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REFRAMING THE MONUMENTS: HOW TO ADDRESS CONFEDERATE STATUES IN THE UNITED STATES

JILLIAN FITZPATRICK

FOREWORD

This Note was written between September 2018 and March 2019 as part of St. John's University School of Law's two-semester Perspectives on Justice class. At the time that this Note was written, there was a growing urgency to address the Confederate monuments around the United States, but little had been done by states or the federal government. At the time, many states, including Virginia, had in place Heritage Protection Acts which made the removal or relocation of such monuments punishable under criminal law, thus tying the hands of the localities where the monuments were located. However, in just two short years, the entire legal landscape surrounding this topic has changed.

Following the killings of George Floyd¹, Breonna Taylor², and Ahmaud Arbery³, the United States saw a massive shift in public opinion, with the Black Lives Matter (BLM) movement gaining incredible attention and widespread support.⁴ Since the first

¹ See *George Floyd: What happened in the final moments of his life*, BBC (July 16, 2020), <https://www.bbc.com/news/world-us-canada-52861726>.

² See Richard A. Oppel Jr. et. al, *Breonna Taylor's Death: What To Know*, THE NEW YORK TIMES (Oct. 23, 2020), <https://www.nytimes.com/article/breonna-taylor-police.html>.

³ See *Ahmaud Arbery: What do we know about the case?*, BBC (June 5, 2020), <https://www.bbc.com/news/world-us-canada-52623151>.

⁴ Although around since 2013, the Black Lives Matter movement has seen a massive increase in support and attention throughout the United States. See Larry Buchanan, et. al, *Black Lives Matter May Be the Largest Movement in U.S. History*, THE NEW YORK TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>; see also Sono Shah and Regina Widjaya, *Posts mentioning 'Black lives matter' spiked on lawmakers' social media accounts after George Floyd killing*, PEW RESEARCH CENTER (July 16, 2020), <https://www.pewresearch.org/fact-tank/2020/07/16/posts->

demonstrations in Minneapolis on May 26, 2020, over seven million people have participated in over 4,700 different protests around the country, making the BLM movement the largest in the United States history.⁵

Quite a few of these demonstrations have resulted in the removal of Confederate monuments by protestors.⁶ However, some locations have had creative ways of “reimagining” the monuments. For example, in Richmond, Virginia, BLM “reclaimed” a monument of Robert E. Lee by projecting the “faces of Black activists and thinkers, including Rep. John Lewis, D. Martin Luther King Jr., Harriet Tubman, and [W.E.B.] Du Bois, overtop the statue.”⁷ As a result, “the surrounding area has become a hub for protests and gatherings, as people show up in support of the Black Lives Matter movement”⁸ In a way, this is exactly what this Note proposes—reimagining monuments to be more inclusive and educational.

Ultimately, the growth of and pressure from the BLM movement has really brought the need for change to the forefront—cities and states have realized they must address these monuments as soon as possible and cannot continue to protect them with Heritage Protection Acts. In the time since this Note was first written, and in response to the resurgence of the BLM movement, Virginia has passed a law that ends Confederate monument protection and allows “individual localities to remove, relocate or contextualize Confederate statues and monuments” without ramifications.⁹ The newly passed measures “effectively overturn Virginia’s prohibition on the removal of Confederate war memorials, and starting July 1, [2020], localities may remove, contextualize or relocate

mentioning-black-lives-matter-spiked-on-lawmakers-social-media-accounts-after-george-floyd-killing/.

⁵ See Buchanan et. al, *supra* note 4.

⁶ See Claire Selvin and Tessa Solomon, *Toppled and Removed Monuments: A Continually Updated Guide to Statues and Black Lives Matter Protests*, ARTNEWS (June 11, 2020), <https://www.artnews.com/art-news/news/monuments-black-lives-matter-guide-1202690845/>.

⁷ Natalie Colarossi, *Photos show how the Robert E. Lee statue in Virginia has been reclaimed to support the Black Lives Matter movement*, INSIDER (July 21, 2020), <https://www.insider.com/robert-e-lee-statue-repurposed-black-lives-matter-images-2020-7>.

⁸ *Id.*

⁹ Zach Rosenthal, *New law allows Virginia localities to remove Confederate statues and monuments*, CAVALIER DAILY (April 13, 2020), <https://www.cavalierdaily.com/article/2020/04/new-law-allows-virginia-localities-to-remove-confederate-statues-and-monuments>.

monuments as they wish.”¹⁰ This is a major departure from the previously restrictive laws in Virginia detailed in this Note.

Yet, even among the ever-changing legal landscape surrounding the protection of the Confederate monuments, the solution proposed by this Note can still be applicable today—especially in locations where it is not easy to remove the Confederate monuments due to remaining Heritage Protection Acts.

INTRODUCTION

*“The statues in public squares, the names on street signs, the generals honored with military bases—these are the ways in which we, as a society, tell each other what we value, and build the common heritage around which we construct a nation.”*¹¹

In the middle of Monument Avenue in Richmond, Virginia stands a twenty-one-foot-high bronze statue of Robert E. Lee sitting on a forty-foot-high granite pedestal.¹² Unveiled in 1890, the Robert E. Lee monument is the largest and the grandest of all the statues on Monument Avenue.¹³ Sitting in the center of the town that once used to be the Confederate capital, the monument of Lee features the general on his horse standing triumphant.¹⁴ The Lee statue is but one of many monuments idolizing Confederate figures on Monument Avenue.¹⁵ Following the unveiling of Lee in 1890, Monument Avenue became the logical place to erect more statues of Civil War “heroes.”¹⁶ In fact, Monument Avenue as a whole was designed to “capture in monumental ways a single

¹⁰ *Id.*

¹¹ Yoni Appelbaum, *Take the Statues Down*, ATLANTIC (Aug. 13, 2017), <https://www.theatlantic.com/politics/archive/2017/08/take-the-statues-down/536727/>.

¹² *See Monument Avenue Historic District*, NAT'L PARK SERV. (last accessed Oct. 29, 2020), <https://npgallery.nps.gov/GetAsset/4e28a156-9c67-42e6-aa88-6fef548210ac/>.

¹³ *See id.*

¹⁴ *See* Meghan Keneally, *How Richmond is addressing the debate over Confederate monuments 1 year after Charlottesville*, ABC NEWS (Aug. 3, 2018, 5:53 PM), <https://abcnews.go.com/US/richmond-addressing-debate-confederate-monuments-year-charlottesville/story?id=57009869>.

¹⁵ *See* NAT'L PARK SERV., *supra* note 12, at 27. Other monuments built on Monument Avenue include Confederate President Jefferson Davis, J.E.B. Stuart, Thomas “Stonewall” Jackson, and Matthew Fontaine Maury. *See* NAT'L PARK SERV., *supra* note 12.

¹⁶ *See id.* at 4.

narrative of the Civil War—that narrative based on the ideas embodied in Lost Cause-thinking and the Jim Crow South.”¹⁷

However, confederate monuments often fail to capture the true essence of the person immortalized in stone. While viewing a grandiose monument of Robert E. Lee in the center of town, one does not get an understanding of all his Confederate treason and advocacy of white supremacy. Robert E. Lee was the most well-known general in the Civil War, leading the Confederate army north in defense of slavery.¹⁸ Under his command, the Confederacy seized scores of fellow Americans as slaves, treating any “blacks [the Confederate army] encountered as contraband—to be seized and returned to the South, whether born free, manumitted, or escaped.”¹⁹ Defending a society built on white supremacy is what General Lee’s uniform represented.²⁰

The actions of Robert E. Lee are nothing to celebrate, especially not with a sixty-foot-tall monument in the center of town. But: *what should be done with these Confederate monuments?*

The United States still contains many monuments dedicated to the Confederacy.²¹ Citizens are split over what to do with these monuments. Many call for the removal of the monuments, claiming that “Confederate statues offer pre-existing iconography for racists.”²² Others assert that the monuments are an important part of the history of the United States.²³ In their eyes, the monuments memorialize the “war for states’ rights,” and Southern culture, and therefore must remain untouched.²⁴

Within the past few years, the controversy about how to address monuments that commemorate Confederate Civil War actors has escalated.²⁵ There have been many incidents of the public

¹⁷ See Keneally, *supra* note 14 (internal quotation marks omitted).

¹⁸ Appelbaum, *supra* note 11.

¹⁹ *Id.*

²⁰ *See id.*

²¹ See *Why the fuss over Confederate statues?*, BBC (Aug. 17, 2017), <https://www.bbc.com/news/world-us-canada-40966800>.

²² *Id.* The phrase “Monuments Must Go” was trending on Twitter shortly after the Charlottesville protest of the summer of 2017. *See id.* Even Robert E. Lee’s great-great-grandson condemned “the misuse of his memory by those advancing a message of intolerance and hate.” *Id.*

²³ *See id.*

²⁴ *See id.*

²⁵ *See generally id.* The violent events in Charlottesville sparked a wave of pressure to remove Confederate monuments across the country. *See id.* Following Charlottesville, vandals and angry crowds in states such as Ohio, North Carolina, and Maryland, have targeted

vandalizing and tearing down these statues—sometimes leading to violence.²⁶ However, in some cities around the country, there are legal ramifications for destroying or removing these monuments, as many of them are owned by the state.²⁷ Yet leaving the monuments alone encourages the celebration of the inhumane and racist views that these individuals held and fought for.²⁸

This Note analyzes the problem of the Confederate statues in the United States and proposes a middle-ground solution to “re-frame”²⁹ them by having a plaque or a glass pane in front of the monument depicting the “true history” of the individual preserved by that monument. Reframing through the use of “truth markers” will help contextualize the monument—ensuring that the message will be educational and inclusive. Standing alone, the monuments are more likely to be misinterpreted, but with the message made clear, history can be preserved in a more truthful and insightful way and those who are affected by messages of hatred and intolerance get a voice while their suffering is publicly acknowledged.

