

The Changing Shape of Cultural Activism: Legislating Statues in the Context of the Black Lives Matter Movement

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Key points

- **The Police, Crime, Sentencing and Courts Bill (2021) takes a damaging, punitive approach to contesting statues. It increases the maximum penalty for criminal damage to a memorial under the value of £5000 from three months' to ten years' imprisonment, while expanding the definition of 'memorial'. This comes alongside restrictions on councils' ability to remove statues.**
- **These changes further criminalise anti-racist protest, posing a particular risk to racially minoritised communities, and making it more difficult to contest statues through official processes.**
- **The government's claim that harsher sentences will address the distress caused by damage to statues ignores the profound harms caused by the statues of slavers, colonisers and other racist figures that continue to dominate public space.**
- **Though the government focuses on the need to protect 'history' from erasure, statues are neither complete nor neutral records of history. Rather, they prioritise certain figures, stories and values while ignoring or erasing others.**
- **Local authorities, museums, academics and activists are exploring a wide range of processes to facilitate discussions about the contested meanings of statues, to encourage learning about the histories of racism they commemorate, consult local residents on their views and reach decisions about the future of statues – including how public space can better represent diverse communities.**

Contesting statues, changing policy

On 7 June 2020, activists at a Black Lives Matter protest in Bristol toppled a statue of slave trader Edward Colston, rolled it through the city centre and pushed it into the harbour. Over the next six months, the toppling of Colston catalysed the removal or renaming of 69 statues and place names across the UK (Mohdin and Storer, 2021).

The resurgence of Black Lives Matter protests presented an opportunity for a critical national conversation about Britishness and history. Instead, the government declared that 'there can be no justification for defacing statues and symbols of British history' (Ministry of Justice, 2020), proposing laws that risk delimiting the ability of future generations to reckon with history. Rather than listening to activists' concerns, the government is taking a two-pronged approach to protecting statues: it has introduced legislation impeding the democratic process of removing statues, alongside harsh penalties for activists who alter them.

Protecting statues, criminalising activists

The Police, Crime, Sentencing and Courts Bill (2021) proposes to increase the maximum penalty for criminal damage to a memorial from three months' to ten years' imprisonment (Home Office, 2021). Drawing from an expanded definition of 'memorial' (encompassing headstones alongside the wreaths deposited on them), the Bill would permit harsh maximum sentences for the non-violent act of damaging an inanimate object.

Currently, damage to a memorial is covered by the 'either way' offence of criminal damage,¹ which attracts a maximum sentence of ten years' imprisonment by the Crown Court if the value of the damage exceeds £5000. Cases that involve less extensive damage must be tried in

¹ 'Either way' offences can be tried in either the magistrates' or the Crown Court.

a magistrates' court, where the maximum penalty is three months' imprisonment and/or a fine of £2500 (Home Office, 2021). Clause 46 of the new Bill would enable the Crown Court to try offences of criminal damage to memorials regardless of its scale or cost (Home Office, 2021).

Alongside this change, the Bill introduces a wide range of changes to criminal justice policy. It has provoked opposition for curtailing the right to protest, criminalising Gypsy, Roma and Traveller communities, and creating a serious violence duty (Liberty, 2021). Existing research shows that people from minoritised communities are already policed and punished disproportionately (Lammy, 2017). It is therefore likely that the Bill would have the most serious effects on individuals and groups who are impacted by structural racism. Strikingly, it is precisely this history of institutional racism that activists protested by targeting statues of slavers and colonisers. Yet the policing of Black Lives Matter protests has exacerbated pre-existing forms of racist policing (Harris et al., 2021).

The government justifies the proposed legislation by claiming that 'it has long been considered that the law is not sufficiently robust in this area'.² The inadequacy of current laws around memorials, they claim, 're-emerged during summer 2020 when many statues and memorials were damaged causing great concern to the wider public' (Home Office, 2021).

