



[Dossier: Politically Motivated Property Damage]

Dodging the Property Discourse: Statues and Student Activism

Desviando do Discurso de Propriedade: Estátuas e Ativismo Estudantil

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Abstract

Political activism labeled as “violent” has seen a significant increase worldwide. A common feature of this movement is the growing use of property damage as a protest strategy. While efforts have been made to structure a framework for politically motivated property damage, some situations seem to fall outside. This is evident in cases of student activism at universities against symbolic property, such as statues, linked to the colonial past. In these instances, a peculiar silence regarding property discourse may indicate the difficulty of employing it under certain circumstances. This article aims to analyze the conditions that hinder the use of this narrative in favor of others, such as debates on historical revisionism and the legacies of the people or times represented by these statues. We outline two main features that may hinder the use of property discourse in these cases: the participation of an entitled group in these mobilizations and the highly symbolic nature of these types of property. More than describing the peculiarities of cases of property discourse, this paper seeks to contribute to a framework for politically motivated property damage, highlighting property discourse as one of the various narratives that can be mobilized to protect ownership.

Keywords: Protests; Politically motivated property damage; Statues; Student activism; Dodging property discourse.

Resumo

Observa-se um aumento significativo de expressões de ativismo político rotulado como “violento” ao redor do mundo. Uma característica comum desses movimentos é o uso crescente de danos à propriedade como estratégia de protesto. Embora tenham sido feitos esforços para construir um quadro de análise para danos à propriedade com motivação política, algumas situações parecem escapar desse panorama. Isso é evidente em casos de ativismo estudantil em universidades contra propriedades simbólicas, como estátuas, ligadas ao passado colonial. Nesses casos, um silêncio peculiar em relação ao discurso de propriedade pode indicar a dificuldade de empregá-lo devido a circunstâncias concretas. Este artigo tem como objetivo analisar as condições que dificultam o uso dessa narrativa em favor de outras, como debates sobre revisionismo histórico e os legados das pessoas ou épocas representadas por essas estátuas. Delineamos duas características principais que podem dificultar o uso do discurso de propriedade nesses casos: a



participação de um grupo privilegiado nessas mobilizações; e a natureza altamente simbólica desses tipos de propriedade. Mais do que descrever as peculiaridades dos casos de discurso de propriedade, este artigo busca contribuir para um arcabouço para danos à propriedade com motivação política, destacando o discurso de propriedade como uma das várias narrativas que podem ser mobilizadas para proteger a posse.

Palavras-chave: Protestos; Dano à propriedade por motivação política; Estátuas; Ativismo Estudantil; Esquivando do discurso de propriedade.



1. Introduction

The last decade witnessed a surge of civil unrest worldwide.¹ Despite most protests remaining non-violent, violent demonstrations in political activism have sharply increased.² A commonly noted characteristic of this progression of violence in these movements is property damage.³ Alongside police violence, protesters increasingly employ damage to properties, whether private or public, as a political tactic.⁴ For instance, George Floyd's death in 2020 not only triggered a wave of protests linked to the Black Lives Matter (BLM) movement across the U.S.,⁵ but also numerous cases of property damage, highlighting it as a rational and arguably legitimate form of activism.⁶

¹ See IEP, GLOBAL PEACE INDEX 2020 34 (2020) (“[t]he number of both protests and riots roughly doubled, while the number of general strikes quadrupled, from 33 events in 2011 to 135 in 2018”); and ISABEL ORTIZ ET AL., WORLD PROTESTS A STUDY OF KEY PROTEST ISSUES IN THE 21ST CENTURY 13-4 (2022) (“[s]ince 2010, the world has been shaken by protests. Our analysis of 2809 events reflects an increasing number of protests from 2006 to 2020. Protests occur in all world regions (Table 1) and across all country income levels (Table 2). The study found a greater prevalence of protests in middle-income countries (1327 events) and high-income countries (1122 protests) than in low-income countries (121 events). There are also a number of international and global protests that happened in multiple countries simultaneously, and their number also keeps increasing steadily over the years (239 protests)”).

² See IEP, GLOBAL PEACE INDEX 2022 32 (2022) (“[t]he number of protest movements and demonstrations has increased sharply across the world, particularly in recent years. In most situations, protests and demonstrations are conducted peacefully, however, instances of events incorporating violence – either perpetrated by demonstrators or by the security forces – are becoming more frequent. Among the GPI indicators, violent demonstrations recorded the worst deterioration, changing by 49.6 per cent since 2008”). Evidently, the very perception of what constitutes violence is subject to debates. See William E. Scheuerman, “Good-Bye to Nonviolence”, 75 POLITICAL RES. Q. 1284 (2022).

³ See, e.g., Rich Lowry, *Of Course Destruction of Property Is Violence*, POLITICO (Jun. 3, 2020), <https://www.politico.com/news/magazine/2020/06/03/of-course-destruction-of-property-is-violence-299759>.

⁴ This type of protest has become so widespread that even organizations, such as Amnesty International, have begun to acknowledge its legitimacy in certain instances. See AMNESTY INTERNATIONAL, CIVIL DISOBEDIENCE TOOLKIT: A GUIDE TO CIVIL DISOBEDIENCE BY AMNESTY INTERNATIONAL 9 (2024) (“Amnesty refrains from organizing or participating in acts of civil disobedience which plan to intentionally cause damage to property, unless the damage is considered to be moderate, reasonable and justified by the circumstances”).

⁵ See Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (Jul. 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> (“[f]our recent polls [...] suggest that about 15 million to 26 million people in the United States have participated in demonstrations over the death of George Floyd and others in recent weeks”); and Roudabeh Kishi & Sam Jones, *Demonstrations and Political Violence in America: New Data for Summer 2020*, ACLED (Sep. 3, 2020), <https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/> (“Floyd’s death prompted a surge of demonstrations associated with the Black Lives Matter (BLM) movement that quickly spread from Minneapolis throughout the country. Between 26 May, the day after Floyd’s death, and 22 August, ACLED records over 7,750 demonstrations linked to the BLM movement across more than 2,440 locations in all 50 states and Washington, DC”).

⁶ See R. H. Lossin, *In Defense of Destroying Property*, NATION (Jun. 10, 2020), <https://thenation.com/article/activism/blm-looting-protest-vandalism/> (“[g]iven the racial dimension of these protests, even apparently sympathetic explanations of theft and destruction risk of implying that people of color are reacting from feelings rather than carrying out reasoned, calculated acts with their own perfectly legitimate political logics. Attacking police stations, for example, makes rational sense. It is not the sudden,



Unsurprisingly, discussions on the moral acceptability of these political strategies have become more common across different institutional contexts,⁷ while some comments have aimed to provide a framework for evaluating their legitimacy. A notable example of a more consistent attempt to address these challenges is William E. Scheuerman's work on politically motivated property damage.⁸ His taxonomy of different types of property damage—symbolic, disruptive and seizing property—seeks to move beyond an all-or-nothing approach by identifying situations where these acts may be linked to violence against persons.⁹ However, some cases seem to question Scheuerman's framework in situations where *the property discourse is not mobilized at all*.¹⁰

This seems to be particularly the case with protests that involve damage to symbolic property,¹¹ such as statues.¹² Universities became prominent stages for disputes surrounding these objects.¹³ These institutions also witnessed a surge in activism by the academic community¹⁴ while re-examining events linked to the colonial past.¹⁵

spontaneous expression of a disordered and irrational mob but the clear enactment of a political position, the fulfillment in some small but concrete way of the central demand being made by protesters across the country: Police need to be defunded, and some police stations need to disappear").

