

Imperatives of the Present: Black Lives Matter and the politics of memory and memorialization

Netherlands Quarterly of Human Rights
2020, Vol. 38(4) 239–245
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DOI: 10.1177/0924051920967541
journals.sagepub.com/home/nqh



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Abstract

Black Lives Matter is having a profound impact on how individuals and communities view their repressive histories and their present environments. The movement has greatly influenced the questioning of everyday landscapes and the role of official memory in the erection, maintenance, or removal of monuments and memorials. In this column, I shed light on these phenomena, and highlight the tensions that exist between the acknowledgement and removal of racist or problematic memorials and statues and the protection of historical monuments and cultural heritage more generally. A human rights approach to memorialization would be a step in the right direction, while recognizing that the imperatives of the present shape memorialization efforts. It calls on those in the human rights field to continue pressing for critical reflection and debate around racism and memory landscapes, and to call out and expose racism in all of its forms in order to bring about social change.

Keywords

Black Lives Matter, memorialization, politics of memory, cultural heritage, racism

I. INTRODUCTION

‘Black Lives Matter’, ‘No Justice, No Peace’, and ‘Change, Freedom, Social Justice’ are a small sample of the protest banners that filled streets across the US in 2020. The protests, the greatest civil unrest the US has seen in decades, reignited in response to the recent deaths at the hands of the police of George Floyd, Breonna Taylor, and Ahmaud Arbery, and later the shooting of Jacob

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Blake.¹ Between 26 May 2020, the day after Floyd's death, and 22 August 2020, the Armed Conflict Location & Event Data Project (ACLED) recorded over 7,750 demonstrations linked to the Black Lives Matter (BLM) movement across more than 2,440 locations in the US alone.² The slogans used in these protests, and many others like them, are calling for change to the way US institutions operate—most notably the police.

What is remarkable about the protests in the US is that its message has spread and resonated all over the world. Protests have been held in Amsterdam, Brussels, Lagos, London, Rio de Janeiro, Seoul, Sydney, and many other cities in over 70 countries. BLM is now a recognisable global social justice movement demanding an end to racism and police brutality worldwide.³ BLM is having a profound impact on how individuals and communities view their repressive histories and their present environments. Like the US, which 'never fully engaged with its exploitative, violent, and traumatic past',⁴ many other countries are also having to reconcile with the ways in which they marginalise or oppress certain groups and the impacts legacies of abuse have on current laws, policies, and institutions. As one Congolese human rights lawyer living in Belgium remarked, '[e]veryone is waking up from a sleep, it's a reckoning with the past'.⁵

In addition to the contributions the movement has made on calling for citizens to become informed about their rights and to mobilise and take action around legal reforms aimed at State accountability, there are other noticeable impacts BLM is having on societies around the world. One positive impact concerns the movement's influence on questioning everyday landscapes and the role of official memory in the erection, maintenance, or removal of monuments and memorials. In this column I shed light on these phenomena. Specifically, I highlight the tensions that exist between the acknowledgement and removal of racist or problematic memorials and statues and the protection of historical monuments and cultural heritage more generally. A human rights approach to memorialization would be a step in the right direction, while recognizing that memorialization is always 'crafted and recrafted in dialogue with the political, social, and cultural imperatives of the present'.⁶ Finally, I applaud BLM and the impact it has had on getting communities around the world to question memorialization practices and call for greater attention and action within the human rights community on issues of memory and racism. But, first, what is BLM, what does it stand for, and how have they influenced the way communities examine their memory landscapes?

1. See NPR, 'A Decade of Watching Black People Die' (*NPR*, 31 May 2020) <<https://www.npr.org/2020/05/29/865261916/a-decade-of-watching-black-people-die?t=1598516948527>> accessed 28 September 2020.

2. ACLED, 'Demonstrations and Political Violence in America: New Data for Summer 2020' <https://acleddata.com/acleddatanew/wp-content/uploads/2020/09/ACLED_USDataReview_Sum2020_SeptWebPDF.pdf> accessed 28 September 2020.

3. Jen Kirby, "'Black Lives Matter' has become a global rallying cry against racism and police brutality" (*Vox*, 12 June 2020) <<https://www.vox.com/2020/6/12/21285244/black-lives-matter-global-protests-george-floyd-uk-belgium>> accessed 28 September 2020.

