



## ESSAY

### *Damnatio Memoriae and Black Lives Matter*

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#### Introduction

Police brutality and killings of Black Americans have recently sparked nationwide protests. Among the many expressions of anger and indignation, one stands out as a unique feature of this wave of the social movement: public scrutiny of civic symbols. Protestors have defaced, torn down, and called for the removal of monuments that represent our country's racist past, as well as structural racial injustice today. Protestors toppled a statue of George Washington in Portland and spray-painted on it the label "Genocidal Colonist,"<sup>1</sup> while statues of Christopher Columbus were found beheaded in Boston, yanked from a pedestal in St. Paul, and tossed into a lake in Richmond.<sup>2</sup> Some state governments—perhaps surprisingly, given their historical reluctance to participate in progressive social movements—have joined in removing racist symbols from public display. The Mississippi state legislature, for example, voted to redesign its state flag so as to remove a Confederate battle emblem.<sup>3</sup>

The executive branch has responded with furor: On June 26, the Trump Administration issued an executive order excoriating what it sees as "a deep ignorance . . . indicative of a desire to indiscriminately destroy anything that honors our past and to erase from the public mind any suggestion that our past may be worth honoring."<sup>4</sup> The executive order directs the Department of Justice to prosecute any person or entity "that destroys, damages, vandalizes, or

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1. David Williams, *Protesters Tore Down a George Washington Statue and Set a Fire on Its Head*, CNN (June 19, 2020), <https://perma.cc/SH7Z-TCMG>.
2. Johnny Diaz, *Christopher Columbus Statues in Boston, Minnesota and Virginia Are Damaged*, N.Y. TIMES (June 10, 2020), <https://perma.cc/JR9W-C9PR>.
3. See H.B. 1796, 2020 Leg. Reg. Sess. (Miss. 2020).
4. Exec. Order No. 13,933, 85 Fed. Reg. 40,081, 40,081 (July 2, 2020).

desecrates a monument, memorial, or statue within the United States,”<sup>5</sup> and raises, among other things, serious First Amendment issues by chilling a vital aspect of political expression.<sup>6</sup> This rhetoric culminated in a Fourth of July speech given at Mount Rushmore, where Trump declared that cancel culture and progressives were “tear[ing] down our statues,” “eras[ing] our history,” “indocrinat[ing] our children,” and “trAMPL[ing] on our freedoms.”<sup>7</sup>

It has escaped both public attention and scholarly commentary that the recent scrutiny of monuments has a direct ancestor—*damnatio memoriae*. Literally translated as “condemnation of memory,” this Roman legal practice involved the erasure of public figures—usually once-powerful politicians—from all public memory by negating their presence in monuments, statues, and records.<sup>8</sup> This Essay introduces this analogue and aims to accomplish two goals. First, by linking the recent scrutiny of monuments to a legitimate, age-old legal practice, it shows that the destruction of monuments associated with Black Lives Matter (BLM) deserves serious attention and is not a frivolous exercise in cancel culture, contrary to the claims of right-wing commentators.<sup>9</sup> Second, by drawing inspiration from philosophical justifications for punishment, it identifies four values potentially served by memory condemnation: retribution, deterrence, expression of moral disapproval, and rehabilitation of the public space. The Essay argues that rehabilitation provides the best lens through which to view the debate about public memory and the most promising approach for the current progressive social movement to effect transformative change.

### I. *Damnatio Memoriae* in History and Today

Monuments do not simply memorialize the past—they are vital expressions of political authority, as the Romans recognized. Imperial inscriptions, portraits, and images dominated the Roman sight and communicated power to the beholder. Uniform statues of a youthful Augustus—Rome’s first emperor and master of propaganda—populated the entire Mediterranean, while representations of successive emperors were imprinted onto metal coins.<sup>10</sup> These civic symbols were meant not only to commemorate history, but also to

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5. *Id.* at 40,082.

6. See Frederick Schauer, *Fear, Risk and the First Amendment: Unraveling the “Chilling Effect”*, 58 B.U. L. REV. 685, 689-94 (1978) (offering the classic account of chilling effects).