⁷ For diverse perspectives on the issue, see *supra* note 6 and *infra* note 17.

⁸ See William E. Scheuerman, *Politically Motivated Property Damage*, 28 HARV. REV. PHILOS. 89 (2021).

⁹ See *ibid.*, at 90 ("[a]nyone hoping to pursue politically motivated property damage should meet preconditions whose stringency will be determined chiefly by their answers to a seemingly straightforward—but, in reality, complex—question: how do their acts relate to violence against persons?").

¹⁰ We employ the term "property discourse" to encompass not only the array of legal rights and remedies accessible to owners for safeguarding their property but also to encompass the diverse narratives that legitimize ownership structures themselves and their protection in the social order. See SIMONE KNEWITZ, *THE POLITICS OF PRIVATE PROPERTY CONTESTED CLAIMS TO OWNERSHIP IN U.S. CULTURAL DISCOURSE* (2021) (providing an extensive analysis on the role of different discourses about property in legitimizing and naturalizing social and economic structures in the U.S.). See also Gerald Gaus, *Property*, in *THE OXFORD HANDBOOK OF POLITICAL PHILOSOPHY* 93 (David Estlund ed., 2012) (debating the contrasting narratives for legitimizing modern property).

¹¹ We use the term "symbolic property" to refer to highly symbolic objects—such as statues, memorials, monuments etc.—that are primarily intended to confer a dominant meaning upon a space. See Federico Bellentani & Mario Panico, *The Meanings of Monuments and Memorials: Toward a Semiotic Approach*, 2 PUNCTUM 28 (2016). This is not to suggest that property itself lacks an inherent symbolic feature as a status signal, but rather to emphasize that certain types of property are primarily associated with a specific symbolic purpose. See also Nestor M. Davidson, *Property and Relative Status*, 107 MICH. L. REV. 757 (2009) (discussing how property in general has a symbolic function).

¹² See *How Statues Are Falling Around the World*, N.Y. TIMES (Jun. 24, 2020), <https://www.nytimes.com/2020/06/24/us/confederate-statues-photos.html> (describing a global wave of property damage to statues and its social and political implications).

¹³ See Sewell Chan, *Historical Figures, Campus Controversies*, N.Y. TIMES (Jan. 29, 2016), <https://www.nytimes.com/interactive/2016/01/29/education/college-symbol-controversies.html>.

¹⁴ See Christopher Rim, *How Student Activism Shaped The Black Lives Matter Movement*, FORBES (Jun. 4, 2020), <https://www.forbes.com/sites/christopherrim/2020/06/04/how-student-activism-shaped-the-black-lives-matter-movement/?sh=7e5db864414a> (analyzing how BLM was embedded within student activism); and Arielle Baskin-Sommers et al., *Adolescent Civic Engagement: Lessons from Black Lives Matter*, 118 PNAS 1 (2021) (providing data on the rising youth involvement in BLM protests).

¹⁵ See T. Elon Dancy, II et al., *Historically White Universities and Plantation Politics: Anti-Blackness and Higher Education in the Black Lives Matter Era*, 53 URBAN EDUC. 176 (2018) (framing BLM within a broader context of



Universities became venues for these movements, as they grapple with the inherent contradictions of the colonial legacy in terms of economic, social and racial dynamics.¹⁶ Nevertheless, as potential property damage to objects tied to the colonial past on campuses increase, the legitimacy of these actions faces significant obstacles when examined through the traditional legal discourse on property.¹⁷

This paper contributes to developing a framework of politically motivated property damage by better understanding the specific conditions where the property discourse may be supplanted by alternative strategies towards ownership protection. Student activism emerges in this context as an illustrative example of this dynamic. More than simply presenting idiosyncrasies of property damage, the article provides a platform for discussing how different narratives are employed for this purpose, then leading to broader reflections regarding the legitimacy of this type of protest.

This paper is divided into two main parts. Firstly, the article explores four different cases of student activism, highlighting how responses to these movements in Brazil, England, South Africa, and the U.S. challenged the property discourse in protecting symbolic property. Secondly, this paper assesses the circumstances that lead to dodging this strategy in favor of other narratives and their implications for establishing legitimacy standards for property damages.

racial and economic issues inherited from America's colonial past). For a historical analysis of the more remote connections between American universities and colonial slave systems, see generally CRAIG S. WILDER, *EBONY & IVY: RACE, SLAVERY AND THE TROUBLED HISTORY OF AMERICA'S UNIVERSITIES* (2013).

¹⁶ See Mathis Ebbinghaus & Sihao Huang, *Institutional Consequences of the Black Lives Matter Movement: Towards Diversity in Elite Education*, 21 *POLITICAL STUD. REV.* 847 (2023) (discussing some of the impacts of BLM on student mobilization and the inclusion of Black students in higher education in the U.S.).

¹⁷ See, e.g., Tyler Stiem, *Statue Wars: What Should We Do with Troublesome Monuments?*, *GUARDIAN* (Sep. 26, 2018), <https://www.theguardian.com/cities/2018/sep/26/statue-wars-what-should-we-do-with-troublesome-monuments>; João Gabriel, *Push for Removal of Statues in SP Sparks Debate on History 'Blackout'*, *FOLHA DE S. PAULO* (Jun. 15, 2020), <https://www1.folha.uol.com.br/internacional/es/saopaulo/2020/06/push-for-removal-of-statues-in-sp-sparks-debate-on-history-blackout.shtml>; Robert Jenrick, *We Will Save Britain's Statues from the Woke Militants Who Want to Censor Our Past*, *TELEGRAPH* (Jan. 16, 2021), <https://www.telegraph.co.uk/news/2021/01/16/will-save-britains-statues-woke-militants-want-censor-past/>; and Andrew Johns, *Times Letters: Statues, the Slave Trade and 'Woke Revisionism'*, *TIMES* (Sep. 6, 2021), <https://www.thetimes.co.uk/article/times-letters-statues-the-slave-trade-and-woke-revisionism-036rgl9hf>.



2. The Peculiar Silence of Property Discourse in Student Activism across Brazil, England, South Africa and the U.S.

Despite being a diverse group of countries, Brazil, England, South Africa, and the U.S. have all witnessed numerous instances of student protests against the colonial ties of symbolic property in recent years. While the specific motivations behind these student movements vary, one common feature stands out: the notable absence of mobilization of the property discourse in these protests. Although there have been instances of actual or potential property damage in these movements against statues and symbols, property rights were surprisingly not enforced to protect them. Instead, efforts to argue for their preservation substantiated on broader notions regarding the legacies and memories of the people and eras these symbols represent.

