaces with statues of war dead.

Over time, the messaging became more overt and oppressive to some, the Lost Cause Mythology in particular. The early attitudes against manmade memorials seemed to carry over against natural monuments—nature being viewed as “hostile, even demonic.” Not until the mid-nineteenth century did we begin to revere natural landscapes and begin to see a similar transformation towards Native American history and the appreciation for archeological resources.

Yet, America remains of two minds about memorials. To understand the differing views, it is necessary to consider the complex regimes at work to see what they aim to protect—from the Antiquities Act of 1906 to the National Historic Preservation Act of 1966 (NHPA) to the state statue protection statutes. While the federal laws purport to be content neutral, this is clearly not the case with the state statue protection statutes, which exist in eight southern states, and are most clearly aimed at protecting monuments to the Confederacy. By their terms, these state statutes constrain local governments and communities from any decision-making on the values of retaining certain statues in their public squares.

While most of the monuments currently in controversy were erected during the height of the post-Jim Crow era, some of the statue protection statutes were enacted or proposed in just the past couple years—for example, in North Carolina in response to the removal of the Confederate flag and in the South Carolina state capitol after the Charleston church massacre. Monuments outside the South have also been the subject of public condemnation, including the statue to Columbus in Columbus Circle in New York City.

After comparing the preservation of historic properties under the federal regime, Professor Bray asserts that state statue protection statutes should be repealed, principally because they are constitutionally suspect—their messages are discriminatory and operate to exclude.

These state statue protection statutes are anti-communitarian and tend to divide more than unite. The NHPA and related federal statutes do a much better job at preserving those things worthy of protecting. By design, these federal statutes use the nomination process and criteria for listing on the national register as means to at least purportedly embrace the wide views of communities.

To be sure, there have been howls against Presidents’ exercise of powers under the Antiquities Act, but one significant difference between this Act and state statue protection statutes is that the Antiquities Act protects national treasures that cannot be repaired or replaced. Nonetheless, Professor Bray seems open to some proposed revisions to the Antiquities Act that would allow deeper consideration of local concerns. One could also say the National Register has a lot to make up for to include the narratives of diverse people.

In the end, Professor Bray prompts us to see that the celebration of events and figures of history is a worthy endeavor, but the decision-making process on what and how long to protect may need deeper thought.

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