7. Donald Trump, Remarks at an Independence Day Celebration (July 4, 2020), *in Remarks by President Trump at South Dakota’s 2020 Mount Rushmore Fireworks Celebration*, WHITE HOUSE (July 4, 2020), <https://perma.cc/NWP5-TECB>.

8. See *infra* notes 13-19 and accompanying text.

9. For visual illustrations of the similarities between *damnatio memoriae* and Black Lives Matter’s scrutiny of public monuments, see the images in Part I below.

10. See, e.g., DIANA E.E. KLEINER, ROMAN SCULPTURE 61-69 (1992).

convey the legitimacy of the ruling elite to ordinary citizens<sup>11</sup>—a lesson well-learned by the Trump Administration, which enacted an executive order to erect statues of Ronald Reagan and Antonin Scalia as national heroes so as to rebuild the “collective national memory.”<sup>12</sup>

In Rome, when monumentally depicted emperors or public figures were overthrown or otherwise fell from grace, their artistic representations were mutilated after their deaths as part of a systematic, public effort to erase their memory.<sup>13</sup> This process—commonly known as *damnatio memoriae*—often started with a senate decree that provided, in addition to a ban on the disgraced individual’s remembrance, ordinary punishments such as confiscation of property.<sup>14</sup> Mechanisms of condemning memory varied but almost always involved the wholesale destruction of statues, removal of names from public inscriptions and documents, scrubbing of the individuals’ faces from paintings, obliteration of any representations on the circulated currency (usually bronze or silver coins), and, in the case of emperors, abolition of their acts.<sup>15</sup> Other common procedures included banning the display of the condemned person’s images at funerals, confiscating and burning his written works, annulling his wills, and even prohibiting the future use of his name within his family.<sup>16</sup> High-profile public figures subject to this punishment also had *private* commemorations of them destroyed (for example, paintings held by the children of the condemned in private residences).<sup>17</sup>

The memory of traitors and tyrants was most frequently condemned. A contemporaneous Roman account suggested that deposing a tyrant was customarily accompanied by decapitating his statues and superimposing the head of the conqueror—usually the next emperor—onto the decapitated statue

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11. See generally PAUL ZANKER, THE POWER OF IMAGES IN THE AGE OF AUGUSTUS 2 (1988) (describing art and monuments as expressions of Augustan ideology).

12. Exec. Order No. 13,934, 85 Fed. Reg. 41,165, 41,165–66 (July 3, 2020).

13. See generally ERIC R. VARNER, MUTILATION AND TRANSFORMATION: *DAMNATIO MEMORIAE* AND ROMAN IMPERIAL PORTRAITURE 1–20 (2004) (providing an overview of the centrality of monuments to Roman culture and the practice of *damnatio*).

14. See, e.g., Harriet I. Flower, *Rethinking “Damnatio Memoriae:” The Case of Cn. Calpurnius Piso Pater in AD 20*, 17 CLASSICAL ANTIQUITY 155, 163 (1998). For background on Roman Senate decrees (*senatus consulta*—legislative directives that gradually became legally binding in the imperial period), see PAUL DU PLESSIS, BORKOWSKI’S TEXTBOOK ON ROMAN LAW 40 (5th ed. 2015).

15. See, e.g., KLEINER, *supra* note 10, at 10; Eric R. Varner, *Portraits, Plots, and Politics: Damnatio Memoriae and the Images of Imperial Women*, 46 MEMOIRS AM. ACAD. ROME 41, 41 (2001). It is worth noting that there were antecedents to the full-fledged Roman procedure of *damnatio memoriae*. Egyptians often carved the noses and eyes out of statues of disgraced rulers, and ancient Greeks often mutilated monuments of tyrants to erase their memory. See VARNER, *supra* note 13, at 13–15.