Part I of this Note discusses the history of the Civil War and why the monuments were built. Part I also explores the laws in place as of the writing of this Note in Southern states to protect the statues and examines the First Amendment consequences of cities being forced to engage in “speech” they may or may not agree with.

Part II of this Note explores potential solutions to the problem. Particularly, this Note analyzes the potential solutions of tearing the statues down or moving them to museums. Part II uses Germany and South Africa as subjects of comparison to explore why these two solutions are not the answer to addressing the

the monuments in an effort to have them removed by local government. *See id.*

²⁶ As of August 2017, about fifty Confederate monuments around the country have been removed, vandalized, or both. *See* Matt Rocheleau, *A list of Confederate monuments defaced or removed after Charlottesville*, BOSTON GLOBE (Aug. 22, 2017, 5:13 PM), <https://www.bostonglobe.com/metro/2017/08/22/list-confederate-monuments-defaced-removed-wake-charlottesville/JU4qvhS8rTEjxxHVKR1N/story.html>.

²⁷ States such as North Carolina, South Carolina, Georgia, Mississippi, and Tennessee have “Heritage Protection Acts” that protect Confederate monuments, while many other southern states are considering such statutes. *See* 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) (discussing how many states protect Confederate monuments with state statutes that are difficult to get around, and suggesting “truth plaques” to be added to explain the history of the monument).

²⁸ *See id.* at 2177-2180.

²⁹ *See generally* 60 Minutes: *The History and Future of Confederate Monuments* (CBS television broadcast July 15, 2018), <https://www.cbsnews.com/news/60-minutes-the-history-and-future-of-confederate-monuments-2020-07-12/>.

Confederate monuments in the United States. While other solutions have been proposed to address the problems created by the Confederate monuments, such as tearing them down or moving them, the other solutions are nothing more than a cover-up for the underlying tensions.

Part III of this Note proposes the solution to “reframe” the monuments. This would involve placing a plaque, sign, or glass pane next to the monument to contextualize them and depict the true, and often unsavory, history of the individual immortalized in stone. By making the history an integral and unignorable part of the monument, there is less confusion as to what the monument stands for. As a result, the Confederate war heroes would no longer be venerated for their white supremacist ideals, onlookers will not be reminded of social intolerance, and spectators can be better educated about the past of the United States. Finally, Part III of this Note also explores a proposed “reframing” solution as applied to the monument of Robert E. Lee located on Monument Avenue in Richmond, Virginia.

I. BACKGROUND

Following the Civil War, monuments of Confederate soldiers popped up all around the United States—especially in the South.³⁰ These monuments were built for numerous reasons, but most often to celebrate Southern Pride.³¹ Decades later, these monuments symbolize so much more than that, creating countless problems throughout the country. From instances of vandalism to First Amendment problems, are these monuments worth the trouble they have caused?

³⁰ See generally Frank Wheeler, “Our Confederate Dead”: *The Story Behind Savannah’s Confederate Monument*, 82 *GEORGIA HISTORICAL SOCIETY* 382 (1998); see also Becky Little, *How The US Got So Many Confederate Monuments*, *HISTORY* (June 12, 2020), <https://www.history.com/news/how-the-u-s-got-so-many-confederate-monuments>.

³¹ See Wheeler, *supra* note 30, at 388.

A. *The Building of the Monuments*

*“We were not a victorious people; on the contrary, we have to commemorate the noble heroism of those who fell in a ‘Lost Cause,’ hence silent grief and undying faith were to be expressed in the chiseled stone.”*³²

Feeling threatened by Northern power and fearing the end of slavery, eleven states seceded from the Union beginning in 1860 with South Carolina.³³ The result of the secession was the bloodiest conflict ever on American soil—the American Civil War.³⁴ After four gruesome years of battle, the Confederacy finally surrendered to the North in the spring of 1865.³⁵

Following the loss of the Civil War, extensive Reconstruction, and the devastation of the Southern states, the American South “lacked a consensus on why they fought or what they stood for.”³⁶ In attempting to form a unified identity, Southerners clung to sentiments of “Southern Pride” and attempted to “de-emphasize the ideological origins of the war” and recast it “as a battle over the principle of states’ rights and Southern honor.”³⁷ Numerous Confederate monuments went up all around the South to “commemorate the noble heroism of those who fell in a ‘Lost Cause.’”³⁸

An article written by Frank Wheeler in the *Georgia Historical Quarterly* about Savannah, Georgia, after the war³⁹ captures the sentiment of “Southern Pride” and the support of Confederate

³² *Id.* at 383.

³³ See Michael Kirk, *States Which Seceded*, OHIO STATE UNIV., <https://ehistory.osu.edu/articles/states-which-seceded> (last accessed Nov. 2, 2020). The states that seceded include: South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, Tennessee, and North Carolina. See *id.*

³⁴ Total casualties have been said to range anywhere between 620,000 to 850,000. At the time, this number reflects roughly two percent of the population. Taken as a percentage of the United States population today, the toll would have risen to approximately 6 million. See *Civil War Casualties*, AMERICAN BATTLEFIELD TRUST, <https://www.battlefields.org/learn/articles/civil-war-casualties> (last visited Oct. 11, 2020).

³⁵ See Stephen John Stedman, *The End of the American Civil War*, in STOPPING THE KILLING: HOW CIVIL WARS END 164, 165 (Roy Licklider ed., 1993).

³⁶ *Id.* at 168.

³⁷ Joshua Zeitz, *Why There Are No Nazi Statues in Germany*, POLITICO (Aug. 20, 2017), <https://www.politico.com/magazine/story/2017/08/20/why-there-are-no-nazi-statues-in-germany-215510> (comparing Nazi monuments and relics in Germany to Confederate monuments in the United States).

³⁸ Wheeler, *supra* note 30, at 383.

³⁹ See generally *id.*

monuments. In Savannah in 1868, the Ladies Memorial Association formed with the intent to place a monument honoring the Confederate dead in Laurel Grove Cemetery within the city limits.⁴⁰ After raising money and deciding on a design, a debate arose as to the placement of a memorial.⁴¹ Readers of the *Savannah Morning News* wrote to the paper, stating that “the monument should be located in the most conspicuous place in the city, where it would daily greet the eyes of our people,” so “it would be a daily reminder of our patriotic cause and its brave defenders who went down in the shock of battle.”⁴² The Association settled on a park extension just south of town where “tall trees, high churches, and other prominent buildings” would not overshadow the monument.⁴³

When the cornerstone for the monument was laid in July 1874, nearly every business in Savannah closed for the dedication and a celebration.⁴⁴ For weeks, the town donated items to be placed in a time capsule within the cornerstone; donations included Confederate notes, a bronze copy of the Seal of the Confederacy, Confederate sheet music, buttons from Confederate uniforms, a copy of the Ordinance of Secession of Georgia, and pieces of the Confederate flag.⁴⁵ The dedication speaker, Captain George A. Mercer, characterized the sentiment of the town by stating, “[t]hey espoused their cause with unanimity and purity of purpose never exceeded—they maintained with a constancy and devotion never surpassed.”⁴⁶ The finished monument was unveiled on May 24, 1875.⁴⁷ No part of the monument was made from materials of Northern states, and no part of it passed through any Northern ports.⁴⁸ Although the “Confederate Dead” monument in Savannah was later broken down into separate statues, both remain in Georgia as of August 2017, although “Silence” was vandalized in July 2020.⁴⁹ Today, the monument serves as a memorial “to the soldiers

⁴⁰ See *id.* at 383, 384.

⁴¹ See *id.* at 387.

⁴² *Id.* at 388 (internal quotation marks omitted).

⁴³ *Id.* at 389.

⁴⁴ See *id.*

⁴⁵ See *id.* at 390.

⁴⁶ *Id.* (internal quotation marks omitted).

⁴⁷ See *id.* at 391.

⁴⁸ See *id.* at 390.

⁴⁹ See Bill Dawers, *City Talk: Take Close Look at Savannah’s Confederate Monument*

of the Confederacy” and also “to the women of Savannah and their commitment to [the] cause.”⁵⁰

However, not all Confederate monuments were built in immediate response to the “Lost Cause.” In fact, many Confederate monuments were actually built decades after the Civil War.⁵¹ In North Carolina, a majority of the statues were erected between 1890 and 1930.⁵² For example, a Silent Sam⁵³ monument was erected on the campus of University of North Carolina at Chapel Hill in 1913—nearly five decades after the end of the Civil War.⁵⁴

Similarly, in Virginia, the commemorative Monument Avenue was established with the unveiling of a monument of Robert E. Lee in 1890, twenty years after the Confederate rebel’s death.⁵⁵ Monument Avenue continued to grow after the unveiling of Lee’s monument, and the last Civil War statue was erected in November 1929, sixty-four years after the defeat of the Confederacy.⁵⁶

Although the construction of Civil War monuments has long since ceased,⁵⁷ the romantic vision of the South following the Civil

in Forsyth, SAVANNAH MORNING NEWS (Aug. 19, 2017, 5:03 PM), <https://www.savannahnow.com/news/column/2017-08-19/city-talk-take-close-look-savannah-s-confederate-monument-forsyth> (discussing how members of the Savannah city council are faced with addressing the monuments in light of the current national controversy surrounding the topic); *Cash reward Offered for Tips on Vandalism of Confederate Statue in Savannah Cemetery*, SAVANNAH MORNING NEWS (Aug. 14, 2020, 11:45 AM), <https://www.savannahnow.com/story/news/2020/08/14/cash-reward-offered-for-tips-on-vandalism-of-confederate-statue-in-savannah-cemetery/114872228/>; *see also* Wheeler, *supra* note 30, at 397 (providing background information and images of “Judgment” and “Silence”). The original monument was “too symbolic to meet popular approval,” and as a result two statues, “Judgment” and “Silence,” were removed from the larger monument and relocated in 1878. *See* Dawers, *supra* note 49 (internal quotation marks omitted).