4. Brianne McGonigle Leyh, 'No Justice, No Peace: The United States of America Needs Transitional Justice' (*Opinio Juris*, 5 June 2020) <<http://opiniojuris.org/2020/06/05/no-justice-no-peace-the-united-states-of-america-needs-transitional-justice/>> accessed 28 September 2020.

5. Georgina Rannard, 'Leopold II: Belgium "wakes up" to its bloody colonial past' (*BBC News*, 12 June 2020) <www.bbc.com/news/world-europe-53017188> accessed 28 September 2020.

6. Nicole Maurantonio, 'The Politics of Memory' in Kate Kenski and Kathleen Hall Johnson (eds.), *The Oxford Handbook of Political Communication* (Oxford University Press 2014) 1.

2. #BLACKLIVESMATTER

The US has a long history of racism. Slavery, Black codes, Jim Crow laws, police brutality, state-sanctioned segregation, mass incarceration, voter disenfranchisement and wide-spread discrimination permeate the past and present, affecting and infecting all social and legal institutions. Racism has always been woven into the fabric of American life,⁷ but the Trump presidency with its racist rhetoric and actions has brought tensions to a new level.⁸ Though President Trump frames protests led by Black Americans as dangerous and ‘anti-American’, a recent study shows that nearly all BLM protests have been peaceful.⁹

BLM was founded in 2013 by three queer Black women in response to the murder of 17-year-old Trayvon Martin and the subsequent acquittal of the person who shot him.¹⁰ In 2015, it gained world-wide recognition during the protests in Ferguson, Missouri after the death of Mike Brown at the hands of police, and gained in momentum as the number of unarmed Black men and women killed by police continued to rise. Harnessing social media outlets like Twitter, the hashtag ‘#BlackLivesMatter’ now regularly trends around the world.

Its mission is to eradicate White supremacy, combat and counter acts of violence against the Black community, support those who have been torn apart by State-sanctioned violence and anti-Black racism, create space for Black imagination and innovation, and centre Black joy.¹¹ Aiming for a world ‘where every Black person has the social, economic, and political power to thrive’,¹² from the beginning it set out to connect Black people and Black communities who share a desire for justice. The BLM Global Network is inclusive and stands up for all Black lives ‘regardless of actual or perceived sexual identity, gender identity, gender expression, economic status, ability, disability, religious beliefs or disbeliefs, immigration status, or location’,¹³ making specific reference on its website to the disparate violence experienced by Black trans women. While it started as a small chapter-based, member-led organisation, it is now the BLM Global Network. The movement is changing the debate on Blackness, and the dangerous impacts of anti-Blackness.

They employ language common to human rights, successfully integrating the civil and political with the economic, social, and cultural—and showing how these rights are interdependent and indivisible. The standpoints of the BLM movement closely align with critical race theory developed by American legal scholars over the last thirty plus years. Critical race theory emerged as ‘counter-legal scholarship’ to the traditional, positivist legal discourse of civil rights. Critical race legal scholars not only began questioning the way that law is used to maintain dominant liberal

7. See Ibram X. Kendi, *Stamped From the Beginning: The Definitive History of Racist Ideas in America* (Nation Books 2016). Racism in America is not only experienced by Blacks but also notably by Native Americans, Latinx, Asians, and people from Arab and Middle Eastern backgrounds.

8. Zenobia Jeffries Warfield, ‘How to Attempt Racial Healing—Even During a Trump Presidency: America’s past truth and reconciliation processes show us what works’ (*Yes Magazine*, 21 November 2016) <<https://www.yesmagazine.org/democracy/2016/11/21/how-to-attempt-racial-healing-even-during-a-trump-presidency/>> accessed 28 September 2020.

9. Lois Beckett, ‘Nearly all Black Lives Matter protests are peaceful despite Trump narrative, report finds’ (*The Guardian*, 5 September 2020) <<https://www.theguardian.com/world/2020/sep/05/nearly-all-black-lives-matter-protests-are-peaceful-despite-trump-narrative-report-finds>> accessed 28 September 2020; ACLED (n 2).

10. The co-founders are Patrisse Cullors, Alicia Garza, and Opal Tometi; For more on the founders see the BLM website at <<https://blacklivesmatter.com/our-co-founders/>>.