2.1. South Africa: Rhodes Must Fall

During 2015, various universities in South Africa became the stage for a wave of protests.¹⁸ In March of that year, a statue of Cecil Rhodes at the University of Cape Town (UCT), in place since 1934, was vandalized. Students threw excrement on the statue of the British colonialist and subsequently wrapped it in black garbage bags, which were later removed.¹⁹ The following month, the university removed the statue while protesters chanted phrases like “Rhodes Must Fall” and “one settler; one bullet” in what became known as the *Rhodes Must Fall* movement.²⁰

It is noteworthy that this form of symbolic damage²¹ was promptly condemned

¹⁸ See Khanyi Mlaba, *South Africa's Student Protests: Everything to Know About a Movement That Goes Back Decades*, GLOBAL CITIZEN (Apr. 8, 2021), <https://www.globalcitizen.org/en/content/south-africa-student-protests-explained/>.

¹⁹ See Associate Press, *Cecil Rhodes Statue Pelted with Excrement at Cape Town University*, GUARDIAN (Mar. 18, 2015), <https://www.theguardian.com/world/2015/mar/18/cecil-rhodes-statue-pelted-with-excrement-at-cape-town-university>.

²⁰ See *Rhodes Statue Removed in Cape Town as Crowd Celebrates*, BBC (Apr. 9, 2015), <https://www.bbc.com/news/world-africa-32236922>.

²¹ See Scheuerman, *supra* note 8, at 94-5 (“[e]very politically motivated injury to property has, by definition, political meaning or significance, so initially this category seems far too indiscriminate. Nonetheless, it is meant to capture a significant subset of protests, i.e., those where legally unauthorized damage to or destruction of property is directed against a target selected primarily because of its symbolic or expressive value. In this vein, antiracist activists in Bristol (UK) during the summer of 2020 painted and then toppled a statue of Edward Colston, a wealthy philanthropist who profited from the Atlantic slave trade, before tossing it into the harbor. They did so in support of worldwide antiracism protests occurring in the immediate



by the UCT Vice-Chancellor, Sandra Klopper, who labeled it as “unacceptable” and “reprehensible,” as it violated the institution’s procedures for protesting.²² However, no concrete measures based on property damages were taken against students. When the university presented charges, they related to a different set of rights, not encompassed by the property discourse. UCT charged students from the *Rhodes Must Fall* movement based on restrictions of access to the campus, alleging they “prevented others from walking where they wanted to, insulted and manhandled them”.²³ Additionally, the university brought charges for “hate speech and inciting public violence, invading a residence hall without permission, removing food without permission, intimidating UCT staff, and interfering with UCT operations” at a “person [not student] who wore a t-shirt with the words: ‘Kill all whites’”.²⁴

Moreover, other UCT measures related to promoting debates on “Heritage, Signage, and Symbolism” and their relationship with symbolic objects on campus, encouraging “open debate, as all universities should do, and urge our students and staff to participate in discussions that contribute to responsible action”.²⁵ Much of the discussion surrounding the maintenance of tributes to former colonizers in South Africa, following the Rhodes Must Fall movement, remained within the framework of a debate on legacy and historical revisionism. This occurred not only among those advocating for the preservation of statues²⁶ but also among those seeking their removal,²⁷ indicating how

aftermath of George Floyd’s death (Farrer 2020). During the same period, protestors smeared graffiti (e.g., ‘Eat the Rich’) on retail stores, including luxury chains in well-to-do shopping areas in Beverly Hills and Soho (New York City), to highlight links between racism and burgeoning material inequality (Davis 2020).”).

²² See UCT Media, *Uct Rhodes Statue Protest – Both Sides*, IOL (Mar. 13, 2015), <https://www.iol.co.za/news/opinion/uct-rhodes-statue-protest-both-sides-1831688>.

²³ See Francis Petersen, *Why We’ve Brought Charges Against RMF Members – UCT*, POLITICSWEB (Feb. 16, 2016), <https://www.politicsweb.co.za/politics/why-weve-brought-charges-against-rmf-members--uct>.

²⁴ See *ibid.*

²⁵ See UCT Media, *supra* note 22.

²⁶ See, e.g., Siya Mnyanda, *‘Cecil Rhodes’ Colonial Legacy Must Fall – Not His Statue’*, GUARDIAN (Mar. 25, 2015), <https://www.theguardian.com/world/2015/mar/25/south-africa-rhodesmustfall-statue> (“[f]or many students, the statue is not just a simple reminder of Rhodes’ former power. It’s as much a symbol of his dubious past as his financial donation, and highlights South Africa’s problematic history – something we shouldn’t hide from. But as a black UCT alumnus who walked past that statue for four years, I think Rhodes should be left exactly where he is. Removing him omits an essential part of the institution’s history that has contributed to everything good, bad and ugly about it – and arguably the country too”).

²⁷ See, e.g., Tarun Timalina, *Why Rhodes Must Fall*, HARV. POL. REV. (Mar. 21, 2021), <https://harvardpolitics.com/rhodes-must-fall/> (“[a]pologists tend to argue that calls for removing Rhodes’ statue are tantamount to erasing history. However, the Rhodes Must Fall Movement does not demand an erasure of history — relocating the statue to a museum will serve to provide an additional historical context to Rhodes’ legacy. If anything, the growing protests have highlighted the horrors of Rhodes’ colonial legacy and the often overlooked moral failings of British imperialism. Removing statues of imperialists like Rhodes is



a distinct arena of debates about symbolic property was established to protect ownership.

All of this leads to a rather peculiar situation: although property discourse would have been a more direct and potentially more effective tool for charging and condemning protesters, it was not utilized. Instead, other narratives were prioritized, such as discussing the legitimacy of how these protests were conducted (e.g., hate speech and restrictions on the rights of others to move freely) or implementing institutional measures focused on debates around the historical revisionism of colonial symbols. It is not possible, based on publicly available records, to fully understand the reasons behind this choice of enforcement. However, it is noteworthy that even Klopper acknowledged “the right of our students to protest and, in so doing, draw attention to the complex issues that confront all of us at UCT and in society at large”.²⁸ The students were seen as having the “right” to be protagonists in these debates, and “UCT has procedures in place that allow students to protest”.²⁹

2.2. England: *Rhodes Must Fall*

The impacts of the Rhodes Must Fall movement in South Africa would curiously catalyze similar movements in other jurisdictions, such as England.³⁰ Soon after the removal of the Rhodes statue at UCT, another statue of the former British colonizer, at Oriel College in the University of Oxford, also became the target of student activism in 2016.³¹ However, it was only in June 2020 that hundreds of protesters rallied for the statue’s removal.³² The connection with the Rhodes Must Fall movement in South Africa and the significance of the protests led to the statue being surrounded by a grid, due to

about condemning the glorification of individuals who achieved prominence through exploitation, subjugation and extermination of people and whose legacy continues to hurt various groups today”).