Repeated references to summer 2020 make clear that the Bill is a response to the Black Lives Matter protests and, in particular, to the toppling of the Colston statue in Bristol. The government seeks to further criminalise not only damage to war memorials but also damage to and removal of statues of slavers and colonisers. It is not currently clear, however, whether there was in fact a significant increase in instances of damage to memorials during summer 2020. In 2010, for example, the Conservative MP David Burrowes relayed to the House of Commons that there had been 57 reports in the press that year of 'desecration of war memorials', and that the number of actual instances was 'probably much higher' (HC Deb, 3 February 2010).

Whose distress?

Sentencing Council (2019) guidelines currently require magistrates' and Crown Courts to consider 'damage caused to heritage and/or cultural assets' and 'established evidence of community/wider impact' as aggravating factors for criminal damage. These guidelines are intended to acknowledge that harm may entail 'long-term psychological effects, and that damage to property can be about more than just its financial value' (Crown Prosecution Service, 2019).

Yet experiences of statues, like experiences of public space at large, are not universal. Statues typically reflect the ideologies and memories of the dominant group. When these individuals find their own values and experiences depicted in public space, that space becomes a comfortable place that belongs to them. Conversely, when individuals who belong to marginalised groups encounter the same statues, they find depictions of people whose experiences were far removed from their own – or, frequently, who dehumanised, conquered, or bought and sold their ancestors.

When statues of slavers and colonisers occupy public space, they convey the message that racially minoritised people are unwelcome strangers – a message that is reinforced when these statues are celebrated and 'defended'. In a democracy, public space should be equally accessible, and equally welcoming, to all members of the public. Yet actively maintaining statues of colonisers and slaveholders perpetuates the exclusion of many people from public space.

The 2021 Bill ignores the ways in which statues may exclude members of the public from nominally public space. By expanding the definition of a memorial, it implies that statues at large demand reverence rather than critical understanding and that any damage to a statue, by extension, might provoke emotional distress. Yet references to 'public concern' and 'distress' remain unsupported by reliable data (see, e.g., Ministry of Justice, 2020; Home Office, 2021).

Further, the 2021 Bill fails to account for the 'long-term psychological effects' caused by the continued symbolic and material elevation of slavers and colonisers in shared public space. Its majoritarian rhetoric dangerously discounts the responsibility of democratically elected officials to protect the rights and wellbeing of minoritised communities. Compounding this, the removal of the £5000 threshold would not be accompanied by any significant attempt to tackle racism in the criminal justice system, which is the sort of action activists have used statues to demand. Rather, the government seems determined to deny the very existence of institutional racism. It therefore appears inevitable that this disapplication will exacerbate existing racial inequalities in the criminal justice system.

Legislating public space

The move towards harsh sentencing is particularly worrying, given the lack of avenues available for contesting statues in public space. In January 2021, Robert Jenrick announced that he intends to require planning permission for the removal of any historic unlisted statue or plaque; that the national planning policy will be to 'retain and explain'; and that he will use his powers to 'call in' planning applications (HC Deb, 18 January 2021; Ministry

² Prior to June 2020, there had been only one (unsuccessful) attempt to change the law in February 2010.

of Housing, Communities and Local Government, 2021). These changes will effectively make the removal of any of the 12,000 outdoor statues in England an even rarer occurrence, subject to bureaucratic delays and vetoes (HL Deb, 19 October 2020).

The government is in effect moving towards protecting all statues in the same manner as listed buildings. Yet equating the two is misleading: demolishing a building entails breaking apart brick, stones and mortar, whereas a statue may be removed in one piece. Further, since listing structures is intended for perpetuity, it is inappropriate to apply these protections to statues intended to celebrate individuals who may prove irrelevant to future generations. As Professor of Law Antonia Layard (2020) writes, 'Statues were never designed to be objective and their protection should not be either. We can no longer imagine ... that listing or scheduling are objective, neutral practices based on clear architectural or historical criteria.'