11. See the BLM website at <<https://blacklivesmatter.com/what-we-believe/>>.

12. *ibid.*

13. *ibid.*

power structures, but they also questioned the approach of critical legal scholars, who very often adopted a limited class-only analysis when engaging in Marxist critiques of law. While critical race theorists did not reject a class-analysis, they successfully argued that law plays a specific role in racial discrimination and inequity, linking analysis of race, law, and power.¹⁴ One of the most significant aspects of BLM has been its critical voice and its ability to encourage individuals and communities to question their everyday landscapes and how these landscapes are very much tied to the concepts of race, law, and power.¹⁵

3. BLM AND MEMORIALIZATION

Memorialization, or the process of creating public monuments or memorials, ‘is a way to keep the past alive in the common memory through physical representation in public areas’.¹⁶ Official sites of memory, sites sanctioned by the State in some way, are meant to publicly commemorate relevant individuals or societal events, including laudable achievements as well as tragic experiences. Very often they become sites of contestation and negotiation around history, but also, and perhaps more notably, around the present. This is because the act of memorialization creates a shared memory and collective narrative relevant to the present. It reflects what a society finds important, acceptable, or even inspirational. Public landscapes are places for dialogue and democratic discussions to unfold,¹⁷ and they have the potential to facilitate knowledge transfer about historical events. Public memorials play a key role reflecting official standpoints and shaping opinions about historical experiences.¹⁸ Indeed, practices of memorialization often contribute to perceptions of justice.

BLM has long been calling on individuals and communities to question the role of official memory in the public spaces around them. As a result, during the periods of protests and in larger numbers than ever before, complaints against street names, monuments, and memorials intensified in legal settings, community debates, and in newspaper editorials. In many cases, the protesters directed their anger and objections against the sites of memory themselves by damaging the statues and memorials through graffiti or other actions while invoking anti-racism rhetoric. For many of the protesters, the removal of racist street names, school names, monuments or memorials is not

14. *ibid* at <<https://blacklivesmatter.com/six-years-strong/>>.

15. On CRT scholarship, see Derrick A. Bell, ‘Who’s afraid of critical race theory?’ (1995) *University of Illinois Law Review* 893; Robin D. Barnes, ‘Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship’ (1990) *103 Harvard Law Review* 1864; Anthony E. Cook, ‘Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.’ (1990) *103 Harvard Law Review* 985; Gloria Ladson-Billings, ‘Just what is critical race theory and what’s it doing in a nice field like education?’ (1990) *11 Qualitative Studies in Education* 7; Kimberlé W. Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139; Kimberlé W. Crenshaw, ‘Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law’ (1988) *101 Harvard Law Review* 1331.

16. Ebru Erbas Gurler and Basak Ozer, ‘The Effects of Public Memorials on Social Memory and Urban Identity’ (2013) *82 Procedia - Social and Behavioral Sciences* 858, 858.

17. *ibid*.

18. Sebastian Brett, Louis Bickford, Liz Ševčenko, and Marcela Rios, ‘Memorialization and democracy: State policy and civic action, The Report of The International Conference of Memorialization and Democracy’, Report from 20-27 June 2007 conference in Santiago, Chile, <https://www.ictj.org/sites/default/files/ICTJ-Global-Memorialization-Democracy-2007-English_0.pdf> accessed 28 September 2020.

about erasing the past or simply about venting anger, but rather about learning from history, and about claiming spaces and public representations that had previously been denied.

In the US it began with protesters trying to deface or remove confederate monuments, many of which had been erected during the Jim Crow or civil rights eras in attempts to reaffirm White supremacy. However, it soon spread to other monuments and memorials associated with oppressor narratives such as statues of Christopher Columbus. Many of these monuments were granted cultural heritage status locally, often making their removal difficult. Using the call of BLM, through legal and non-legal means, activists around the world resurrected demands seeking the changing of street names or school names, as well as the removal of statues and monuments in Belgium, India, New Zealand, South Africa, and the UK, to name a few. In one prominent example, in early June 2020 in Bristol, UK, protestors used ropes to pull down a statue of Edward Colston, an 18th century merchant involved in the Atlantic slave trade. Campaigners had been trying for years to remove his statue legally, without success. After pulling down the statue, protestors rolled it to the harbour and into the water to a resounding sound of cheers from the public. The statue has since been fished out of the harbour, with the city promising that the ropes and spray paint will remain so that it can be used to teach about Bristol's history.