⁵⁰ *See* Wheeler, *supra* note 30, at 396.

⁵¹ *See* Wahlers, *supra* note 27, at 2198.

⁵² *See id.*

⁵³ The monument depicts a Confederate soldier holding a rifle facing north as if to defend the Confederacy from the Union. The statue got the nickname “Silent Sam” due to the soldier’s lack of ammunition. *See Commemorative Landscapes*, UNIV. N.C. CHAPEL HILL (last visited Oct. 18, 2020), <https://docsouth.unc.edu/commland/monument/41/>.

⁵⁴ *See* Wahlers, *supra* note 27, at 2198. At the dedication ceremony for the Silent Sam monument, there was a public recounting of a whipping of an African American. Although many view the monument as honoring UNC alumni that fought in the Civil War, others view it as honoring white supremacy and “invidious racial politics of the early twentieth century.” *See id.*

⁵⁵ *See* OFFICE OF THE MAYOR & CITY COUNCIL, MONUMENT AVENUE COMMISSION REPORT 19-20 (July 2018), <https://static1.squarespace.com/static/594bdfc3ff7c502289dd13b3/t/5b3a821788251b63fef735f7/1530561059506/MonumentAvenueCommissionFINAL.pdf>.

⁵⁶ *See id.* at 20-21. A monument of Matthew Fontaine Maury was unveiled in November 1929. It was not until 1996, that another statue was added to Monument Avenue—a statue of Arthur Ashe, an African American tennis player. *See id.* at 21.

⁵⁷ *See id.* at 21 (noting that the last monument honoring the Confederacy on Monument

War that prompted such statues still carries over to present day. Today, the “deep South” does not simply refer to a socioeconomic or cultural sub-region, but to a “primarily emotional orientation to the past.”⁵⁸ This “Southern Pride” sentiment is illustrated by the fact that, as recently as 2015, the Confederate flag still flew above the South Carolina State House until it was finally removed.⁵⁹ Ultimately, this suggests that Southerners “cling to what they know best, the past.”⁶⁰

However, this sparks what author Coleman Hutchinson refers to as an entire “hate versus heritage” debate.⁶¹ Are the Confederate monuments a reflection of Southern ideals and culture, or are they representative of deep-rooted racism and a reluctance to surrender an ounce of “white power?”

B. A Monumental Problem

“Now, a century and a half after the Civil War, Americans are finally confronting the propriety of celebrating the lives of men who committed treason in the name of preserving slavery. That these statues even exist is unusual. When armies are defeated on their own soil—particularly when those armies fight to promote racist or genocidal policies—they usually don’t get to keep their symbols and material culture.”⁶²

Ave in Virginia was built in 1929). *See also* Little, *supra* note 30 (explaining that the giant stone carving of Confederate leaders in Stone Mountain, Georgia was completed in the 1960s).

⁵⁸ Coleman Hutchison, *In the Land Where We Were Dreaming*, 48 S.: SCHOLARLY J. 44, 47 (2015) (discussing the change in meaning of the terms “deep south” and “Southern pride” in the time between the end of the Civil War and modern-day).

⁵⁹ *See id.* at 44 (explaining how the South Carolina State Senate voted to finally remove the Confederate Flag in response to shootings that occurred on June 17, 2015, at Charleston’s Emanuel African Methodist Episcopal Church).

⁶⁰ *See id.* at 49.

⁶¹ *See id.* at 44-45. Prior to removing the Confederate flag, there were years of fierce debate over whether the flag represented “hate” or “heritage.” On one side was the argument that the flag only perpetuated years of racism and white power. On the other side was the argument that the flag represented the strongly embedded culture of the “Deep South.” *See id.* at 44-47.

⁶² Zeitz, *supra* note 37.

Monuments are tangible signs of what we celebrate and honor as a society. We erect monuments for events that “are overwhelmingly important to us, and interpret them in the way we would like them to be remembered.”⁶³ Monuments signal power and authority.⁶⁴ For many in the United States, the Confederate monuments are a daily reminder of slavery, Jim Crow, and the brutality of the Ku Klux Klan.⁶⁵ They are “physical reminders that African Americans remain systematically disadvantaged in many ways, especially in the South.”⁶⁶ The Confederate monuments are a celebration of those who fought to maintain slavery, they are a celebration of white supremacy, and for that reason, many believe that they should be removed and destroyed.⁶⁷

Because the monuments seek to commemorate a cause that is not worth celebrating, the psychological impact of these statues on people of color is immeasurable. Take for example the life of Vann R. Newkirk II.⁶⁸ Growing up as an African American in North Carolina, Newkirk, did not know that the “Confederate statues *could* come down.”⁶⁹ To him, the monuments were as “immovable and immutable as the hills and the lakes.”⁷⁰ It was not until much later that Newkirk was able to understand what these monuments really stood for—“a real-life rallying cry for the ongoing defense of white hegemony and for massive resistance against anything

⁶³ See MONUMENT AVE. COMMISSION REP., *supra* note 55, at 19.

⁶⁴ See Claudia Glatz & Aimée M. Plourde, *Landscape Monuments and Political Competition in Late Bronze Age Anatolia: An Investigation of Costly Signaling Theory*, 361 BULLETIN AM. SCH. ORIENTAL RES. 33, 33 (2011) (“There is little doubt about the role of monumental architecture, rock reliefs, and inscriptions in the projection of authority and prestige as forms of conspicuous consumption of expertise and manpower.”)

⁶⁵ See Carolyn E. Holmes, *Should Confederate Monuments Come Down? Here’s What South Africa Did After Apartheid.*, WASH. POST (Aug. 21, 2018, 10:00 AM), https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/29/should-confederate-monuments-come-down-heres-what-south-africa-did-after-apartheid/?utm_term=.0df0f9b15c91 (comparing apartheid statutes in South American and Confederate monuments in the United States).

⁶⁶ See Wahlers, *supra* note 27, at 2177.

⁶⁷ See Appelbaum, *supra* note 1. After removing three Confederate monuments, Mayor Mitch Landrieu of New Orleans gave a speech stating, “These statues were a part of . . . terrorism as much as a burning cross on someone’s lawn; they were erected purposefully to send a strong message to all who walked in their shadows about who was still in charge in this city.” *Id.* (internal quotation marks omitted).

⁶⁸ Vann R. Newkirk II is a staff writer at *The Atlantic*. See Vann R. Newkirk II, *Growing Up in the Shadow of the Confederacy*, THE ATLANTIC (Aug. 22, 2017), <https://www.theatlantic.com/politics/archive/2017/08/growing-up-in-the-shadow-of-the-confederacy/537501/>.

⁶⁹ See *id.*

⁷⁰ See *id.*

challenging that hegemony.”⁷¹

In fact, today, if someone were to walk down Monument Avenue they would not get much of a sense of slavery and the Civil War at all.⁷² The view is completely one-sided, as the narrative of slavery has completely been erased, and the “consequences of this historical revisionism are alive and well.”⁷³ In an opinion piece for *The Atlantic*, Newkirk reflects on how difficult it is for him to reconcile a monument erected in memory of heroism and bravery of a Confederate soldier, when the “cause he never yielded intended to continue the subjugation of my ancestors,” or how “Old Dixie” could even be worth remembering when, if it had survived, he “might still be working those cotton mills today.”⁷⁴

This impact is not limited to minority groups. In an opinion piece for the *New York Times*, Clay Risen, a white, male Southerner, reminisced about his childhood growing up in Nashville, Tennessee and called for the reconsideration of Confederate iconography throughout the United States.⁷⁵ He noted that as a child, within ten minutes on his bike, he could pass countless symbols of the Confederacy.⁷⁶ Risen stated that at the time, “[he] knew full well what Lee stood for; had [he] stopped for a second, [he] might have imagined how it would feel to be a black person riding along that same street. But that’s the point: [he] didn’t, because it all just seemed so natural, so all encompassing.”⁷⁷

As a result of this deep-cutting psychological impact on the population,⁷⁸ there have been numerous incidents of vandalism,

⁷¹ See *id.*

⁷² See *60 Minutes: The History and Future of Confederate Monuments*, *supra* note 29. “The only representation of an African American you’ll find on Monument Avenue is a statue of Richmond native and tennis great Arthur Ashe.” *Id.*

⁷³ Meg Dalton, *Yes, the Civil War was about slavery. Just listen to Uncivil*, COLUM. JOURNALISM REV. (Feb. 7, 2018), https://www.cjr.org/the_feature/uncivil-slavery.php (noting a study conducted by the Southern Poverty Law Center found that “[o]nly 8 percent of high school seniors surveyed last year were able to identify slavery as the central cause of the Civil War.”)

⁷⁴ See Newkirk II, *supra* note 68.

⁷⁵ See Clay Risen, *Confederate Statues Are the Easy Part*, N. Y. TIMES (Aug. 18, 2017), <https://www.nytimes.com/2017/08/18/opinion/confederate-statues-south-legacy.html>.

⁷⁶ See *id.* (“I could be riding along Jefferson Davis Drive, Confederate Drive, General Forrest Court, Robert E. Lee Court and, confusingly, two separate Robert E. Lee Drives. My Boy Scout troop went to the national jamboree at Virginia’s Fort A. P. Hill, named for a Confederate general. A few classmates went to college at Washington and Lee.”)