²⁸ See UCT Media, *supra* note 22.

²⁹ See *ibid.*

³⁰ See A. Kayum Ahmed, *#RhodesMustFall: How a Decolonial Student Movement in the Global South Inspired Epistemic Disobedience at the University of Oxford*, 63 AFR. STUD. REV. 281, 282 (2019) (“the echoes of the #RMF UCT movement were felt most profoundly at the University of Oxford, where the #RhodesMustFall Oxford movement was established two months after Maxwele’s act of protest. The movement to decolonize UCT resonated strongly with students at the University of Oxford, who created the #RMF Oxford movement in May 2015”).

³¹ See *Cecil Rhodes Statue to Be Kept by Oxford University College*, BBC (Jan. 29, 2016), <https://www.bbc.com/news/uk-england-oxfordshire-35435805>.

³² See Aamna Mohdin, *Protesters Rally in Oxford for Removal of Cecil Rhodes Statue*, GUARDIAN (Jun. 9, 2020), <https://www.theguardian.com/world/2020/jun/09/protesters-rally-in-oxford-for-removal-of-cecil-rhodes-statue>.



substantial risks of property damage.³³

Following these protests, Oriel College promptly began internal discussions about whether to keep the statue. An initial vote by Oriel College's Governing Body in June 2020 favored removing the Rhodes memorials.³⁴ In April 2021, a commission of inquiry established by Oriel College to examine issues associated with memorials to Cecil Rhodes delivered an independent report.³⁵ It primarily focused on the ambiguity of Rhodes' colonial legacy and on its relationship with racial and equity issues in British academia.³⁶ The main recommendations of the document highlighted the specific procedures for the removal of the memorial, along with other measures to contextualize the negative implications of the tributes to Rhodes and to improve inclusion in the university community.³⁷

However, contrary to these findings, Oriel College ultimately reversed its initial decision to remove the statue. Under heavy criticism,³⁸ the Governing Body stated that due to regulatory and financial challenges, the removal of Rhodes memorials was unfeasible. They argued that the entire necessary procedure would require a lengthy process, extensive planning, and might not yield a certain outcome.³⁹ Some months later, a plaque contextualizing the statue was placed at Oriel College, although protesters

³³ There are indications that the protesters were willing to mimic UCT students' strategies. See RMF, *Rhodes Must Fall in Oxford Founding Statement*, in RHODES MUST FALL: THE STRUGGLE TO DECOLONISE THE RACIST HEART OF EMPIRE 3, 3 (Brian Kwoba et al. eds., 2018) ("Cecil Rhodes has fallen. His statue has been removed and the uncritical memory of his legacy has been discredited at the University of Cape Town – where the Rhodes Must Fall Movement – a movement to decolonise education, targets the still-active tentacles of colonial relations in Africa. [...] And so, Rhodes Must Fall in Oxford").

³⁴ See Aamna Mohdin et al., *Oxford College Backs Removal of Cecil Rhodes Statue*, GUARDIAN (Jun. 17, 2020), <https://www.theguardian.com/education/2020/jun/17/end-of-the-rhodes-cecil-oxford-college-ditches-controversial-statue>.

³⁵ See ORIEL COLLEGE, REPORT OF A COMMISSION OF INQUIRY ESTABLISHED BY ORIEL COLLEGE, OXFORD INTO ISSUES ASSOCIATED WITH MEMORIALS TO CECIL RHODES (2021).

³⁶ See *ibid*, at 23-44.

³⁷ See *ibid*, at 8-13.

³⁸ See Aamna Mohdin, *Oxford College Criticised for Refusal to Remove Cecil Rhodes Statue*, GUARDIAN (May 20, 2021), <https://www.theguardian.com/education/2021/may/20/cecil-rhodes-statue-will-not-be-removed-for-now-says-oxford-oriel-college>.

³⁹ See *Decisions Made by the College Following the Completion of the Independent Commission into Cecil Rhodes and Related Issues*, ORIEL COLLEGE (May 20, 2021), <https://www.oriel.ox.ac.uk/news/decisions-made-by-the-college-following-the-completion-of-the-independent-commission-into-cecil-rhodes-and-related-issues/> ("[t]he Governing Body has carefully considered the regulatory and financial challenges, including the expected time frame for removal, which could run into years with no certainty of outcome, together with the total cost of removal. In light of the considerable obstacles to removal, Oriel's Governing Body has decided not to begin the legal process for relocation of the memorials. Instead, it is determined to focus its time and resources on delivering the report's recommendations around the contextualisation of the College's relationship with Rhodes, as well as improving educational equality, diversity and inclusion amongst its student cohort and academic community").



claimed that it trivialized “the pain and suffering Rhodes caused”.⁴⁰

During the Rhodes Must Fall movement at Oxford, similar to what occurred in South Africa, the property discourse, even in the face of concrete risks of damages to Rhodes statue, was set aside in favor of other narratives. Rather, reevaluations of Cecil Rhodes’s legacy to both Britain and Oriel College were central to the entire discussion about its removal. Both supporters⁴¹ and opponents⁴² of the statue focused their debates on the ambiguity of Rhodes’s legacy. Student protagonism in the Rhodes Must Fall movement, from this perspective, was criticized because many of the individuals involved in protests were recipients of Rhodes scholarships.⁴³ Hence, even though the property discourse was not mobilized in this case, the adoption of other strategies proved effective, as the statue was ultimately retained.

2.3. U.S.: *Royall Must Fall*

On November 18, 2015, a group of students at Harvard Law School (HLS) mobilized around an open letter to Dean Martha Minow, protesting the “continued use of the Royall family seal as the crest”.⁴⁴ In 1781, Isaac Royall Jr. endowed the first

⁴⁰ See *Cecil Rhodes Statue: Explanatory Plaque Placed at Oxford College*, BBC (Oct. 12, 2021), <https://www.bbc.com/news/uk-england-oxfordshire-58885181>.

⁴¹ See, e.g., Javier Espinoza, ‘Rhodesgate’: Campaign to Remove Rhodes Statue ‘Is like Isis’s Destruction of Antiques’, Says Oxford Don, TELEGRAPH (Dec. 22, 2015), <https://www.telegraph.co.uk/education/educationnews/12064936/Rhodesgate-Campaign-to-remove-Rhodes-statue-is-like-Isis-destruction-of-antiques-says-Oxford-don.html> (“I think you have got to respect history. In addition, there are many people in history that are far worse than Rhodes”); and Sean Coughlan, *Don’t Hide History, Says Oxford Head in Statue Row*, BBC (Jun. 10, 2020), <https://www.bbc.com/news/education-52999319> (“[m]y own view on this is that hiding our history is not the route to enlightenment,” Prof Richardson told the BBC. ‘We need to understand this history and understand the context in which it was made and why it was that people believed then as they did,’ she said. ‘This university has been around for 900 years. For 800 of those years the people who ran the university didn’t think women were worthy of an education. Should we denounce those people? Personally, no - I think they were wrong, but they have to be judged by the context of their time,’ said Prof Richardson”).