Not too far away from Bristol, in Belgium, protesters targeted statues of King Leopold II. During his reign from 1865-1909, Leopold II ruled large areas of Africa for his own personal gain, most notably present-day Democratic Republic of Congo. Under his control, systematic brutality (including the amputation of hands when rubber quotas were not met) and extermination were used against the population. Given this history, and the prominence of his statues in landscapes across Belgium, it is no surprise protesters returned their attention once again, to these official sites of memory. A statue of him in Antwerp was graffitied and then set on fire before authorities removed it. Others have been doused in red paint with BLM tagged on their surfaces before being removed by the State. However, over a dozen still remain.

These acts of outrage and defiance around statues, memorial sites, and even street names are reminiscent of the powerful role played by official sites of memory and indeed the politics of memory. Alon Confino defined the politics of memory as 'a subjective experience of a social group that essentially sustains a relationship of power', and noted that questions around the politics of memory essentially ask whose memories matter and why.¹⁹ The politics of memory and commemoration shows how the shaping and reshaping of collective memory is political—and part of cultural history. How a society decides to remember (and venerate certain individuals or narratives over others) affects our collective and cultural identities.

Because historical narratives (often acknowledged through memorialization) play a central role in shaping collective identities, and are an important element of cultural heritage, they are directly relevant to human rights.²⁰ Karima Bennouna, the UN Special Rapporteur in the field of cultural rights, has stated that

19. Alon Confino, 'Collective Memory and Cultural History: Problems of Method' (1997) 102 *The American Historical Review* 1386, 1393.

20. Human Rights Council, *Cultural rights and the protection of cultural heritage*, A/HRC/RES/33/20 (6 October 2016).

[c]ultural heritage is a human rights issue, and that the destruction of cultural heritage harms a range of human rights, such as the right to freedom of thought and religion, the right to freedom of expression, including the right to learning about your history and the history of others.²¹

States around the world recognize the importance of cultural history and heritage and its protection from harm. On the one hand, this recognition is crucial in safeguarding memory and displays of cultural heritage. On the other hand, cultural heritage protections are the means through which controversial memory sites are shielded from attempts to have them removed—even when they no longer reflect the values of the communities in which they stand.

The contestations and negotiations around memorialization and BLM starkly remind us that domestic legal routes have often been ineffectual in getting statues or street names removed—in large part to due to domestic cultural heritage laws.²² Now, local leaders and communities across the world are having to decide what course of action to take on their public displays of memory and the counter-displays against them. In some instances, cities have announced the convening of special commissions to debate and recommend either the dismantling or repurposing of memorial sites, or recommend the erection of new types of monuments and counter-memorials.²³ In other instances, jurisdictions have passed these so-called heritage laws in attempts to safeguard existing statues, making it illegal to deface or remove statues or damage memorial spaces like museums.²⁴ Although these have not stopped protestors from taking action, they do reflect a use of the law to reinforce dominant positions of power especially when not combined with some form of public deliberation.

Undoubtedly, more can and should be done around the world to start looking at the acts of monument design and memorialization. This begins with city leaders and community partners discussing public spaces in transparent, inclusive processes. It includes meetings between students and heads of schools or universities.²⁵ It includes what artefacts a public museum chooses to keep on display (or to return to country of origin) and how it decides to present information around those artefacts.²⁶ In 2014, the Special Rapporteur in the field of cultural rights, Farida Shaheed, wrote a report on memorialization.²⁷ The report outlined the challenges around memorialization efforts and advocated for what can essentially be called a