⁷⁷ See *id.*

⁷⁸ See *Why the Fuss Over Confederate Statues?*, *supra* note 21 (discussing how racial minorities, especially black Americans, feel that their presence in public life is offensive).

threats, and protests in an effort to remove the Confederate monuments. For example, in August 2018, one week before a white-nationalist rally set in Washington D.C., protestors splattered red paint all over a monument of Robert E. Lee in Richmond, Virginia.⁷⁹ The protestors spray-painted the letters “BLM,” for the Black Lives Matter Movement, on the base of the monument.⁸⁰ Earlier in the year, the city of Richmond had a similar incident in which protestors spray-painted “Racist Ban KKK” on the base of a monument of Jefferson Davis also located on Monument Avenue.⁸¹

Monument Avenue in Richmond, Virginia has been a hotspot for these protests, which has cost taxpayers thousands of dollars. In October 2017, the city of Richmond reported that it had spent over \$16,000 in the previous two years cleaning graffiti off of Confederate monuments.⁸² That figure does not include any additional expense the state of Virginia or the federal government spent in cleaning up, restoring, or protecting Confederate monuments in the area.⁸³

Similar acts of vandalism have occurred all over the South. In August 2018, on the University of North Carolina at Chapel Hill campus, protestors tore down a monument of Silent Sam that had stood in the center of campus for over 100 years.⁸⁴ Eleven arrests were made in connection with the vandalism and the protests.⁸⁵ Following the incident, the Silent Sam statue was not returned to its original spot, and five months later UNC Chancellor, Carol

⁷⁹ See Teo Armus, *Robert E. Lee statue in Richmond is splattered with paint*, WASH. POST (Aug. 4, 2018, 10:34 PM), https://www.washingtonpost.com/local/public-safety/robert-e-lee-statue-in-richmond-is-splattered-with-paint/2018/08/04/bb170404-9820-11e8-810c-5fa705927d54_story.html?utm_term=.9a195125ecf0.

⁸⁰ See *id.*

⁸¹ See Mark Robinson, *Richmond has spent \$16,000 cleaning monuments in last two years*, RICHMOND TIMES-DISPATCH (Oct. 18, 2017), https://www.richmond.com/news/local/city-of-richmond/richmond-has-spent-cleaning-monuments-in-last-two-years/article_cf953ed0-e4fd-578e-a31a-a082ed6009b4.html.

⁸² See *id.*

⁸³ See Steven I. Weiss, *You Won't Believe What the Government Spends on Confederate Graves*, THE ATLANTIC (July 19, 2013), <https://www.theatlantic.com/politics/archive/2013/07/government-spending-confederate-graves/277931/> (noting that southern taxpayers pay more to maintain rebel Confederate graves and monuments than those of Union soldiers).

⁸⁴ See Susan Svrluga, *After Confederate Monument is Torn Down, UNC promises to come up with a plan to protect Silent Sam and public safety*, WASH. POST (Aug. 28, 2018, 3:06 PM), https://www.washingtonpost.com/education/2018/08/28/after-confederate-monument-was-torn-down-unc-promises-come-up-with-plan-protect-silent-sam-public-safety/?utm_term=.baef78beb5ff.

⁸⁵ See *id.*

Folt, ordered the removal of the base of the monument and the commemorative plaque.⁸⁶ As a result of this action, the UNC school board asked Chancellor Folt to resign weeks earlier than she had planned.⁸⁷

Meanwhile, in Virginia, a statue memorializing Robert E. Lee was the center of a violent and deadly protest in Charlottesville in the summer of 2017.⁸⁸ A white nationalist march led to a “nighttime brawl lit up by torches and smartphones, and worse violence.”⁸⁹ The protest left one dead and dozens injured.⁹⁰

Although a majority of these Confederate monuments are located in Southern states, these acts of protest are not limited to the American South.⁹¹ In fact, such incidents are among countless that have been occurring throughout the United States.⁹² For example, in Brooklyn, New York, two plaques honoring Robert E. Lee were removed after the Episcopal Church they were near

⁸⁶ See Amir Vera, *UNC Chancellor Forced to Leave Job in 2 Weeks After Approving Removal of the Remains of ‘Silent Sam’ Confederate Statue*, CNN (Jan. 15, 2019, 8:45 PM), <https://www.cnn.com/2019/01/14/us/unc-chancellor-resignation-silent-sam/index.html>.

⁸⁷ Carol Folt was the Chancellor of the University of North Carolina since 2013, and announced her resignation on January 14, 2019, planning to leave after graduation in May. On the same day, Folt announced the removal of the Silent Sam base and plaque. On January 15, the school board accepted Folt’s resignation, but only gave her until January 31 to leave her job. The school board stated: “We are incredibly disappointed at this intentional action . . . It lacks transparency and it undermines and insults the board’s goal to operate with class and dignity.” See *id.*

⁸⁸ See Jacey Fortin, *The Statue at the Center of Charlottesville’s Storm*, N. Y. TIMES (Aug. 13, 2017), <https://www.nytimes.com/2017/08/13/us/charlottesville-rally-protest-statue.html>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Although this Note is limited to addressing the problem of Confederate monuments and memorials in the United States, it is important to note that similar campaigns are going on around the United States in regard to homage to Christopher Columbus. See Edward Helmore, *New York Mayor Considers Christopher Columbus Statue Removal*, THE GUARDIAN (Aug. 25, 2017, 2:09 PM), <https://www.theguardian.com/us-news/2017/aug/25/new-york-christopher-columbus-statue-de-blasio> (noting that New York Mayor Bill de Blasio ordered review of a landmark statue of Christopher Columbus that has overlooked Columbus Circle since 1892).

⁹² The list of locations that have taken down, or are planning to take down Confederate statues includes, but is not limited to: Annapolis, Maryland; Austin, Texas; Brooklyn, New York; Boston, Massachusetts; Memphis, Tennessee; and San Diego, California. See Jess Bidgood et al., *From 2017: Confederate Monuments Are Coming Down Across the United States. Here’s a List.*, N. Y. TIMES (last updated Aug. 28, 2017), <https://www.nytimes.com/interactive/2017/08/16/us/confederate-monuments-removed.html>; see also Lydia O’Connor, *Here Are Some Of The Confederate Monuments Protesters Have Vandalized*, HUFFINGTON POST (last updated Aug. 18, 2017, 5:41 PM), https://www.huffingtonpost.com/entry/confederate-monuments-vandalized_us_5994cf3be4b0d0d2cc841d07.

received numerous violent threats.⁹³ In Massachusetts, the state recently covered up a Confederate monument in Boston for Confederate prisoners of war.⁹⁴ In St. Louis, Illinois, after a campaign by activists, a little-known Confederate monument was removed in the summer of 2018.⁹⁵

While there is a robust movement to remove these Confederate monuments, the backlash has also gained strong momentum. For example, in February 2018, a Virginia judge ordered the removal of tarps that shrouded two Confederate monuments in Charlottesville.⁹⁶ In doing so, the judge noted that the harm to the general public in not being able to view or enjoy the monuments outweighs any benefit to having the monuments covered.⁹⁷ Additionally, numerous states have recently enacted laws providing criminal sanctions for the removal, relocation, or disturbance of any Civil War monument.⁹⁸

⁹³ See Bidgood et al., *supra* note 92.

⁹⁴ In covering the memorial, the Massachusetts Governor, Charlie Baker, stated “we should refrain from the display of symbols, especially in our public parks, that do not support liberty and equality.” *Id.*

⁹⁵ The monument was removed from Forest Park and was a memorial “erected in memory of the soldiers and sailors of the confederate states by the United Daughters of the Confederacy of Saint Louis.” Jim Salter, *Workers Remove Portion of St. Louis’ Confederate Monument*, WASHINGTON TIMES (June 8, 2017), <https://m.washington-times.com/news/2017/jun/8/workers-remove-portion-of-st-louis-confederate-mon/>. See also Chris Kenning, *St. Louis Reaches Deal to Remove Confederate Monument*, REUTERS (June 26, 2017, 1:59 PM), <https://www.reuters.com/article/us-missouri-monuments-idUSKBN19H284>; Bidgood et al., *supra* note 92.

⁹⁶ See *Payne, et al. v. City of Charlottesville, et al.*, Ruling on Temporary Injunction as to Coverings, CL 17-145 at 7 (Feb. 23, 2018), <https://bloxi-images.newyork1.vip.townnews.com/dailyprogress.com/content/tncms/assets/v3/editorial/8/e1/8e135cb0-1bf1-11e8-9119-e37f41343b59/5a95acc171caa.pdf>; see also Matthew Haag, *Judge Orders Tarps Removed From Confederate Statues in Charlottesville*, N.Y. TIMES (February 27, 2018), <https://www.nytimes.com/2018/02/27/us/charlottesville-confederate-monuments.html> (noting that tarps covered monuments of Robert E. Lee and Stonewall Jackson after the violent protests in Charlottesville in the summer of 2017, and that recently a judge ordered the City of Charlottesville to remove the tarps).

⁹⁷ See Ruling on Temporary Injunctions as to Coverings, *supra* note 96.