Layard highlights an important point: statues are neither sacred symbols nor objective records of history but profoundly political objects. 'Statue defenders' and their supporters in government widely claim that removing statues is tantamount to erasing history (see, e.g., Evans, 2020; Jenrick, 2021). They tend to assume, as Sir David Amess MP put it, that statues 'educate us about the past and inform us about the present, and we can learn lessons from them about the future' (HC Deb, 25 September 2020). This rests on the assumption that statues embody history in all its complexity, and that they effectively communicate that history to the contemporary public. Further, it assumes that the meaning of statues is unchanging and universal. These assumptions misconstrue the significance of statues both for those who erected them in the past and for those who encounter them in the present.

Erecting and altering statues

Our understanding of the past is neither complete nor constant. Rather, it changes across time and space, reflecting (and shaping) a society's dominant values, concerns and fears. A society's collective memory is multiple: some individuals, for example, may hold closely to family history and local history, which help them to make sense of their own identity. Likewise, people who belong to racially minoritised groups may recall key events in the histories of racism and anti-racism. In all cases, memory is power-laden: while the memories of marginalised groups are omitted from, or de-emphasised in, national memory, those of the dominant group are highlighted in history textbooks, marked with national holidays and set in stone.

Erecting a statue is a way of foregrounding a particular memory of the past: it proclaims that a historical figure is heroic in stature and worthy of public admiration. Statues are not erected accidentally, or objectively; they require advocacy, funding and official permission. Yet when the

statue takes its place on a plinth in public space, this context is erased. Rather, the statue is presented as the authoritative memory of a historical figure – even, or perhaps especially, when that figure is largely forgotten by the public (Nora 1989).

Monuments simplify complex histories, set them in stone and plant them in public space, such that generations of spectators are compelled to acknowledge their existence. Monuments link contemporary citizens to the past while implying that the past is unchanging (Brown 2001). At this point, for those who adhere to the dominant narrative of the past, contesting the presence of a statue is read as erasing history – even though the very authority of a statue is predicated on the erasure of its context.

Because statues are physically imposing, and because they prescribe particular behaviours from people who encounter them, altering statues is a powerful way of 'speaking back' to the dominant narratives that underpin them. It reveals the contestations that underlay statues before they were erected. Thus, rather than erasing history, contesting statues reveals the complexity and multivocality of the past.

Altering statues also holds implications for contemporary public space: by refusing to adhere to formal and informal codes of behaviour surrounding them, activists reject the privileged place afforded to statues in public space. By extension, they reject the privileging of dominant groups, their memories and their values. Altering statues claims public space for people who heretofore have been excluded and opens up the possibility of presenting multiple memories and perspectives in city centres. These may include both stigmatised and officially sanctioned interventions, such as council-sponsored art installations. The proposed legislation, however, forecloses the possibility of creative engagement with statues in public space: it sacralises statues and criminalises those who engage with them.

Emerging research and engagement

As part of a wider project based at CoDE (the Centre on the Dynamics of Ethnicity) at the University of Manchester, the authors of this briefing, alongside Professor Gary Younge, are conducting research into the global contestation of statues that commemorate slavers and colonisers. Focusing on in-depth interviews in the UK, the US, South Africa, Belgium and Martinique, we ask why and how activists have challenged these monuments. We also investigate the diverse ways that local and national governments and institutions are responding to critical engagement with public space. Alongside these case studies, the project has included a series of workshops with young people, exploring their creative responses to local statues.

In stark contrast to claims that activists are erasing history, our research reveals that cultural activism encourages a

deeper and more critical engagement with history in all its complexity. The statues that dominate cities too often reflect the values of the elite at the time they were erected and represent the narratives and images that served to legitimise profound racial inequalities.

In many cases, the statues targeted by activists have been contested for years – sometimes since their installation. Communities have long been calling for more historical information to contextualise and explain the legacy of figures like Cecil Rhodes, and intervening in public space to challenge the rigid narratives offered by statues. The unauthorised physical removal of statues by protestors is rare; in the case of Colston, it followed decades of campaigning for a more accurate explanation of Colston's role in the slave trade.