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21. Remarks made by Karima Bennouna, Special Rapporteur in the field of cultural rights, at 'A discussion of the report presented by the UN Special Rapporteur in the field of cultural rights' on 27 October 2016, more information available at <<https://www.bic.org/news/relationship-between-cultural-heritage-and-human-rights-explored-un>>.
 22. See American Bar Association, 'Confederate-monument removals slowed by knot of legal issues' (*American Bar Association*, December 2019) <<https://www.americanbar.org/news/abanews/publications/youraba/2019/december-2019/efforts-to-remove-confederate-monuments-slowed-by-knot-of-legal/>> accessed 28 September 2020; Lee McConnell, 'Edward Colston: Listing Controversy' (*University of Bristol Law School Blog*, 15 June 2020) <<https://legalresearch.blogs.bris.ac.uk/2020/06/edward-colston-listing-controversy/>> accessed 28 September 2020.
 23. Kelly Grovier, 'Black Lives Matter protests: Why are statues so powerful?' (*BBC Culture*, 12 June 2020) <www.bbc.com/culture/article/20200612-black-lives-matter-protests-why-are-statues-so-powerful> referencing the initiative by London mayor, Sadiq Khan, to establish a special commission to review city statues.
 24. Kasi E. Wahlers, 'North Carolina 's Heritage Protection Act: Cementing Confederate Monuments in North Carolina 's Landscape' (2016) 94 *North Carolina Law Review* 2176; Jess R. Phelps and Jessica Owley, 'Etched in Stone: Historic Preservation Law and Confederate Monuments' (2019) 71 *Florida Law Review* 627.
 25. Sean Coughlan, 'Oxford college wants to remove Cecil Rhodes statue' (*BBC News*, 18 June 2020) <<https://www.bbc.com/news/education-53082545>>.
 26. Farah Nayeri, 'To Protest Colonialism, He Takes Artifacts From Museums' (*New York Times*, 21 September 2020) <<https://www.nytimes.com/2020/09/21/arts/design/france-museum-quai-branly.html>> accessed 28 September 2020.
 27. Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed A/HRC/25/49* (23 January 2014).

human rights approach. A human rights approach to memorialization requires transparent processes and inclusive civil society participation and collaboration. Participation should take place at all stages, including decision-making stages, and should be designed in a way to empower civil society voices. It requires non-discrimination in procedures and outcomes (including in selection of artists and committee members) and addresses even those individuals or groups deciding not to participate. Furthermore, a critical assessment of past memorial landscapes and efforts aimed at mutual understanding between diverse communities is required. The removal of memorials that no longer reflect a community's values and aspirations should not be hindered by rigid legal processes. There must be avenues and processes available to continuously review decisions about public landscapes. Finally, those involved in reassessing memorials and monuments in the age of BLM, as well as the communities they serve, would benefit from adopting a human rights approach.

4. LOOKING AHEAD: BLM AS A MOVEMENT AND NOT A MOMENT

One thing is clear: the shaping of collective memory is never a static process and is shaped by the cultural imperatives of the present.²⁸ Societies have always grappled with issues around sites of memory. In that sense, these current contestations are not new because grassroots protests have often demanded that statues and memorials be changed or removed. What is new is the breadth and scale of the demands for action using the BLM standpoints. Those of us in the human rights field must continue pressing for critical reflection and debate around racism and memory landscapes. Remembering that discussions around memorialization are only one small part of a larger whole, we must call out and expose racism in all of its forms in order to bring about social change.²⁹ By doing so, human rights scholars can help ensure that BLM remains a powerful movement and not simply a moment.³⁰

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

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28. Nicole Maurantonio, 'The Politics of Memory' in Kate Kenski and Kathleen Hall Johnson (eds.), *The Oxford Handbook of Political Communication* (Oxford University Press 2014) 1.

29. Ibram X. Kendi, *How to be an Anti-Racist* (Penguin Random House 2019).

30. Natalie McCabe Zwerger, "'Not a Moment but a Movement': Deconstructing the Myths Behind Black Lives Matter' (*Everyday Race Blog*, 16 May 2016) <www.everydayraceblog.com/2016/05/16/not-a-moment-but-a-movement-deconstructing-the-myths-behind-black-lives-matter> accessed 28 September 2020; Liz Reich, 'Black Lives Matter is not a moment but a movement' (*The Hill*, 21 March 2017) <www.thehill.com/blogs/pundits-blog/civil-rights/325040-black-lives-matter-is-not-a-moment-but-a-movement>; Jenn M. Jackson, 'Black Lives Matter: Not a Moment, But a Movement' (*Black Perspectives*, 13 November 2018) <www.aaihs.org/black-lives-matter-not-a-moment-but-a-movement> accessed 28 September 2020.