16. See John Balsdon & Barbara Levick, *Damnatio Memoriae*, in OXFORD CLASSICAL DICTIONARY (2015).

17. See Flower, *supra* note 14, at 160–61.

to signal political change.<sup>18</sup> This aspect of *damnatio* as a penalty also evinces the transformative potential of a legal practice: Public scrutiny of civic symbols can result not only in destruction, but also in molding representations of the past to welcome a new social reality.<sup>19</sup>

*Damnatio memoriae* provides fruitful grounds for comparison with the BLM movement. Roman law is the direct ancestor of most Western legal systems and has informed the development of legal doctrine in the United States.<sup>20</sup> More relevant is the fact that both Roman culture and ours highly value the preservation of memory. *Damnatio* was considered the severest criminal penalty that could be imposed on a member of the elite,<sup>21</sup> precisely because Roman society valued reputation and the survival of one's legacy past death. Bidding wars for naming college classrooms and endowed professorships are but one example of Americans' obsession with fame.<sup>22</sup> Both cultures also made conscious decisions to preserve memory in the form of public monuments that emanate power through likenesses of individuals: Mount Rushmore bears a striking resemblance to images of Augustus in symbolizing the legitimacy of the state. *Damnatio memoriae* was also most frequently imposed during regime changes to sever ties with a problematic political past—a goal that has clearly animated BLM activists.<sup>23</sup>

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18. VARNER, *supra* note 13, at 1.

19. See *infra* Part II.C.

20. See Samuel J. Astorino, *Roman Law in American Law: Twentieth Century Cases of the Supreme Court*, 40 DUQ. L. REV. 627, 627 (2002) ("Roman law, together with English common law and continental civil law, furnished American jurists seeking legal pedigrees for their decisions with historical understandings.").

21. See Flower, *supra* note 14, at 155. It is worth noting that *damnatio* was not confined to ancient times: We find modern counterparts in times of revolution and political instability. In its transition from communism to democratic governance at the beginning of the 1990s, cheering crowds in Ukraine toppled thousands of statues of Vladimir Lenin that they saw as symbols of Soviet hegemony. See Anastasiya Ryabchuk, *Right Revolution?: Hopes and Perils of the Euromaidan Protests in Ukraine*, 22 J. CONTEMP. CENT. & E. EUR. 127, 128-29 (2014).

22. In tax law, for example, scholars have attempted to quantify the monetary value of naming rights to assess whether donors should be able to take a charitable deduction when they receive the benefit of displaying their name on a public building—the market in New York City hovers around \$100 million. See Linda Sugin, *Competitive Philanthropy: Charitable Naming Rights, Inequality, and Social Norms*, 79 OHIO ST. L.J. 122, 152-53 (2018). These price tags furnish additional evidence for just how much one might value immortalizing one's name after death.

23. One may argue that a difference between *damnatio memoriae* and BLM is that the former involved official government action (such as a Senate decree), while the latter consists solely of popular initiative. This distinction is less pronounced than it appears. While the Roman Senate often imposed memory erasure as a punishment on the dead, ordinary people were involved in the mutilation of the monuments. See, e.g., VARNER, *supra* note 13, at 24 (commenting that mutilation of Caligula's monuments, in particular coinage, "could be carried out by private persons or soldiers not necessarily acting with a mandate from the Senate or *princeps*."). While BLM activists have toppled monuments, government entities have also responded to the movement by removing

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Recent anti-racism protests share unmistakable commonalities with the Roman practice. Both involve wholesale destruction of public monuments to erase condemned individuals from public remembrance and to express society's disapproval of their actions. Just as the Roman Senate decreed mutilation of the statues of Domitian—emperor of the Flavian dynasty—as an expression of public anger against his tyranny, BLM protestors have dismantled statues associated with the Confederacy to manifest their censure of slavery.<sup>24</sup> Both include instances where mutilators treated monuments as stand-ins for the commemorated individual himself, as if inflicting punishment for the crimes committed by the dead. Just as Romans cut off the bronze heads of tyrants' effigies as if to impose sanctions on political aggrandization, BLM protestors decapitated marble statues of Christopher Columbus as if to penalize his role in the deaths of Native Americans.<sup>25</sup> Both feature transformation of symbols that memorialize a divisive past into celebration of a hopeful future. Just as Roman artists recut and repainted over condemned portraits of successive emperors, Yale University, after intense student protests, changed the name of a residential college from Calhoun (a white supremacist and slavery apologist) to Grace Hopper (a distinguished woman computer scientist).<sup>26</sup>

The following figures illustrate the visual similarity between BLM's mutilation of public monuments and *damnatio memoriae*.