⁴² See, e.g., Timalsina, *supra* note 27 (“Rhodes launched campaigns and facilitated policies that led to the subjugation and death of thousands of Black Africans. His legacy is defined by racism, British supremacy, and ruthless imperialism, so why is there a statue of him standing at Oxford? To be sure, he generously left a big sum of money to Oxford upon his death which funded the Rhodes Scholarship, a scholarship that to this day remains very prestigious and brings people to Oxford from all over the world. While some like to defend Rhodes by pointing to this, it is by no means sufficient to expunge him of his inexcusable sins”).

⁴³ See Nadia Khomami, *Oxford Scholars Reject Hypocrisy Claims amid Row over Cecil Rhodes Statue*, GUARDIAN (Jan. 13, 2016), <https://www.theguardian.com/education/2016/jan/12/cecil-rhodes-scholars-reject-hypocrisy-claims-amid-row-over-oriel-college-statue>.

⁴⁴ See *An Open Letter to Dean Minow from Students of Harvard Law School: Royall Must Fall*, HARV. L. REC. (Nov. 18, 2015), <https://hlrecord.org/an-open-letter-to-dean-minow-from-students-of-harvard-law-school-royall-must-fall/>.



professorship of law at Harvard College, which eventually helped establish HLS, leading to the use of the Royall family seal on the institution's crest. In recent years, reevaluations of Royall's legacy have emphasized that he not only amassed his wealth as a slave owner but also that he "was complicit in torture and in a gruesome conflagration wherein 77 black human beings were burned alive".⁴⁵ While other instances of student protests over racial issues could be mentioned,⁴⁶ the Royall Must Fall movement is a direct result of the influence of the Rhodes Must Fall movement at UCT in South Africa.⁴⁷

These debates were accompanied by various incidents of potential property damage. The day after the movement's letter to Dean Minow, portraits of black professors at HLS were duct-taped.⁴⁸ Also, members of Reclaim HLS, a group of students of color, removed signs comparing the movement to Trump.⁴⁹ In all these instances, the property discourse was not mobilized. Although some police investigations were conducted regarding the defacing of portraits of Black professors at HLS, they focused on

⁴⁵ See Alexander Clayborn et al., *Royall Must Fall*, HARV. CRIMSON (Nov. 20, 2015), <https://www.thecrimson.com/article/2015/11/20/hls-royall-must-fall/>.

⁴⁶ At Princeton University, students protested for the removal of Woodrow Wilson's name from the School of Public and International Affairs due to his involvement in racist and segregationist policies. See Maru Hui, *After Protests, Princeton Debates Woodrow Wilson's Legacy*, WASH. POST (Nov. 23, 2015), <https://www.washingtonpost.com/news/grade-point/wp/2015/11/23/after-protests-princeton-debates-woodrow-wilsons-legacy/>. Yale University also decided by dropping the supremacist statesman John Calhoun's name from a residential college. See Noah Remnick, *Yale Will Drop John Calhoun's Name From Building*, N.Y. TIMES (Feb. 11, 2017), <https://www.nytimes.com/2017/02/11/us/yale-protests-john-calhoun-grace-murray-hopper.html>.

⁴⁷ See Ahmed, *supra* note 30, at 282 ("[t]he #RMF movement resonated with students in the United States, particularly at Harvard Law School, where the Royall Must Fall movement was created in October 2015, calling for the removal of Massachusetts slave owner Isaac Royall Jr. from the crest of Harvard law school. At Princeton University, the Black Justice League occupied the university president's office in November 2015 to demand the removal of Woodrow Wilson's name from various buildings. Wilson supported racial segregation during his tenure as U.S. president from 1913 to 1921").

⁴⁸ See Jess Bidgood, *Tape Found Over Portraits of Black Harvard Professors*, N.Y. TIMES (Nov. 19, 2015), <https://www.nytimes.com/2015/11/20/us/tape-found-over-portraits-of-black-harvard-professors.html>.

⁴⁹ See Rena Karefa-Johnson, *Harvard: Reclaim Harvard and Royall Must Fall*, in RHODES MUST FALL: THE STRUGGLE TO DECOLONISE THE RACIST HEART OF EMPIRE 207, 208-9 (Brian Kwoba et al. eds., 2018) ("[i]t was to this space, this tiny island, that two to four white male students travelled every day last week to put up deliberately provocative posters. The first day, the students put up Trump campaign signs calling Reclaim racist, among other accusations, and comparing the movement to Trump. [...]. We took down their signs. The men came again on Tuesday, Wednesday, Thursday, and Friday, each day with antagonistic signs and attitudes. [...] We took them down because they were meant to rupture the one space on campus where people of colour do not have to be reminded of the ways that the norms of the school undervalue them and the communities they come from. We took those students' signs down because Reclaim is an occupation, and each of those signs violated the norms of values of our community. To be clear: Reclaim has made Belinda Hall open to students, staff, and community members. But Belinda Hall belongs to those who embody and advance the principles underlying Belinda Hall").



hate crime.⁵⁰ Similarly, the actions of Reclaim HLS were criticized as a form of censorship and a violation of the right to free speech.⁵¹

HLS, in turn, adopted a different set of strategies. On November 30, 2015, Dean Minow established a committee to research whether the shield should be removed.⁵² A few months later, the majority of the committee members concluded that HLS's seal should be changed.⁵³ The committee's report focused deeply on Royall's heritage to HLS, asserting that the true question was "whether an institution in the twenty-first century should be represented by a man of the eighteenth century whose only legacy was his money".⁵⁴ Professor Annette Gordon-Reed offered a dissenting opinion on the matter, advocating for the retention of the shield along with a historically accurate narrative.⁵⁵ She argued that this approach "would be the most honest and forthright way to ensure that the true story of our origins, and connection to the people whom we should see as our progenitors (the enslaved people at Royall's plantations, not Isaac Royall), is not lost".⁵⁶

Similar to the other cases discussed above, the Royall Must Fall movement in the U.S. illustrates how the disputes regarding symbolic property employed alternative strategies to the property discourse. Moreover, broader debates about historical revisionism and legacies were employed in this regard.⁵⁷ In addition to those who advocated for the retention of the seal,⁵⁸ such as Gordon-Reed, this lexicon was also employed by those who questioned this symbol. For example, in response to Gordon-

⁵⁰ See Christine Perkins, *Harvard Law School Dean Martha Minow Responds to the Defacement of African American Faculty Portraits*, HARV. L. TODAY (Nov. 19, 2015), <https://hls.harvard.edu/today/harvard-law-school-statement-on-the-defacement-of-faculty-portraits/>.

⁵¹ See Karefa-Johnson, *supra* note 49, at 209-10.