⁹⁸ Across the South, many states have enacted laws protecting Confederate monuments, which have been colloquially termed “Heritage Protection Acts.” See Wahlers, *supra* note 27, at 2181-82. See e.g., ALA. CODE § 41-9-232(a) (2017) (preventing relocation, removal, alteration, renaming, or any disturbance to any monument located on public property for more than forty years); GA. CODE ANN. §50-3-1(b)(3) (West 2015) (preventing any publicly owned monument or memorial erected in honor of the military service of any past or present military personnel from being relocated, removed, concealed, obscured, or altered in any fashion); N.C. GEN. STAT. ANN. § 100-2.1(a) (West 2015) (“a monument, memorial, or work of art owned by the State may not be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission”); S.C. CODE ANN. § 10-1-165(A) (2015) (preventing relocation, removal, alteration, disturbance, or alteration to any monument erected on public property in remembrance of the War Between the States); TENN. CODE ANN. § 4-1-412(b)(2) (West 2016) (“No memorial or public property that

C. Statutes Protecting Statues

Unfortunately, in some states, it is not simply a matter of taking these monuments down or even moving them. In many states, these monuments are protected by state law or city charters.⁹⁹ While some of these laws have been around for decades, others are relatively recent and have been enacted in the face of efforts to have the monuments removed.¹⁰⁰

One state that had rather strong protections for its Confederate monuments was Virginia.¹⁰¹ In Richmond, Virginia, after numerous incidents of vandalism, and faced with the demands of the public, Mayor Levar Stoney created the Monument Avenue Commission to address the Confederate monuments.¹⁰² Before moving forward with any changes to Monument Avenue, the Commission asked the Richmond city attorney for “an analysis of the rights and

contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state”).

⁹⁹ See Wahlers, *supra* note 27, at 2182 (listing states where the monuments are protected by statute).

¹⁰⁰ North Carolina’s Heritage Act was signed into law in July 2015, while more recently in 2017, Alabama Governor, Kay Ivey, signed the Alabama Memorial Preservation Act into law. See *id.* at 2180; see also N.C. GEN. STAT. ANN. § 100-2.1(a) (West 2015) (“a monument, memorial, or work of art owned by the State may not be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission”); ALA. CODE § 41-9-232(a) (2017) (preventing relocation, removal, alteration, renaming, or any disturbance to any monument located on public property for more than forty years).

¹⁰¹ See *e.g.*, VA. CODE ANN. § 15.2-1812 (West 2010) (amended 2020); VA. CODE ANN. § 18.2-137 (West 2018) (amended 2020).

¹⁰² Mayor Stoney’s commission was created to participate in “a series of small group meetings to gather feedback on the future of the city’s Confederate iconography.” Mark Robinson, *Stoney’s Monument Avenue Commission Schedules Five Meetings*, RICHMOND TIMES-DISPATCH (Feb. 20, 2018), https://www.richmond.com/news/local/city-of-richmond/stoney-s-monument-avenue-commission-schedules-five-meetings/article_f243882c-86d8-58bb-a31d-73046b0c05d9.html. See also *Monument Avenue Commission Members*, Monument Avenue Commission, <https://www.monumentavenuecommission.org/commission-members/> (last accessed Feb. 19, 2019) (listing the ten members of the Mayor’s commission: Christy Coleman, CEO of American Civil War Museum; Gregg Kimball, Library of Virginia Director of Education and Outreach; Ed Ayers, President Emeritus of the University of Richmond; Julian Hayter, Professor at the University of Richmond; Sarah Driggs, author of “Richmond’s Monument Avenue”; Laurant Lee, Professor at the University of Richmond; Stacy Burrs, Board of Directors at the Black History Museum; Coleen Butler Rodriguez, resident of Monument Avenue; Andreas Addison, City Council, 1st District; Kim Gray, City Council, 2nd District).

obligations of the City with respect to the Monument Avenue statues.”¹⁰³ On November 14, 2017, the city attorney released a statement concluding that:

[N]o such monuments may be removed except at the risk of exposure to legal liabilities until either the courts or the General Assembly provide clarity to certain generally applicable state laws. Some monuments, including the Monument Avenue statues, may not be removed without still further action by the General Assembly to negate restrictions contained in the City Charter.¹⁰⁴

Ultimately, the city attorney suggested “[a]ny effort to remove Confederate statues on Monument Avenue would require the General Assembly to approve a change to the city charter.”¹⁰⁵

Applicable Virginia state law also imposed certain “limitations on actions by localities, or people permitted, hired or contracted by them.”¹⁰⁶ Specifically, Virginia Code § 15.2-1812 allowed a locality to erect a monument or memorial for any war or conflict, including “Confederate or Union monuments or memorials of the War Between the States.”¹⁰⁷ Section 15.2-1812 further provided “it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper

¹⁰³ See Letter from Allen L. Jackson, City Attorney, City of Richmond, to Monument Avenue Commission at 1 (Nov. 14, 2017), <https://static1.squarespace.com/static/594bdfc3ff7c502289dd13b3/t/5a0b7c16c830252ee144faea/1510702103890/War+MonumentsLegalOpinion.pdf>.

¹⁰⁴ *Id.*

¹⁰⁵ Ned Oliver, *In Confidential Memo, Richmond City Attorney Says City Must Seek State Approval to Remove Confederate Monuments*, RICHMOND TIMES-DISPATCH (Oct. 6, 2017), https://richmond.com/news/local/city-of-richmond/in-con%ED%AF%80%ED%B3%92dential-memo-richmond-city-attorney-says-city-must-see/article_3c8e1cce-cbd5-5098-95e4-43027a5c357c.html.

¹⁰⁶ See Letter from Allen L. Jackson, *supra* note 103, at 2.

¹⁰⁷ VA. CODE ANN. § 15.2-1812 (West 2010) (amended 2020) (“For purposes of this section, ‘disturb or interfere with’ includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials.”).

measures and exercising proper means for the protection, preservation and care of same.”¹⁰⁸

The state of Virginia had even stricter regulations for statutes it owned. For example, the Robert E. Lee monument and the surrounding traffic circle belong to the Commonwealth.¹⁰⁹ For this monument specifically, the 1899 resolution that “authorized the governor to accept the gift of the statue promised that the state would ‘hold said statue and pedestal and ground perpetually sacred to the monumental purpose to which they have been devoted.’”¹¹⁰ Therefore, the city of Richmond had no legal authority to address the Robert E. Lee statue without the consent of the state.¹¹¹

In 2020, Virginia loosened or eliminated most of its rules limiting the removal of confederate monuments.¹¹² Other states’ restrictions, however, remained; in North Carolina, the 2015 North Carolina Heritage Protection Act protects monuments, such as the Silent Sam statue on the University of North Carolina at Chapel Hill campus.¹¹³ This law “severely restricts the removal, relocation, or alteration of any monument or ‘display of a permanent character’ located on public property.”¹¹⁴ Although this measure is not restrained to protection of Confederate monuments, the Heritage Protection Act was enacted in 2015 “amidst cries for removal of Confederate monuments and rampant Confederate monument vandalism” and, “[t]herefore, many observers have inferred that the purpose of this legislation is the protection of these monuments, an inference that has had significant implications for the heated public debate surrounding the statute.”¹¹⁵

¹⁰⁸ *Id.*

¹⁰⁹ See Letter from Allen L. Jackson, *supra* note 103.

¹¹⁰ *Id.*

¹¹¹ See *id.*

¹¹² See Zach Rosenthal, *New law allows Virginia localities to remove Confederate statues and monuments*, THE CAVALIER DAILY (Apr. 13, 2020), <https://www.cavalierdaily.com/article/2020/04/new-law-allows-virginia-localities-to-remove-confederate-statues-and-monuments>.

¹¹³ See Wahlers, *supra* note 27, at 2179-80; see also N.C. GEN. STAT. ANN. § 100-2.1(a) (West 2015).

¹¹⁴ Wahlers, *supra* note 27, at 2180.

¹¹⁵ *Id.*

Ultimately, these statutes present a major concern for cities that disagree with the veneration of Confederate individuals, as the laws leave no legal room for the cities to remove or relocate the monuments without facing a violation of law.

D. Forcing Speech: Monuments and the First Amendment

With all the statutes in different states protecting Confederate monuments, moving or removing these monuments becomes an extremely difficult task. Yet, leaving the statues as they are not only perpetuates the moral issues of white supremacy and racism,¹¹⁶ but also raises First Amendment concerns.¹¹⁷ A constitutional problem arises when a city finds the message that the Confederate monuments convey to be offensive, but cannot do anything about it because there is a state statute forcing the monument to remain.¹¹⁸

The First Amendment to the United States Constitution states, “Congress shall make no law . . . abridging the freedom of speech.”¹¹⁹ The Free Speech Clause does not regulate government speech, just the government regulation of private speech.¹²⁰ The Supreme Court held in *Pleasant Grove City, Utah v. Summum*¹²¹ that “[p]ermanent monuments displayed on public property

¹¹⁶ See Fortin, *supra* note 88. On August 12, 2017, a white nationalists march in Emancipation Park in Charlottesville, Virginia, organized in response to the city’s plan to remove a statue of Robert E. Lee, left one person dead, and dozens injured. *Id.*

¹¹⁷ See Aneil Kovvali, *Confederate Statue Removal*, 70 STAN. L. REV. 82, 83 (2017) (“Critics of these controversial state measures tend to focus on the moral issue of preserving monuments to white supremacy. But the measures also raise a separate set of issues, because they run contrary to constitutional values regarding free speech and the fairness of the political process.”).

¹¹⁸ See *id.*

¹¹⁹ U.S. CONST. amend. I.

¹²⁰ See *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009) (citing *Johanns v. Livestock Marketing Assn.*, 544 U.S. 550, 553 (2005)) (“The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech.”).

