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Recommended Citation

Roger Williams University School of Law, "Newsroom: A Painful History 1-19-2018" (2018). *Life of the Law School (1993-)*. 624.

https://docs.rwu.edu/law_archives_life/624

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January 19, 2018

Newsroom

A Painful History

Two leading legal scholars debate the trend of removing monuments to the Confederacy. Is it erasing history? Or acknowledging its biases?



Professor Al Brophy of the University of Alabama School of Law (seated, right) and Professor Martha S. Jones of Johns Hopkins University (seated, left) delivered the 13th annual Dr. Martin Luther King, Jr., Celebration Keynote Address on Thursday, Jan. 18, 2018, at Roger Williams University School of Law. The program was entitled, “Symbols of the Confederacy: A Conversation About The Tension Between Preserving History and Declaring Contemporary Values.” Image Credit: Andrea Hansen

January 19, 2018 Michael M. Bowden

Historic memorials or hurtful provocations?

That’s the question at the heart of the debate about removing Confederate monuments from public spaces – or keeping them in place. Groups opposing removal argue that eradicating the

monuments in effect erases history and punishes Southern pride. Advocates of removal counter that the monuments serve as painful reminders of institutional racism, segregation and slavery.

From Presidential tweets to CNN roundtables, this difficult debate captured the nation's attention last summer after a white nationalist rally in Charlottesville, Va. – instigated by city plans to remove a statue of Confederate commander Robert E. Lee – led to violence, death and massive counter protests.

For its 13th annual Dr. Martin Luther King, Jr. Celebration Keynote Address on Thursday, Roger Williams University School of Law offered a forum on the debate. The well-attended program, titled “Symbols of the Confederacy: A Conversation About The Tension Between Preserving History and Declaring Contemporary Values,” featured Professor Al Brophy of the University of Alabama School of Law and Professor Martha S. Jones of Johns Hopkins University.

Questions of Context

Professor Jones opened by acknowledging the importance to a nation of “shared storytelling through monuments” – but added that the U.S. is still “boiling in this question of how to remember slavery and the Civil War, and how to incorporate that into a shared memory that might move us forward.” That question, she said, involves many nuanced decisions: “We make choices all the time about what to remember and how to remember, but there is a cost associated with memory, especially when it becomes grand-scale, such that other pasts are silenced.”

Yet, she said, our public spaces and municipal buildings such as courthouses “play a particular role in memory” and have a psychological power “that may, in some cases, dwarf the literal space.” In other words, a Confederate monument in a public space that should be associated with fairness and justice for all may send precisely the opposite message to many citizens.

It's all about context, Professor Brophy agreed.

“My default position regarding buildings and monuments is more contextualization,” he said. “They are a piece of history. They have moved from being a celebration of a person or event to being an artifact that tells us something important.”

'Environmental Analysis'

Brophy proposed an “environmental impact analysis” in approaching such cases. We should ask, he said, (1) who had a say in choosing the subject of the memorial and its placement; (2) who in the community was excluded from the decision; and (3) what was the memorial's intent and meaning at the time it was placed? For example, was the monument erected immediately after the Civil War (plausibly reflecting the community's genuine grief and honoring the dead), or 50-75 years later (more likely signaling Jim Crow and white supremacy)? As an example of the latter, Brophy showed a slide of a Confederate soldier statue placed in front of a rural Virginia courthouse in the early 20th century with the inscription, “The principles for which they fought live eternally.”

Jones focused on another example, a Maryland statue of former U.S. Supreme Court Chief Justice Roger Taney, who authored the infamous 1857 *Dred Scott* decision upholding slavery and declaring that black Americans were not citizens. (Harvard law professor Charles Ogletree has called *Dred Scott* “the most regretted and despised decision ever by the Supreme Court when it comes to issues of race injustice.”) The Annapolis monument was commissioned, however, after the Civil War – and not for Taney's Confederate credentials, but because “he stood for commitment to the institution of slavery.” The empty plinth upon which his statue once stood has since become the site for a revolving variety of thoughtful, spontaneous artworks.

Brophy, however, did not find that monument removal justifiable.

“For me, these monuments serve a very important purpose of kick-starting conversations,” he explained. “I hope that whenever we remove them we do not lose or erase an opportunity to discuss why we put this monument up” in the first place. Sometimes, he said, “by taking things down we facilitate forgetting too much.”

He added that the standard for removing these monuments should be higher where their historical value is greater and their power to discriminate or intimidate is less. Jones suggested that a museum rather than a public space might be a more appropriate place for such conversations, because the monuments could be better curated, contextualized and discussed there.

A Different Approach

In closing the program, RWU Law Director of Diversity and Outreach Deborah Johnson noted that, while past MLK Week lectures have featured individual speakers, “with all that’s going on in our country and in the world, we thought it would be a great idea to have an event – here at the law school, where we talk about the exchange of ideas – where experts could come in and share their different perspectives on a very important issue of the day.”

Al Brophy holds the Paul and Charlene Jones Chair in law at the University of Alabama, where he teaches trusts and estates and legal history. His books include *University, Court, and Slave: Proslavery Thought in Southern Colleges and Courts and the Coming of Civil War* (Oxford, 2016), *Reparations Pro and Con* (Oxford, 2006), and *Reconstructing the Dreamland: The Tulsa Riot of 1921* (Oxford, 2002), and the co-authored *Experiencing Trusts and Estates* (WestAcademic, 2017).

Martha S. Jones is the Society of Black Alumni Presidential Professor and Professor of History at Johns Hopkins University. She was formerly a Presidential Bicentennial Professor at the University of Michigan, and was a founding director of the Michigan Law School Program in Race, Law & History. She is the author of *All Bound Up Together: The Woman Question in African American Public Culture, 1830-1900* (2007), a co-editor of *Toward an Intellectual History of Black Women* (2015), and author of the forthcoming *Birthright Citizens: A History of Race and Rights in Antebellum America*, from Cambridge University Press.

The 13th annual Dr. Martin Luther King, Jr. Celebration Keynote Address was generously supported by Nixon Peabody LLP.