The Black Lives Matter protests of 2020 provided a new sense of urgency, catalysing demands to review how (and whose) history is represented. It is vital that this energy is sustained, and that stakeholders proactively and meaningfully engage with the public in all its diversity. This must be accompanied by work to address the ongoing structural racism that the Black Lives Matter movement highlights.

Recommendations

In this context, we recommend that:

- Parliamentarians and civil society groups oppose the measures introduced in the Police, Crime, Sentencing and Courts Bill (2021) to increase the maximum penalty for criminal damage to a memorial.
- The government and councils support education to develop awareness and understanding of Britain's role in colonialism and slavery.
- The government support initiatives to involve a broad range of the public in decision-making about local monuments.
- Local and national government fund creative, inclusive initiatives by local authorities and institutions to engage the public in conversations and decisions about statues.
- All parties accompany these initiatives with inquiries into, and a commitment to address, the systemic racism that has underpinned slavery, colonialism and their contemporary legacies.

We recommend drawing on existing initiatives and resources, including:

Commissions to review contested monuments

- Established by the Mayor of London, Sadiq Khan, in 2020, the Commission for Diversity in the Public Realm aims to enrich public art and commemoration. It will focus on increasing representation among Black, Asian and minority

ethnic communities, women, and LGBTQ+ and disabled groups, as well as those from a range of social and economic backgrounds.

- Set up in September 2020 by the Mayor of Bristol, Marvin Rees, the We Are Bristol History Commission is an independent group that aims to work with citizens and community groups to ensure that everyone can share their views on Bristol's history and build a collective understanding of Bristol's story for future generations.
- Manchester City Council has run an online public consultation as part of a wider review of the city's public artworks, which will include revisiting existing statues, as well as assessing what, where and how artworks relating to the city's history should be displayed.
- In Leeds, an independent review of the city's statues recommended a number of initiatives to improve understanding of history, and to better recognise the role of diverse communities and individuals in the city.

Creative engagement

- Manchester Museums' Our Shared Cultural Heritage Young Collective hosted 'Whose Statues? Whose Stories?', a series of online workshops convened by Dr Sadia Habib. The workshops brought together young people, researchers and spoken word artists to examine monuments in their local areas, explore a wide range of perspectives on contested heritage, and produce creative responses. They highlighted the need for educators to create safe spaces where young people can reflect critically on how statues of empire and colonialism in their cities impact young people's sense of local and national belonging.
- The American Museum of Natural History's Addressing the Statue exhibition was developed in response to the controversy around the statue that stands on the steps of the museum, presenting Theodore Roosevelt on horseback, flanked by Native American and African figures. The exhibition seeks to provide greater context about the statue's history and rationale and multiple perspectives on its meanings, including its problematic aspects.
- The Mellon Foundation's Monuments Project is a five-year project to reimagine and transform commemorative spaces to celebrate the United States' diverse history, focusing on developing new initiatives to tell the stories of those who have been historically overlooked or under-represented.
- The We Are Bristol History Commission, with partners across the city, will launch a free programme in summer 2021, using a range of creative activities including poetry, storytelling and monument-making. The programme aims to build

connections between people of all ages, political views and social groups, providing opportunities to explore questions like 'Who are we? Where have we all come from? What have we remembered? And where do we want to go?'

Guidance for local authorities and institutions

- Ben Stephenson, Joanna Burch-Brown and Marie-Annick Gournet (forthcoming) *On Reviewing Contested Statues, Memorials and Place Names: Guidance for Public Bodies* (Bristol: University of Bristol and Institute for Place Management).
- Contested Histories in Public Spaces, an initiative founded and led by the Institute for Historical Justice and Reconciliation, has produced a set of

case studies, best practices and guidelines for policymakers confronting controversial statues, memorials and street names.

- The Local Government Association has shared suggestions for councils responding to calls for changes to the names of estates and streets and the removal of statues, and objections to such proposals.
- New York City's Mayoral Advisory Commission on City Art, Monuments, and Markers reviewed and made recommendations on four contentious monuments and developed a framework for addressing future controversial objects, based on a series of processes and key principles that can be applied in other contexts.