¹²¹ The case of *Pleasant Grove City v. Summum* arose when a religious organization in Pleasant Grove, Utah wished to donate a monument to one of the city’s public parks. The mayor of Pleasant Grove denied the request, and the religious organization sued claiming a violation of the organization’s freedom of speech. The case went all the way to the Supreme Court in 2009, where the Court held that the placement of a monument in a public park is a form of government speech, and under the First Amendment a city is entitled to say what it wishes and to select the views that it wants to express. See *id.* at 465-66, 472-73.

typically represent government speech.”¹²² Therefore, since the “[g]overnment is not restrained by the First Amendment from controlling its own expression,” cities are constitutionally entitled to choose and broadcast their own messages.¹²³

In reaching its holding, the Supreme Court reasoned that the “‘message’ conveyed by a monument may change over time.”¹²⁴ For instance, the Court noted “[a] study of war memorials found that ‘people reinterpret’ the meaning of these memorials as ‘historical interpretations’ and ‘the society around them changes.’”¹²⁵ The Court used the Statue of Liberty as an example of the changing message of monuments.¹²⁶ When the Statue of Liberty was first gifted to the United States from France, it was meant to be an emblem of international friendship and the widespread influence of American ideals.¹²⁷ Later, the Statue of Liberty became known as a beacon welcoming immigrants to a land of freedom.¹²⁸ From this, the Court concluded that “it frequently is not possible to identify a single ‘message’ that is conveyed by an object or structure,” and thus a city can alter the message intended by the donor or creator by choosing how the monument is portrayed.¹²⁹

However, a constitutional issue arises when a city is mandated by state statute to preserve and maintain a Confederate monument, essentially forcing a city to engage in speech with which it may disagree.¹³⁰ If a city disagreed with a message protected under state law, there would be little the city could do about it.¹³¹

¹²² *Id.* at 470.

¹²³ *See id.* at 467 (citing *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 139, n.7 (1973) (Stewart, J., concurring)).

¹²⁴ *Id.* at 477.

¹²⁵ *Id.* (quoting JAMES M. MAYO, *WAR MEMORIALS AS POLITICAL LANDSCAPE: THE AMERICAN EXPERIENCE AND BEYOND* 8-9 (Praeger, 1st ed., 1988)).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 476-77.

¹³⁰ *See* Kovvali, *supra* note 117, at 82-83 (explaining how the statutes protecting the Confederate monuments “suppress the speech of cities while compelling them to make statements they disagree with.”).

¹³¹ Whether a city can assert Free Speech protections against a state, and whether the city would succeed on such a claim is beyond the scope of this Note. However, a constitutional problem is created when onlookers equate the monuments with city speech. *See* David Niose, *Blood Spills Over a Statue of Lee*, *PSYCH. TODAY* (Aug. 13, 2017), <https://www.psychologytoday.com/us/blog/our-humanity-naturally/201708/blood-spills-over-statue-lee> (“Symbols, and public displays, in particular, can have enormous significance, because ideas represented by public displays are presumptively valid. That is, if the government maintains a monument to something or someone, the memorial in question

Yet, not all hope for a solution is lost. Looking to the actions of countries such as Germany and South Africa for inspiration, the United States may be able to reframe the message of the monuments without running afoul the state statutes.

II. LOOKING ELSEWHERE FOR SOLUTIONS

The United States is not the first country to have to deal with relics of an unsavory history. For example, in Germany, nearly every Nazi relic was destroyed. While in South Africa, most Apartheid monuments were moved from public spaces into museums. Looking to the solutions that other countries have implemented helps shed light on how potential solutions may work in the United States.

A. *Do What the Germans Did: Destroy the Monuments Entirely*

One possible solution that has been supported by scholars and the public is to remove the monuments entirely.¹³² This solution is similar to what Germany did with Nazi monuments following World War II. In Germany, most physical relics of the Nazi regime were banished from public view.¹³³ Following the War, “[s]tone swastikas were chiseled off the façades of buildings, Nazi insignia were taken down from flagpoles, and, in towns and cities across Germany, streets and squares named after Hitler reverted to their previous designations.”¹³⁴

By removing any and all physical relics of Nazi Germany, Germans attempted to ensure that such horrible actions would not be

must stand for an idea that deserves recognition, a concept that at some level is acceptable or even righteous.”)

¹³² See Bidgood et al., *supra* note 92 (noting that many government officials, including Representative Nancy Pelosi of California, have called for Confederate monuments to be removed from public grounds).

¹³³ See Zeitz, *supra* note 37 (explaining how Germany following World War II is a useful comparison in addressing the monument problem facing the United States).

¹³⁴ Richard J. Evans, *From Nazism to Never Again: How Germany Came to Terms with Its Past*, 97 FOREIGN AFF. 8, 8 (2018).

celebrated, accepted, or respected.¹³⁵ Eradicating Nazi symbolism was intended to help the Germans deal with the truth and understand the horrors of World War II.¹³⁶ It attempted to prevent the spread of such radical ideals—"you won't see neo-Nazis converging on a monument to Reinhard Heydrich or Adolf Hitler, because no such statues exist."¹³⁷

However, while the intention behind removing the monuments was "out of sight, out of mind," removing the monuments was "no instant antidote to extremist ideology."¹³⁸ In fact, tearing down the physical Nazi symbols only had a minimal impact; "[i]t would take time, generational change and external events to make Germany what it is today."¹³⁹ Germany's effort "to forge a new identity could not just leap across the Third Reich as if it had not existed," although it sure did try.¹⁴⁰ For the first fifteen years after World War II, German schools did not mention the Holocaust or Nazis.¹⁴¹ And while tearing down the physical relics of Nazism was a first step in attempting to heal from the terrors of the Hitler regime, it was not the end-all solution. Removing the monuments and insignia did not "ensure overnight political or cultural transformation," but rather "required a longer process of public reconciliation with history for Germans to acknowledge their shared responsibility for the legacy of Nazism."¹⁴²

Therefore, removing the monuments was not the solution in Germany. The solution was the reformation of thinking and the reconciliation with the truth, which was accomplished through greater education and self-reflection.¹⁴³ While it is incredibly important for Germany not to romanticize or venerate Nazism, simply tearing down and destroying relics of an unfavorable past

¹³⁵ *See id.* at 10.

¹³⁶ *See Zeitz, supra* note 37 ("The federal state systematically destroyed statues and monuments, razed many Nazi architectural structures and buried executed military and civilian officials in mass, unmarked graves so that their resting grounds would not become Nazi shrines.").

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Evans, *supra* note 134, at 9.

¹⁴¹ *See Zeitz, supra* note 37.

¹⁴² *Id.*

¹⁴³ *See id.* (noting that it took years for German schools to incorporate information about the Holocaust or Nazi atrocities into the school curriculum, and that helped the following generations confront the "country's Nazi past and forcefully repudiate[] it").

creates a dangerous precedent of erasing history. Much can be learned from the past and blatantly ignoring it does not do any good.¹⁴⁴ Removing Confederate statues will not be the end-all solution to racism in the United States. There will need to be more education and more reconciliation with the truth.

B. Follow in the Footsteps of South Africa: Move the Monuments to a Different Location

Another possible solution would be to move the Confederate monuments to another location, such as a museum.¹⁴⁵ This solution has been used by South Africa to address Apartheid monuments.¹⁴⁶ Similar to the response to Confederate monuments in the United States, South Africa was faced with countless acts of vandalism and protests demanding the removal of the statues celebrating Apartheid leaders.¹⁴⁷ South Africa's solution was bi-fold, focusing on forgiveness, rather than the truth.¹⁴⁸

Initially, "during the early 1990s, the South African government removed many statues of apartheid-era leaders from city parks and government buildings, giving them to private heritage

¹⁴⁴ "[T]he philosopher George Santayana wrote, 'those who do not learn from history are doomed to repeat it.'" Abigail Costea, *History that is Hard to Forget: Remembrance of the Civil War and Holocaust Era*, MUSEUM OF JEWISH HERITAGE (Jan. 4, 2019), <https://mjhnyc.org/history-hard-forget-remembrance-civil-war-holocaust-era/> (arguing that the Confederate monuments should be removed, but not "completely forgotten").

¹⁴⁵ See *id.* (proposing the removal of Confederate monuments to a Civil War museum). Following the violence in Charlottesville, many headlines called for the removal of Confederate monuments in public spaces and their "safe housing" in museums. See Janeen Bryant et al., *Are Museums the Right Home for Confederate Monuments?*, SMITHSONIAN MAG. (May 7, 2018), <https://www.smithsonianmag.com/history/are-museums-right-home-confederate-monuments-180968969/>.

¹⁴⁶ See David Smith, *Vandalism of Apartheid-Era Statues Sparks Fevered Debate in South Africa*, THE GUARDIAN (Apr. 10, 2015 10:55 PM), <https://www.theguardian.com/world/2015/apr/10/vandalism-of-apartheid-era-statues-sparks-fevered-debate-in-south-africa>.

¹⁴⁷ In April 2015, a 112-year-old monument of Queen Victoria was splattered with green paint in Port Elizabeth, while earlier in the year a student flung a bucket of excrement over a monument of Cecil Rhodes at the University of Cape Town. These acts, along with many others, forced the South African government to address the Apartheid symbols. See *id.*

¹⁴⁸ See Sisonke Msimang, *All Is Not Forgiven: South Africa and the Scars of Apartheid*, FOREIGN AFF. (Jan./Feb. 2018), <https://www.foreignaffairs.com/articles/south-africa/2017-12-12/all-not-forgiven> (noting that while South Africa's solution has maintained the appearance of justice, it has "done less well at achieving actual justice by banishing the inequalities that apartheid created").

organizations.”¹⁴⁹ Today, many monuments are on display in private museums or private sculpture gardens.¹⁵⁰

Although the original solution of moving monuments to private heritage organizations preserves the actual, physical monuments, it also presents its own issues. First, this solution limits access to the monuments. To see the monuments and learn about the history, people have to go out of their way to a private museum or garden, likely paying a fee. Currently, in the United States, a majority of Confederate monuments are located in the center of towns,¹⁵¹ and are therefore viewed by the public, for free, every single day. Keeping the monuments in their original location allows for more interaction and education of the public as a whole.