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offensive civic symbols of their own accord. In addition to state governments, *see supra* note 3, certain divisions of the federal government have banned displays of Confederate flags, *see U.S. DEP'T OF DEF., PUBLIC DISPLAY OR DEPICTION OF FLAGS IN THE DEPARTMENT OF DEFENSE* (2020).

24. *See* HARRIET I. FLOWER, THE ART OF FORGETTING: DISGRACE AND OBLIVION IN ROMAN POLITICAL CULTURE 235-75 (2006); *Confederate and Columbus Statues Topped by US Protestors*, BBC (June 11, 2020), <https://perma.cc/3YHM-5QYD>.

25. *See supra* notes 2 and 18.

26. *See* VARNER, *supra* note 13, at 4; *Yale to Change Calhoun College's Name to Honor Grace Murray Hopper*, YALENEWS (Feb. 11, 2017), <https://perma.cc/Q7F3-C6RU>.

A decapitated statue of a Vestal Virgin, whose head was cut off as a result of her *damnatio memoriae*.<sup>27</sup>

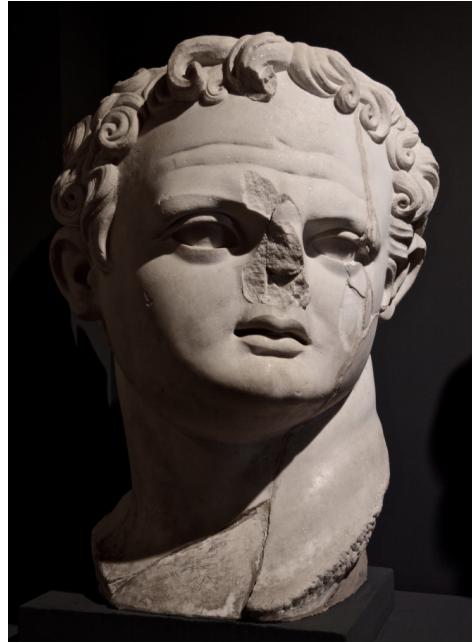


A beheaded statue of Christopher Columbus in Boston:<sup>28</sup>



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27. Wknight94, Photograph of a beheaded Vestel Virgin statue, in WIKIMEDIA COMMONS (Apr. 26, 2008), <https://perma.cc/AC8Z-L284>.
  28. WBZ-TV, Photograph of a beheaded Christopher Columbus statute, in *Beheaded Christopher Columbus Statue in Boston Will Be Removed from North End Park*, CBS Bos. (June 10, 2020, 6:14 PM), <https://perma.cc/B8U8-5RG4>.

Defaced statue of the Emperor Domitian:<sup>29</sup>



The mutilated statue of Jefferson Davis in Richmond:<sup>30</sup>



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29. Llewelyn Morgan, Photograph of a defaced statue of the Emperor Domitian, in *Royal Flush: Llewelyn Morgan on Domitian's High Colour*, BRIT. SCH. ROME BLOG (Feb. 18, 2016), <https://perma.cc/2V42-JUX7>.
  30. J. Scott Applewhite, Photograph of a mutilated statue of Jefferson Davis, in Sarah Rankin & Jonathan Drew, *Protestors Topple Jefferson Davis Statue in Virginia Capital*, STAR TRIB. (June 11, 2020, 2:10 PM), <https://perma.cc/BV3L-Z5FS>.

These commonalities between an age-old Roman legal procedure and the Black Lives Matter movement should prompt commentators to rethink their criticism of the recent scrutiny of public monuments.<sup>31</sup> First, the Roman practice shows that memory condemnation is not a frivolous exercise of cancel culture. There are legitimate reasons for scrutinizing civic symbols—legitimate enough for Roman law to devise procedures and punishments for post-mortem disgrace. Second, *damnatio memoriae* supports the notion that certain types of memory, even if integral to our cultural identity, cannot be carved in stone and displayed in public: that is, the historical centrality of an individual or the mandate not to forget a part of our heritage does not excuse public commemoration of the offensive past. Third, *damnatio memoriae* provides a strong historical precedent for the legitimacy of memory erasure through violent means.