⁵² See Kim Wright, *Committee Exploring Whether Harvard Law School Shield Should Be Changed*, HARV. L. TODAY (Nov. 30, 2015), <https://hls.harvard.edu/today/committee-exploring-whether-harvard-law-school-shield-should-be-changed/>.

⁵³ See Claire E. Parker, *Law School Committee Recommends Seal Change*, HARV. CRIMSON (Mar. 4, 2016), <https://www.thecrimson.com/article/2016/3/4/law-school-seal-report/>.

⁵⁴ See *ibid.*

⁵⁵ See *ibid.*

⁵⁶ See *ibid.*

⁵⁷ See Angie Beeman, *Royall Must Fall: Old and New Battles on the Memory of Slavery in New England*, 5 SOCIOLOGICAL RACE ETHNICITY 326 (2019) (describing the Royall Must Fall movement under a history and memory framework).

⁵⁸ See, e.g., *Recognizing History*, HARV. CRIMSON (Mar. 4, 2016), <https://www.thecrimson.com/article/2015/11/6/staff-hls-royall-seal/> ("[i]t is undoubtedly crucial to reflect upon history in order to realize how far society has come since then. Royall's donation established an institution that now educates students of all races, creeds, and genders in the practice of law that now protects all Americans. When viewed from this perspective, the transformation within the institution is absolutely stunning").



Reed's opinion, Alexander Clayborne, one of the representatives of the Royall Must Fall movement, argued that her perspective was misguided, as "you're essentially honoring the legacy of the slaveholder", while causing "real psychological distress to minority communities at the school every day".⁵⁹

2.4. Brazil: Amâncio de Carvalho

On April 9, 2021, a report revealed that the University of São Paulo Law School (*Faculdade de Direito da Universidade de São Paulo* or FDUSP) maintained the mummified body of a black woman, Jacinta Maria de Santana, between 1900 and 1929. Amâncio de Carvalho, a professor of criminology at FDUSP and one of the main proponents of eugenics theories in Brazil, embalmed Jacinta's body after performing an autopsy and subsequently used it repeatedly in his classes over three decades. The year following Carvalho's death, his widow chose to give Jacinta a proper burial, considering her body as part of the family's heritage, and removed her from FDUSP.⁶⁰

The disclosure of this news led to a mobilization among the students of FDUSP against the fact that one of the institution's rooms directly honored Carvalho, displaying a plaque detailing his biography alongside a picture of the former professor.⁶¹ Alongside convening meetings among the faculty council of FDUSP, this movement took Carvalho's picture, turning it upside down in the student union.⁶² Interestingly, this act of seizing symbolic property⁶³ did not prompt any measures from FDUSP or state forces based on

⁵⁹ See Robert Mackey, *Harvard Law School Wants to Remove Slaveholder's Crest from Logo*, INTERCEPT (Mar. 7, 2016), <https://theintercept.com/2016/03/07/harvard-law-school-wants-to-remove-slaveholders-crest-from-logo/>.

⁶⁰ See Daniel Salomão Roque, *Como a Principal Faculdade de Direito do País Violou o Corpo de uma Mulher Negra por 30 Anos*, PONTE (Apr. 9, 2021), <https://ponte.org/principal-faculdade-direito-pais-usp-sao-francisco-violou-corpo-mulher-negra-30-anos-jacinta/>.

⁶¹ See Beatriz Drague Ramos, *Após Reportagem da Ponte, Alunos da USP se Mobilizam Contra Homenagens a Professor Racista*, PONTE (Apr. 13, 2021), <https://ponte.org/apos-reportagem-da-ponte-alunos-da-usp-se-mobilizam-contr-homenagens-a-professor-racista/>.

⁶² See Silvana Salles, *Direito da USP Retira Homenagem a Professor que Expôs Corpo de Mulher Negra como Curiosidade*, JORNAL DA USP (May 9, 2023), <https://jornal.usp.br/diversidade/etnico-racial/direito-da-usp-retira-homenagem-a-professor-que-expos-corpo-de-mulher-negra-como-curiosidade/>.

⁶³ See Scheuerman, *supra* note 8, at 98 ("[t]he commonplace view of politically motivated seizures of property as irrational 'looting,' usually linked to bloodthirsty 'rioting,' gets in the way of a balanced assessment. Wherever property is held in high esteem, those who appropriate it for their own uses will face well-nigh universal condemnation. So any smart political actor interested in shifting public opinion in a favorable direction should obviously proceed with extreme caution. More fundamentally, politically motivated property seizures can prove no less destructive and potentially life-threatening than their disruptive cousin").



property discourse. Rather, it ignited a broader institutional debate about the continued presence of this tribute within FDUSP premises.

During the following years, the council of professors convened meetings to address the issue, with active participation from the student movement.⁶⁴ Initially, there was advocacy for maintaining the tributes due to Carvalho's academic contributions, particularly by professor Renato de Mello Jorge Silveira, a criminal law professor.⁶⁵ Moreover, different proposals emerged, such as keeping the room's name but adding an informative plaque about Jacinta's history, while Carvalho would remain honored.⁶⁶ However, under continued pressure from students, the governing body reconsidered its decision, ultimately leading to the removal of the tributes by the faculty.⁶⁷ In this vote, all present members voted in favor, except for professor Erasmo Valladão.⁶⁸ Furthermore, a second plaque in honor of Jacinta was approved for placement in FDUSP courtyard.⁶⁹

As in the other cases described in this section, it is not possible to know specifically why the property discourse was not employed against the seizing of Carvalho's picture. As indicated above, much of the resistance to the removal of the tributes centered on weighing his memory, recognizing his significant contribution to the development of criminology in Brazil, while also acknowledging his association with eugenics.⁷⁰ Here, it is also important to notice the protagonism of student activism in these protests, as "[t]he mobilization of black students at FDUSP was crucial to the outcome of the vote".⁷¹ Overall, Carvalho's tributes at FDUSP represent another instance dodging of the property discourse.

⁶⁴ See Mônica Bergamo, *Direito da USP Decidirá se Mantém Homenagem a Eugenista Acusado de Violar Corpo de Mulher Negra*, FOLHA DE S. PAULO (Mar. 27), <https://www1.folha.uol.com.br/colunas/monicabergamo/2023/03/direito-da-usp-decidira-se-mantem-homenagem-a-eugenista-acusado-de-violar-corpo-de-mulher-negra.shtml>.

⁶⁵ See *ibid.*

⁶⁶ See Leticia Lé, *Caiu Um Racista: Amâncio de Carvalho Não Mais Será Homenageado pela Faculdade de Direito da USP*, ESQUERDA ONLINE (Apr. 1, 2023), <https://esquerdaonline.com.br/2023/04/01/caiu-um-racista-amancio-de-carvalho-nao-mais-sera-homenageado-pela-faculdade-de-direito-da-usp/>

⁶⁷ See *ibid.*

⁶⁸ See *ibid.*

⁶⁹ See *ibid.*

⁷⁰ See Bergamo, *supra* note 64.