Further, placing monuments in the hands of private ownership, as South Africa did, presents the possibility of exploitation of the message of the statue.¹⁵² In the United States, some Confederate statues still sit on public grounds.¹⁵³ It makes the most sense for the government to be the one to own up to these statues and address them. By passing off the problem to a private organization, the government engages in an “effort to sidestep the conversation that we need to have.”¹⁵⁴ Indeed, by not addressing the Apartheid monuments directly and, instead, moving the monuments to museums, South Africa seemed to be washing its hands of responsibility and foregoing all accountability.

However, in the mid-1990s, the South African government began to take a different approach, constructing new monuments

¹⁴⁹ See Holmes, *supra* note 65.

¹⁵⁰ *Id.*

¹⁵¹ Becky Little, *How the US Got So Many Confederate Monuments*, HISTORY (Aug. 17, 2017), <https://www.history.com/news/how-the-u-s-got-so-many-confederate-monuments> (last updated June 12, 2020).

¹⁵² See Joseph O'Reilly, *Memories in Transition: Memory and Museums in the “New” South Africa*, 29 J. MUSEUM EDUC. 12, 13–15 (2004). Although South Africa's post-apartheid museums have a common theme, they vary widely in how they convey such a theme. *Id.* at 13. “[D]ecisions about whose memory is represented and how it is conveyed have significant implications when the history being documented is so obviously linked to an understanding of deep injustice, to our conception of how it was overcome, and to how it will shape a nation's character and future.” *Id.* at 14–15.

¹⁵³ Kathleen Tipler et. al., *93 percent of Confederate monuments are still standing. Here's why.*, WASH. POST. (Dec. 16, 2019, 7:00 AM), <https://www.washingtonpost.com/politics/2019/12/16/percent-confederate-monuments-are-still-standing-heres-why/>. “About 91 percent are located in the former Confederacy; 43 percent are statues rather than plaques, flags or other memorials. About 18 percent are on public grounds, typically at courthouses; the rest are on private property, where public officials can do little to remove them.” *Id.*

¹⁵⁴ See Bryant et al., *supra* note 145 (suggesting that the effort to put Confederate monuments in museums reflects a misunderstanding of what museums are actually for).

next to the old ones.¹⁵⁵ The government's intent was to provide "monuments for everyone," and rather than "destroying the past, [South Africa] would be peacefully transformed into a multiracial present."¹⁵⁶

The more recent solution of having a "monument for everyone" is closer to the one proposed in this Note, but it still fails to deal with the truth of Apartheid. Keeping Apartheid monuments up without reframing them continues to celebrate and defend the actions of the individuals immortalized in stone, even if more inclusive monuments that reflect a broader range of the population surround them.¹⁵⁷ Like Germany, by failing to fully recognize the true past behind Apartheid-era leaders, South Africa fails to come to terms with its full history. As a result, today, "white South Africans seem to be suffering from collective amnesia," and many "look back on the [reconciliation] process as a carefully managed stage show—a piece of theater concerned with the appearance of truth-telling rather than the substance of what the truth actually means."¹⁵⁸

¹⁵⁵ See Holmes, *supra* note 65. This also seems to be the attempt of what was done with the addition of the monument of Arthur Ashe in Richmond. See MONUMENT AVENUE COMMISSION REPORT, *supra* note 55, at 19–21.

¹⁵⁶ Holmes, *supra* note 65. To create monuments for "everyone," South Africa built a Voortrekker monument that celebrates early Afrikaner pioneers, as well as Freedom Park, a monument that immortalizes the anti-apartheid struggle. *Id.*

¹⁵⁷ See German Lopez, *The Battle Over Confederate Statues, Explained*, VOX (Aug. 23, 2017, 2:36 PM), <https://www.vox.com/identities/2017/8/16/16151252/confederate-statues-white-supremacists>. In an effort to have monuments reflect more of society, Nathan Coflin, a resident of Portsmouth, Virginia, created a petition to have a monument of Robert E. Lee replaced with the Portsmouth native, rapper Missy Elliot. See Lisa Respers France, *Fans want Missy Elliot statue to replace Confederate monument*, CNN (Aug. 21, 2017), <https://www.cnn.com/2017/08/21/entertainment/missy-elliott-confederate-statue/index.html>.

¹⁵⁸ See Msimang, *supra* note 148.

III. PROPOSED SOLUTION: REFRAME THE MONUMENTS

In light of the controversy surrounding the Confederate monuments and the obvious need for change, this Note proposes that the statues be accompanied by a “footnote of epic proportions.”¹⁵⁹

A. Reframing the Monuments

Reframing the monuments is a middle-ground solution between leaving them as they are and removing them from public locations. Reframing can be accomplished in several ways, such as using a “glass placard,”¹⁶⁰ a “truth plaque,”¹⁶¹ or even a large sign, but the idea remains the same: by using some form of “truth marker,” cities can depict and explain the *true* history of the individual, explain why the monument was created, and explain why the individual should not be celebrated. In this way, onlookers will be able to see old monuments in a new light.¹⁶²

Including “truth plaques” or signs is not a radical idea.¹⁶³ Such signage would “reflect the historic, biographical, artistic, and changing meaning over time for each.”¹⁶⁴ The “truth markers”

¹⁵⁹ See *60 Minutes: The History and Future of Confederate Monuments*, *supra* note 29. Julian Hayter, a historian at the University of Richmond and a member of the Monument Avenue Commission, has suggested a “footnote of epic proportions” to reframe the Confederate monuments. *Id.* Specifically, he suggests using the “scale and grandeur” of the monuments against themselves to tell a more accurate story of American history. *Id.*

¹⁶⁰ *Id.* “You could have a glass placard here and etched into that glass placard would be a story. And then when you look through it, you can still see the Lee monument, but you see it through the lens of a more accurate historical depiction.” *Id.*

¹⁶¹ See Wahlers, *supra* note 27, at 2198 (calling for “truth plaques” to be added to monuments to allow onlookers to “make their own appraisal of the monument’s meaning”).

¹⁶² See *id.* at 2199 (asserting that granting local governments the ability to approve “truth plaques” would “not only allow some degree of local control over the objects but would also shed light onto the problematic contexts that influenced the monuments’ erections.”).

¹⁶³ The use of “truth plaques” has also been proposed for memorializing lynching sites to create public acknowledgment and a “permanent record of racial terror violence.” See *Community Remembrance Project*, EQUAL JUST. INITIATIVE, <https://eji.org/community-remembrance-project> (last visited Oct. 18, 2020); see also Sarah Gerwig-Moore, *Justice in the Deep South: Learning from History, Charting Our Future*, 67 MERCER L. REV. 483, 492 (2016) (“One of the most striking things is that EJI visited over 150 lynching sites throughout the South, including here in Georgia, and we found in almost all of these places there was no historical marker; usually nothing in the community, often in communities where there are markers, and attention to this period, but nothing about lynching, which was really remarkable. There were about three or four markers we did find.”)

¹⁶⁴ Keneally, *supra* note 14.

could explain that these individuals were once wrongfully celebrated, explain the true history of the individual, and provide the information to allow onlookers to form their own opinion of the monument.

Ultimately, the hope is that a “truth marker” next to the monument would “allow onlookers to make their own appraisal of the monument’s meaning.”¹⁶⁵ And an understanding of the circumstances surrounding the creation of each monument “may enable citizens to contextualize monuments within the backdrop of local history.”¹⁶⁶ Ideally, the city would determine what the marker would say, and the marker should be crafted by an unbiased commission similar to that of the Monument Avenue Commission.

B. Criticism of Reframing the Monuments

*“The cause that is celebrated by these memorials cannot be defended, and so the statues will not be either.”*¹⁶⁷

While the “hate” versus “heritage” debate regarding the meaning of the monuments continues throughout the South, “white supremacist violence in support of these monuments seems to be persuading observers that they do, in fact, stand for white supremacy—and should be taken down.”¹⁶⁸ In a talk sponsored by the ACLU, Jeffery Robinson, the ACLU’s top racial justice expert, called for the monuments to be removed:

You can take down every Confederate monument in America tomorrow, it ain’t going to feed anybody, it ain’t going to get anybody out of prison . . . it’s not going to solve all the racial problems we have in America. What getting rid of the Confederate monuments will do, is, in my view, begin a process of

¹⁶⁵ Wahlers, *supra* note 27, at 2198.

¹⁶⁶ *Id.*

¹⁶⁷ Holmes, *supra* note 65.

¹⁶⁸ *Id.*

making Americans like you and me who were never taught the truth about our Country, it will make us deal with the truth.¹⁶⁹

Robinson argues that the only way to start confronting the ugly truth about the United States' past would be to remove the monuments once and for all.¹⁷⁰ This Note respectfully disagrees with Mr. Robinson's assertion. "Who controls the past controls the future," and by keeping these monuments in place with "truth markers" states and cities can control the message and ensure that the true history of the United States is known – it will make us "deal with the truth."¹⁷¹

Ultimately, destroying the monuments erases all of the history behind them, and while leaving them may encourage individuals to "venerat[e] and fetishiz[e] them," refusing to re-contextualize their meaning, "almost ensures that the country won't fully confront its past."¹⁷² Looking to Germany, it was clear that this was not the solution to all of the country's problems. The solution in Germany was education and reconciliation¹⁷³—something that can be accomplished in the United States through the use of these "truth markers."

What is important is that cities *must* be honest with the marker. With such a gruesome true history explained, the hope is that no one will be celebrating what the monument originally stood for. Ideally, the truth would discourage radical groups from using the monuments to their advantage.

¹⁶⁹ ACLU, *The Truth About the Confederacy in the United States (FULL Version)*, YOUTUBE (Aug. 24, 2017), <https://www.youtube.com/watch?v=QOPGpE-sXh0>.