## II. The Purposes of Memory Erasure

A fundamental insight from Part I's discussion is that Romans often thought of *damnatio memoriae* as a form of criminal sanction. Senatorial decrees of memory erasure generally provided for other penalties as well, including property confiscation or fines, and the manner in which *damnatio* was carried out mirrored public executions.<sup>32</sup> In assessing the recent public scrutiny of civic monuments, therefore, it is helpful to conceptualize memory condemnation within the framework of traditional justifications for punishment. Of course, expunging memory differs from ordinary punishment: after all, the condemned is (often long) dead and no longer capable of performing (or being deterred from performing) further crimes. Physical damage can only be inflicted on the artistic representations rather than on the condemned himself. Despite this difference from traditional punishment through criminal law, the philosophical theories behind criminal sanctions provide lenses for analyzing what values are served by scrutinizing civic symbols. Further, *damnatio memoriae* provides evidence for how effectively each theory could justify memory erasure as a social and legal practice.

### A. Retribution

Scholars have long proposed and debated retribution as a principal justification for punishment.<sup>33</sup> Broadly conceived, retributivism posits that

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31. See *supra* note 7 and surrounding text.

32. Recent destruction of statues associated with the Black Lives Matter protests is similarly reminiscent of mass enforcement of moral norms embodied in post-mortem legal rules: Protestors condemned Columbus for genocide and some of the Founders for slavery—both of which clearly merit, and, indeed, are subject to, criminal prohibition.

33. See, e.g., H.L.A. Hart, *Prolegomenon to the Principles of Punishment*, in PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 1-3 (2d ed. 2008); Russell L. *footnote continued on next page*

society should punish to give wrongdoers the suffering or material deprivation that they deserve (as opposed to produce desirable consequences—for example, deterrence effects). Condemnation of memory clearly exacts retribution. First, to the extent that society values posthumous memory, erasing an individual's memory from public celebration deprives him of an intangible good for which he may have paid—with money or service—during his lifetime. Second, statues may act as stand-ins for the public figures themselves, so mutilation can substitute for the imposition of physical punishment that is no longer possible. In prominent instances of Roman *damnatio*, for example, contemporary observers noted that the public defaced bronze statues of Domitian—a disgraced former emperor—"as if 'blood and pain would follow every single blow,'" and protestors defaced the images of Commodus (a Second Century emperor) "as artistic surrogates for his corpse."<sup>34</sup> When BLM protestors decapitated statues of Columbus or hanged those of Confederate figures, their actions were similarly more than symbolic and manifested an underlying desire to penalize those responsible for slavery or for the genocide of Native Americans.<sup>35</sup>

The limits of retributivist accounts of memory erasure are as apparent as their foundations are intuitive. After all, the condemned is dead, and any pain inflicted on his statues or erasure of his memory can no longer be felt in any ordinary sense. The central appeal of retributivism lies in exacting payback for committing crimes that render one deserving of the punishment—and this conceptual attraction vanishes when the condemned no longer exists: Locking up statues in warehouses (or museums) hardly resembles imprisonment.

#### B. Deterrence

Consequentialist theories may also account for memory condemnation: The Roman Senate certainly imposed *damnatio* as a political warning so that future offenders would be deterred from committing the same crimes or entertaining tyrannical aspirations.<sup>36</sup> Recent protests may harbor similar goals. Mutilation could serve to deter public figures from openly espousing the racist views and policies associated with those depicted in the monuments, and perhaps even to deter police brutality, if we see the statues as symbolizing racial injustices of the past.

The problem with deterrence-based accounts of memory erasure is twofold. First, deterrence theories have been subject to a philosophical difficulty: Punishment may deter the punished person (specific deterrence) *and* others (general deterrence) from future crimes. While specific deterrence is

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Christopher, *Deterring Retributivism: The Injustice of "Just" Punishment*, 96 NW. U. L. REV. 843, 845, 855 (2002).