⁷¹ See Salles, *supra* note 62.



3. Dodging the Property Discourse and Its Implications for a Framework of Politically Motivated Property Damage

The various instances of student activism examined in the preceding section indicate that in these cases, the mobilization of the property discourse to defend statues and symbols was undesirable. Universities across Brazil, England, South Africa, and the U.S. could have charged protesters potentially responsible for property damages or used legal remedies related to property rights for their protection. However, this was not the case. Other tactics, such as discussions on historical revisionism, have consistently emerged among voices seeking to defend the preservation of statues and symbols. Although not as straightforward as the property discourse itself, in the case of the statue of Rhodes at Oriel College, these alternative strategies proved to be an effective means of ensuring their protection.

All of this suggests that, beyond distinguishing between different protest activities, a framework for politically motivated property damage should also emphasize that the property discourse is a strategy for protecting ownership structures subject to the convenience of specific circumstances. Property, as a field of political dispute, can encounter specific situations where its enforcement, particularly through legal means, may be more difficult.⁷² In this context, the legitimacy of ownership may find alternative justifications, as seen in the cases discussed above. Although a deeper understanding of the different narratives that may substitute the property discourse requires a more comprehensive research agenda, we can offer some initial comments on two common circumstances that may lead to this dynamic.

First, the actors who contest these objects belong to an “entitled” community. Here, the term “entitlement” is deliberately chosen, while it denotes a privileged class that have greater rights to these spaces than “ordinary people”.⁷³ In this sense, the

⁷² See Hendrik Hartog, *Pigs and Positivism*, 1985 WIS. L. REV. 899, 934-5 (1985) (“[i]f a legal historian has to define or assume a nature of law, [...] he or she might as well start with a definition of law as an arena of conflict within which alternative social visions contended, bargained, and survived”).

⁷³ Law has a major role in shaping entitlements around ownership, while they “express the ability of property rights to be secure in certain ways and defeasible in others” (JOSEPH WILLIAM SINGER, ENTITLEMENT: THE PARADOXES OF PROPERTY 92 (2000)). Therefore, “[o]wnership relations are [just] one kind of *entitlement* relations”, connecting “one set of ownerships to another through certain rules of legitimacy” (AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 1 (1981)). Entitlements are not restricted to owners but are distributed among different stakeholders. As a result, “they may conflict with one another” as property rights



university community is not only regarded as a legitimate group with the right to question these objects on campus but also frequently perceives itself as such.⁷⁴ The protagonism of students in the protests above, amid varying degrees of entitlement, results in a shift in the narratives surrounding property protection. As these objects are being contested by their entitled owners or users, their defenders may encounter substantial challenges in mobilizing the property discourse compared to other instances of property damage to statues and symbols by protesters who lack entitlement to do so.⁷⁵ Clearly, entitlement is confined to specific spaces (*e.g.*, the university in the case of students) and may not be a barrier to employing the property discourse outside of these contexts.⁷⁶

Second, besides being contested by an entitled group, the symbolic nature of certain types of property is another central element hindering the employment of the property discourse. Indeed, “[d]efacing a politically symbolic statue [...] is not the same thing as torching a small shop”.⁷⁷ Serving as vessels of individuals’ legacies and embodying history itself,⁷⁸ statues are especially open to political disputes during times of civil unrest.⁷⁹ Damages to symbolic property under severe criticism prompt the adoption of alternative narratives to argue that such damage is illegitimate.⁸⁰ Additionally, this also helps to explain why entitlement itself is not sufficient to invalidate the mobilization of the property discourse, as seen in cases where students participating in campus activism have been charged for damaging university facilities.⁸¹ Unlike expressions of symbolic property, ordinary objects often damaged in protests hardly become a space of political

“are defeasible by political action in the public interest [...] and that the rules in force must adjust the meaning of particular entitlements in light of their effects on other entitlement holders” (Singer, *supra* note 73, at 92).

⁷⁴ Entitlement may also transcend law and manifest in more personal and individualistic perceptions by students of “ownership” and privileges in the university environment. See KRISTIN J. ANDERSON, ENRAGED, RATTLED, AND WRONGED: ENTITLEMENT’S RESPONSE TO SOCIAL PROGRESS 34-5 (2021).

⁷⁵ A notable example is the toppling of the statue of the slave merchant Edward Colston in Bristol in 2020, where four protesters were charged with criminal damage. See Jessica Murray, *Four Charged over Damage to Colston Statue in Bristol*, GUARDIAN (Dec. 9, 2020), <https://www.theguardian.com/uk-news/2020/dec/09/four-charged-over-damage-to-colston-statue-in-bristol>.

⁷⁶ In December 2018, two white college students faced charges for damaging and trying to steal a statue of the abolitionist Frederick Douglass, with both later pleading guilty. See Michael Gold, *Who Tore Down This Frederick Douglass Statue?*, N.Y. TIMES (Jul. 7, 2020), <https://www.nytimes.com/2020/07/07/nyregion/frederick-douglass-statue-rochester.html>.

⁷⁷ See Scheuerman, *supra* note 8, at 93.

⁷⁸ See Bellentani & Mario Panico, *supra* note 11.

⁷⁹ See *supra* note 12.

⁸⁰ This is particularly the case in arguments against historical revisionism. See *supra* note 17.

⁸¹ Recently, six students from the University of Pennsylvania were arrested for property damage during pro-Palestine protests. See Ron Todt, *6 Penn Students Among Pro-Palestinian Protesters Arrested During Attempt to Occupy Building*, TIME (May 18, 2020), <https://time.com/6979767/penn-students-arrested-pro-palestinian-demonstration-occupy-building/>.



contestation, allowing for a more direct use of the property discourse.

The presence of subsidiary narratives to the property discourse may complement a framework for politically motivated property damage in two main aspects. On one hand, it highlights that the property discourse is unevenly applied among different groups due to their degree of entitlement. This perception of the actual disparities in the enforcement of property rights between similar cases of damage to highly symbolic objects⁸² may underscore the hypocrisy in condemning certain protests. A framework for evaluating the legitimacy of property damage, in this sense, should acknowledge that property itself, as an institution and more specifically, as a set of rights, is influenced by asymmetric power relations that impact its mobilization.⁸³ Under this perspective, more and more, the debate on legitimate politically motivated property damage “forces on us more urgent questions: What shall property be? What shall it mean? What kind of property regime should we construct?”⁸⁴

On the other hand, damage to highly symbolic property poses new challenges to the understanding of legitimacy standards for this type of protest. Even as we attempt to confine the discussion of legitimacy to its impact on individuals,⁸⁵ evaluating the legitimacy of property damage in these cases can hardly avoid value judgments about the motivations of these forms of activism.⁸⁶ While the cases above may represent legitimate

⁸² Despite the toppling of Colston’s statue in Bristol in 2020, a group of protesters set fire to the statue of the *bandeirante* (a type of Portuguese conquistador) Borba Gato in São Paulo in 2021. Shortly afterward, some of the individuals involved in the protest, including a delivery app driver and his wife, were arrested amid a public outcry against the arrests. See *The Burning of a Statue Brought to Light the Permanence of Brazil’s History of Colonization*, BRASIL DE FATO (Jul. 30, 2021), <https://www.brasildefato.com.br/2021/07/30/the-burning-of-a-statue-brought-to-light-the-permanence-of-brazil-s-history-of-colonization>.