¹⁷⁰ *See id.*

¹⁷¹ *See id.* ("If you control the narrative about what is true about our past, that narrative sets the mark for how we go forward in the future. If you control the truth about the past, then you have the path to the future. And who controls the present controls the past.")

¹⁷² Zeitz, *supra* note 37.

¹⁷³ Ann L. Phillips, *The Politics of Reconciliation Revisited: Germany and East-Central Europe*, 163 WORLD AFF. 171, 172 (2001).

C. Making History Hard to Forget: Why Reframing the Monuments is Best

*“When we do not deal with the ugly part about the truth of our history, we have no chance of going forward in any kind of productive way.”*¹⁷⁴

Ultimately, reframing the Confederate monuments in the United States is a solution that preserves the educational history of the monuments, does not run afoul of the numerous protective state statutes, and does not violate the First Amendment.

First, this solution preserves the history of why the monuments were built in the first place. While the racist notions that the individuals on the Confederate side of the Civil War fought for¹⁷⁵ do not warrant praise, it is important to acknowledge that those sentiments were once part of the history of the United States.

In building Confederate monuments, the funders and organizers—organizations such as the United Confederate Veterans, the United Daughters of the Confederacy, and the Sons of Confederate Veterans—sought to erase slavery from the historical narrative and brush over the topics of rebellion and treason.¹⁷⁶ Therefore, it is the duty of cities today to put this horrible part of history back into the story. By adding a marker near the monuments, individuals will be able to understand and confront the true story behind the monument and its creation with little to no confusion of what the statue actually stands for.

A statement on the On Monument Avenue homepage sums up the importance of reframing the monuments:

Some say Richmond’s efforts are not enough. City officials, they think, we are too cowardly to fight to tear the statues down. Others say the city is going too far — that the statues are works of art that should not

¹⁷⁴ ACLU, *supra* note 169.

¹⁷⁵ *See id.*

¹⁷⁶ *See Zeitz, supra* note 37 (noting that these organizations “de-emphasized the ideological origins of the war and instead promoted a powerful but vague cult of Southern chivalry, battlefield valor and regional pride.”).

be tampered with, or that the past is the past and resurfacing it only opens old wounds. *But those wounds never really healed.* Recognizing this, as Richmond has finally promised to do, is one way to start.¹⁷⁷

Overall, it is incredibly important to learn from history and to heal the wounds of the past, and this solution helps ensure that we do so. As a country, the United States must acknowledge its true history in order to move forward.¹⁷⁸ While expressing the history of the individual immortalized in stone on a plaque may not “convince everybody that this is the truth,” it can absolutely “limit the range of permissible lies that we tell each other” about the history of the United States.¹⁷⁹ As a country, we should never forget the horrors of the Civil War, and that is exactly what would be accomplished by reframing the Confederate monuments.¹⁸⁰

Second, by adding additional signage, cities would not have to deal with any state statutes that protect the monuments. The Monument Avenue Commission legal opinion concluded that:

Placing permanent markers near the monuments that provide contextual information about them, and do not either disturb the monuments themselves or interfere with the ability of reasonable people to view them, would likely be viewed as being consistent with state law without further action by either the courts or the General Assembly.¹⁸¹

¹⁷⁷ *Home, ON MONUMENT AVENUE*, <https://onmonumentave.com> (last accessed Feb. 19, 2019).

¹⁷⁸ See ACLU, *supra* note 169 (“When we do not deal with the ugly part of the truth about our history, we have no chance of going forward in any kind of productive way.”).

¹⁷⁹ Gerwig-Moore, *supra* note 163, at 494. “We tell a story to ourselves about our history and if we really engage with that history and understand the era of racial terrorism for what it was, the range of untruths that we can tell and we can, as a society, hold about that era becomes narrow, and that is one of the things we are interested in.” *Id.*

¹⁸⁰ See Smith, *supra* note 146.

¹⁸¹ Letter from Allen L. Jackson, *supra* note 103, at 1.

With “truth markers,” the monuments would continue to be protected as intended by the states, while cities would have freer hands to address the stories of the monuments.

Third, the First Amendment is well preserved by this solution. Instead of only one side of the story being reflected, both sides are portrayed. By representing both sides of the story, a city does not take a side, and ultimately, the viewer is able to personally interpret the monuments. This ensures a more accurate historical message and does not tie the hands of cities that disagree with the meaning of the monument as it allows cities to choose for themselves what story is told.

Ultimately, reframing the monuments serves as a solution to an incredibly sensitive and difficult problem.¹⁸² Re-contextualizing the monuments through the use of a plaque or glass pane preserves the historical and artistic meaning of the monument while ensuring the public message is clear.¹⁸³ Simply removing the Confederate monuments may amount to “whitewashing our history, turning our heads away from the inconvenient truths of our past,”¹⁸⁴ but leaving them standing with accurate and historical markers allows control over the message, and more education of the population. Although the change may not be immediate, the reframing of Confederate monuments can help society better understand and heal; hopefully one day leading to a more inclusive society.

¹⁸² The Monument Avenue Commission conducted a poll of Richmond residents of what should be done with the Confederate monuments: 26.7% stated the monuments should be kept and context should be added; 22.4% stated the monuments should be kept with no change; 18% stated the monuments should be removed; and 16.6% stated the monuments should be relocated. See MONUMENT AVENUE COMMISSION REPORT, *supra* note 55, at 18.

¹⁸³ See Lawrence A. Kuznar, *I detest our Confederate monuments. But they should remain.*, WASH. POST. (Aug. 18, 2017), https://www.washingtonpost.com/opinions/i-detest-our-confederate-monuments-but-they-should-remain/2017/08/18/13d25fe8-843c-11e7-902a-2a9f2d808496_story.html?utm_term=.ec56de97f228 (“But these pieces of metal and stone only have the meaning we assign to them, and that meaning can take any form we like. They can be revered or reviled; honored or ridiculed; or co-opted for a new purpose.”).

¹⁸⁴ *Id.*

D. The “New” Robert E. Lee

In the middle of Monument Avenue in Richmond, Virginia stands a twenty-one-foot high bronze statue of Robert E. Lee sitting on a forty-foot high granite pedestal. Right next to the monument is a sign, almost as large as the forty-foot base. Under the proposal of this Note, that sign would read as follows:

Here stands a statue memorializing the Confederate General Robert E. Lee. Lee was born in Stratford Hall, Virginia in 1807, and was one of the most revered Generals of the Confederate Army.¹⁸⁵

During the Civil War, Lee represented the treacherous South. He vehemently fought for the preservation of slavery and for a society that was built on white supremacy. Yet, he became a “god figure for Virginians, a saint for the white Protestant South” and to the post-war South, “he was the rationale of the Lost Cause, the proof of the argument that the righteous do not always prevail.”¹⁸⁶

This monument was unveiled in 1890 in celebration of all that Lee accomplished in the Civil War.¹⁸⁷ The dedication ceremony was attended by an audience estimated to be between 100,000 and 150,000.¹⁸⁸ At the ceremony, Col. Archer Anderson dedicated the monument not as “a memory to the Confederacy, but as a testament to ‘personal honor,’ ‘patriotic hope and cheer,’ and an ‘ideal

¹⁸⁵ See THOMAS LAWRENCE CONNELLY, *THE MARBLE MAN: ROBERT E. LEE AND HIS IMAGE IN AMERICAN SOCIETY*, 4-5 (1977).

¹⁸⁶ *Id.* at 3.

¹⁸⁷ See Tina Griego, *Past and Present: The Many-Sided History of the Monument Avenue Debate*, RICHMOND MAGAZINE (June 25, 2015), <https://richmondmagazine.com/news/news/monument-ave-history/>.

¹⁸⁸ See *id.*

leader.”¹⁸⁹ Some claim that Lee’s heroism “lay not least in his laying down his sword when the war was done, deciding to ‘promote harmony once he recognized defeat.’”¹⁹⁰

However, this “reconciliation he offered was between whites—it pointedly excluded those he had held as property, whose freedom the war secured, but whose equality he bitterly contested.”¹⁹¹

CONCLUSION

*“Such statues cannot stand alone in the middle of a square with azaleas. I have argued that we need to transform these open spaces into open-air museums, where we can learn about the simultaneous histories of lynching, Confederate monuments and Jim Crow policies. These are powerful objects so they will need powerful recontextualization . . . They need to become catalysts for conversations.”*¹⁹²

With many monuments still dedicated to the Confederacy in the United States, these statues continue to serve as catalysts of violence and carry with them immeasurable psychological impacts. The problem stems from the fact that the monuments are reflective of continuing white supremacy and racism, yet others believe the monuments reflect Southern heritage and the Lost Cause of the American South. Ultimately, the Confederate monuments have created a major social issue in the country, especially in the South, and must be addressed soon. The problem is how—Should they be removed? Should they be replaced? Should they be completely left alone?

Reframing the monuments through the use of a “truth marker” is a solution to this colossal problem. While reframing the monuments is not an end-all solution to race problems in the United

¹⁸⁹ *Id.*

¹⁹⁰ Appelbaum, *supra* note 11.

¹⁹¹ *Id.*

¹⁹² Bryant et al., *supra* note 145.

States, it addresses the statues in a way that preserves history but also strips the monuments of their white supremacist meaning. Ideally, the use of “truth markers” will help contextualize the monuments and ensure that the historical message of the monuments will be educational, inclusive, and at the forefront.

Standing alone, the Confederate monuments are much more likely to be misinterpreted and venerated. But with the historical message made clear, the monuments can be viewed in a more truthful and more insightful way. In this light, the monuments will be conversation starters and create a more knowledgeable and enlightened group of onlookers.