34. VARNER, *supra* note 13, at 3-4 (citations omitted).

35. See *Activists Target Removal of Statues Including Columbus and King Leopold II*, GUARDIAN (June 10, 2020), <https://perma.cc/446S-VTWV>.

36. See VARNER, *supra* note 13, at 3.

justifiable for the harms that the punished has inflicted on others, general deterrence—which requires additional punishment in order to motivate the general public to behave lawfully—involves using human beings as means to an end and thus violates basic tenets of fairness.<sup>37</sup> This problem is pronounced in the context of memory condemnation. Because the punished is dead, only the morally problematic effect of general deterrence is possible. Additionally, the mechanisms of memory erasure simply do not produce much deterrence: Roman society's widespread practice of *damnatio* never prevented future emperors from dictatorial excesses, and much recent commentary has pointed out that toppling statues, by itself, does not lead to progress.<sup>38</sup> Even if future offenders are alarmed by expressions of popular indignation, such a deterrence effect is likely to fade as soon as acts of mutilation cease. This short-lived effect would work against the goal of the BLM movement to effectuate long-term changes in distributions of power.

### C. Expressivism and Rehabilitation

Commentary on BLM's scrutiny of public monuments has generally appealed to notions of retributivism (with conservatives condemning memory erasure as inappropriate retribution, arguing that history should be remembered rather than forgotten) and deterrence (with progressives questioning whether memory erasure will lead to real change). As the previous two Subparts show, these approaches inevitably result in skepticism because of weaknesses in their theoretical underpinnings. A much stronger foundation for memory condemnation, however, can be built on a combination of two other theories: expressivism and rehabilitation. Put together, these two approaches conceptualize memory condemnation as an expression of society's moral disapproval of the attitudes conveyed through public monuments, as well as the beginning of a long-term effort to rehabilitate not the offenders, but rather our public spaces.

Expressivists consider punishment a permissible mechanism for society to express condemnation.<sup>39</sup> Under this view, memory erasure serves to denounce or contradict the social meanings of the offender's actions, rather than to exact retribution or reduce crime. Popular in the 1990s, expressivism has come under scholarly attack,<sup>40</sup> but the criticisms raised against expressivism as a *general* justification for punishment only bolster the account in the *specific* context of

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37. See Daniel M. Farrell, *The Justification of General Deterrence*, 94 PHIL. REV. 367, 367, 375 (1985).

38. E.g., Andrew Higgins, *In Russia, They Tore Down Lots of Statues, but Little Changed*, N.Y. TIMES (July 7, 2020), <https://perma.cc/6MP6-BBA2>.

39. Joshua Glasgow, *The Expressivist Theory of Punishment Defended*, 34 LAW & PHIL. 601, 602 (2015).

40. Compare, e.g., Dan M. Kahan, *The Anatomy of Disgust in Criminal Law*, 96 MICH. L. REV. 1621, 1624 (1998), with Heidi M. Hurd, *Expressing Doubts About Expressivism*, 2005 U. CHI. LEGAL F. 405, 405 (2005).

memory condemnation. One main critique centers on the argument that most punishable crimes do not constitute speech acts, so it makes little sense to communicate condemnation to the punished<sup>41</sup>—but this objection hardly applies to our discussion. The precise point of BLM protests is that aspects of our country’s institutional past—slavery and violence against Native Americans—communicate offense and disgust to today’s public. The sorts of actions that BLM’s scrutiny of monuments condemns, therefore, are more akin to hate crimes—which convey to victims strong messages of contempt—and mutilation of statues is precisely intended to express denunciation of those racist attitudes. Under this view, destruction and calls for removal of public monuments are meant to contradict the social meanings embodied in them.<sup>42</sup> Criticism against BLM’s scrutiny of civic symbols misses the fundamental point that display of monuments is not a normatively neutral act but reflects a value judgment. A memorial to Confederate soldiers, for example, not only records that those soldiers lived and fought, but also projects the message that those lives and histories are worthy of public celebration. Condemning their memory is important for repudiating their actions.