References

- Brown, W. (2001) *Politics Out of History*. Princeton, NJ: Princeton University Press.
- Crown Prosecution Service (2019) 'Criminal damage'. www.cps.gov.uk/legal-guidance/criminal-damage
- Evans, G. (2020) 'We must challenge those who would topple our statues – otherwise this will never end', *The Telegraph*, 9 June. www.telegraph.co.uk/news/2020/06/09/must-challenge-would-topple-statues-otherwise-will-never-end
- Harris, S., Joseph-Salisbury, R., Williams, P. and White, L. (2021) *A Collision of Crises: Racism, Policing, and the COVID-19 Pandemic*. London: Runnymede/Centre on the Dynamics of Ethnicity. www.runnymedetrust.org/uploads/projects/CoDE%20Briefings/Runnymede%20CoDE%20A%20Collision%20of%20Crises%20FINAL.pdf
- HC Deb (3 February 2010), vol. 505, col. 318–320. <https://publications.parliament.uk/pa/cm200910/cmhansrd/cm100203/debtext/100203-0006.htm>
- HC Deb (25 September 2020), vol. 680, col. 1322. <https://hansard.parliament.uk/Commons/2020-09-25/debates/D02DF3E1-DFA7-4736-B943-51824CFFB00F/PublicStatues>
- HL Deb (19 October 2020), vol. 806, col. 1270–1272. <https://hansard.parliament.uk/lords/2020-10-19/debates/8A0EC995-F782-4EC6-AB4A-A7AA5581BDB7/HistoricStatues>
- HC Deb (18 January 2021), vol. 687, col. 35WS–36WS. <https://hansard.parliament.uk/Commons/2021-01-18/debates/2101187000013/PlanningAndHeritageHistoricStatuesPlaquesMemorialsAndMonuments>
- Home Office (2021). 'Police, Crime, Sentencing and Courts Bill 2021: Criminal damage to memorials factsheet'. www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-criminal-damage-to-memorials-factsheet
- Jenrick, R. (2021) 'We will save Britain's statues from the woke militants who want to censor our past', *The Telegraph*, 16 January. www.telegraph.co.uk/news/2021/01/16/will-save-britains-statues-woke-militants-want-censor-past
- Lammy, D. (2017) *The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
- Layard, A. (2020) 'Edward Colston: Listing controversy', University of Bristol Law School Blog, 15 June. <https://legalresearch.blogs.bris.ac.uk/2020/06/edward-colston-listing-controversy>
- Liberty (2021) *Liberty's Briefing on the Police, Crime, Sentencing and Courts Bill for Second Reading in the House of Commons*. London: Liberty. www.libertyhumanrights.org.uk/wp-content/uploads/2021/03/Liberty-Briefing-on-the-Police-Crime-Sentencing-and-Courts-Bill-HoC-2nd-reading-March-2021-1.pdf
- Ministry of Justice (2020) *A Smarter Approach to Sentencing*. London: Ministry of Justice. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918187/a-smarter-approach-to-sentencing.pdf
- Ministry of Housing, Communities and Local Government (2021) 'New legal protection for England's heritage', 17 January. www.gov.uk/government/news/new-legal-protection-for-england-s-heritage
- Mohdin, A. and Storer, R. (2021) 'Tributes to slave traders and colonialists removed across UK', *The Guardian*, 29 January. www.theguardian.com/world/2021/January/29/tributes-to-slave-traders-and-colonialists-removed-across-uk
- Nora, P. (1989) 'Between memory and history: Les lieux de mémoire', *Representations* 26(2): 7–24.
- Police, Crime, Sentencing and Courts Bill (2021). Bill no. 268. <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf>
- Sentencing Council (2019) 'Criminal damage (other than by fire) value not exceeding £5,000/Racially or religiously aggravated criminal damage', 1 October. www.sentencingcouncil.org.uk/offences/crown-court/item/criminal-damage-other-than-by-fire-value-not-exceeding-5000-racially-or-religiously-aggravated-criminal-damage