Expressivism leads to a conundrum: How can destruction and removal of one’s public presence exist along with condemnation? Put differently, if memory erasure aims at enabling the community to conduct its business as if the punished individual never existed, how could it communicate any message of disapproval? After all, collective forgetting evinces forgiveness.

The Roman practice is again instructive and leads to another familiar theory of punishment that centers around rehabilitating the punished. As already described, *damnatio memoriae* involved not only the systematic destruction and removal of one’s images and names, but also peculiar types of mutilation that transformed the monuments in line with the new political reality.<sup>43</sup> These transformations included superimposing the new emperor’s head onto an old, decapitated statue, tossing the mutilated monuments into the Tiber river, and recycling images as pavestones to accentuate the message of condemnation as carriages and pedestrians trampled the punished underfoot.<sup>44</sup> These practices served the purposes of rehabilitation: Materials composing the monuments were recycled for productive use, and statues were stripped of their identifying qualities so that the succeeding emperors could mold them into their own likenesses. Of course, *damnatio memoriae* cannot rehabilitate the offenders (long dead and incapable of moral reformation). Instead, it is the monuments, inscriptions, and statues—in general, symbols of power—that are rehabilitated by memory erasure.

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41. See Hurd, *supra* note 40, at 419-20.

42. See also Eric R. Varner, *Punishment After Death: Mutilation of Images and Corpse Abuse in Ancient Rome*, 6 MORTALITY 45, 45-46 (2001).

43. See *supra* text accompanying notes 18-19.

44. See VARNER, *supra* note 13, at 5.

This Essay does not mean to suggest transplanting these crude mechanisms directly into the present. Still, the transformative aspect of *damnatio memoriae* should push us to think of creative ways to carry out both the expressivist and the rehabilitative aims of memory erasure. Condemnation of memory cannot end simply in destruction. It must challenge the received meanings communicated through the erection of a monument by making public spaces more hospitable to the growth of a more equitable social reality. To effectuate this goal, a promising strategy counsels us not only to remove symbols whose social meanings we repudiate, but also to craft monuments that celebrate the struggles of the victims. After all, the point of expressivism is to denounce the offender and the crime, and this denunciation is always underpinned by a respect for the dignity of victims and their right not to suffer the moral and legal wrongs that the offender has inflicted on them.

Black Lives Matter presents a unique opportunity for carrying out this transformative change in our public space, using monuments and symbols not to communicate the power of past racism, but to communicate hope for the justice of the future. This rehabilitative approach obviates another criticism of memory erasure—that history should be preserved rather than destroyed—by recognizing the insight that preserving history need not involve commemorating the offender. Post-war Germany manages to remember the Holocaust without carving Hitler in bronze,<sup>45</sup> and Romans did not forget the atrocities of Nero after they defaced his marble statues. The 2018 opening of the National Memorial for Peace and Justice, dedicated to victims of white supremacy, is a good start. So is the statue depicting BLM protester Jen Reid, which the citizens of Bristol, United Kingdom, placed on the plinth after toppling an old statue of a slave trader.<sup>46</sup> What the Trump administration and other anti-BLM commentators have failed to recognize is that the debate is not *whether* but *how* we should remember our country's past or commemorate its legacy in public. Memory condemnation is only the beginning of a long conversation about how to restore our public monuments and civic symbols, so that they convey the correct normative messages while memorializing our shared past. This conversation will hopefully involve more democratic input and deliberation. It is time to carry out not only a *damnatio memoriae*, but also a *celebratio memoriae*, to celebrate the memory of victims in memorializing history.

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45. See Joshua Zeitz, *Why There Are No Nazi Statues in Germany*, POLITICO (Aug. 20, 2017), <https://perma.cc/RX3B-MYMK>.

46. See Colin Dwyer, *Black Lives Matter Monument Replaces Statue of Slave Trader in England*, NPR (July 15, 2020), <https://perma.cc/5LB5-7NR7>.