⁸³ See Singer, *supra* note 73, at 9 (“[p]roperty is a form of power, and the distribution of power is a political problem of the highest order”); and LAURA BRACE, *THE POLITICS OF PROPERTY: LABOUR, FREEDOM AND BELONGING* 10 (2004) (“[p]roperty relations then have to be concerned with more than straightforward exclusion and take account of complex social relations of power. Race, gender and class have to be understood as more fluid and less fixed, as social rather than natural categories and as connected to wider discourses about colonialism, civilisation and progress”). See also Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. LAW REV. 561 (1983) (discussing how traditional perspectives have disembedded property rights, treating them merely as contracts, thereby insulating them from the political structures that shape social order).

⁸⁴ See Singer, *supra* note 73, at 9.

⁸⁵ See *ibid.*, at 95 (“I worry that we simply confuse matters by, for example, describing the burning down or destruction of a public monument as more “violent” than vandalizing it. What matters is the act’s impact on persons: only if some clear bodily or psychological violation ensues should we then speak of property damaging resulting in violence”). See also, Helen Frowe, *The Duty to Remove Statues of Wrongdoers*, 7 JPE 1, 3 (2019) (“[i]f removing a statue would, for example, spark a violent riot that would risk unjust harm to lots of people, the duty to remove could be outweighed by the duty not to foreseeably cause unjust harm. This would provide a lesser-evil justification for keeping the statue”).

⁸⁶ See Tiffany C. Fryer et al., *As the Statues Fall An (Abridged) Conversation about Monuments and the Power of Memory*, 62 CURR. ANTHROPOL. 373, 376 (2021) (“I think one of the things we need to do is move beyond



responses to marks of the colonial past,⁸⁷ other instances of damage to highly symbolic property are often linked to authoritarian movements⁸⁸ or even motivated by racism.⁸⁹ Although such forms of protest may not involve any degree of harm to individuals, they may require alternative standards for their legitimization. For instance, due to varying perceptions of free speech,⁹⁰ legitimacy tests may demand broader discussions based on the democratic values that mark different institutional realities.⁹¹

These circumstances discussed above represent only an initial effort to better understand the mobilization of the property discourse, while other factors may also influence this dynamic. The cases of student activism indicate that protesters may strategically manipulate the very traditional concept of property, affecting the perception of potential damages to statues and symbols. In this sense, cutting down or burning a statue⁹² can be different from simply vandalizing symbolic objects with duct tape or

individual monuments to confront the entire civic narrative that's told by the collective body of monuments. [...] And I think that's part of what worries people about tearing them down: they are being asked to rethink not just whether this person was admirable or not but the entire mythology they've been taught and lived in").

⁸⁷ See Scheurman, *supra* note 8, at 95 (“[a]s Ten-Herng Lai (2020) has argued, damages to statues or monuments can be plausibly interpreted as political *counter-speech* targeting interpretations of history and political identity privileged by the state. Such acts can be morally permissible and perhaps even obligatory as a way to push back against official political symbols that treat some groups in a derogatory fashion, or exalt hateful ideologies that demean certain categories of persons. Defacing or tearing down a monument often makes a constructive political contribution, even when protestors ignore elements of the standard civil disobedience playbook”).

⁸⁸ Both the U.S. and Brazil witnessed instances of symbolic property damage during extreme right riots on the Capitol on January 6, 2021, and on Brasília on January 8, 2023, as well. See Zachary Snowdon Smith, *Capitol Riot Costs Go Up: Government Estimates \$2.73 Billion In Property Damage*, FORBES (Apr. 8, 2022), <https://www.forbes.com/sites/zacharysmith/2022/04/08/capitol-riot-costs-go-up-government-estimates-273-million-in-property-damage/?sh=545fa0bc19c5>; and Cedê Silva, *First Conviction Requests for Financial Damages in January 8 riots*, BRAZ. REPORT (Feb. 13, 2023), <https://brazilian.report/liveblog/politics-insider/2023/02/13/conviction-requests-january-8-riots/>.

⁸⁹ See, e.g., Gold, *supra* note 81 (describing different cases of vandalizations to Douglass' statues); Tesfaye Negussie & Bill Hutchinsonand, *'Disgusting': MLK Monument Vandalized in Denver Park During Black History Month*, ABC NEWS (Feb. 22, 2024), <https://abcnews.go.com/US/disgusting-mlk-monument-vandalized-denver-park-black-history/story?id=107447470> (reporting a recent case of depredation to Martin Luther King Jr.'s memorial in Denver during Black History Month).

⁹⁰ See Richard Wike & Katie Simmons, *Global Support for Principle of Free Expression, but Opposition to Some Forms of Speech*, PEW RESEARCH CENTER (Nov. 18, 2015), <https://www.pewresearch.org/global/2015/11/18/global-support-for-principle-of-free-expression-but-opposition-to-some-forms-of-speech/> (providing comparative data on global tolerance for free speech, including the regulation of hate speech).

⁹¹ See Kimberly Turner & Kiela Crabtree, *Reclaiming the Public Space*, 102 Soc. Sci. Q. 3127, 3132 (2021) (“[b]eyond the physical act itself, what does monument removal mean to those who have toppled them and to their broader communities? How do these actions reflect on democracy and democratic processes?”). Some comments in this regard highlight that preventing the removal of statues and memorials linked to non-democratic values clashes with the free speech of cities themselves and distorts the political process. See Aneil Kovvali, *Confederate Statute Removal*, 70 STAN. L. REV. ONLINE 82 (2017).

⁹² See *supra* notes 75 and 82.



excrement. Activists may be aware of this distinction, incorporating it into their protest strategies. For instance, recent protests in museums, where soup or paint is thrown on famous artworks, stretch the elasticity of the property discourse, given that no real damage is caused to the protected pieces (shielded by glass), while museum directors feel “increasingly ‘frustrated’” and “‘deeply shaken’ by the endangerment of the art”.⁹³ All of this demonstrates that property, besides being an arena of conflict, potentially possesses fluid boundaries that can be strategically mobilized by various parties in these disputes.

4. Conclusion

As “violent” protests become increasingly prevalent globally, a space for new researches directed at understanding the legitimacy standards of these movements opens. This becomes particularly challenging when property itself becomes the target of new activism tactics. The inherently symbolic nature of certain objects, such as statues, and the participation of entitled groups in these instances of political mobilizations represent an additional layer of complexity to these debates by highlighting cases where the property discourse is not employed at all. In this context, this narrative emerges as just one of the possible tools for protecting ownership, among other mechanisms that may, in specific circumstances, prove to be more effective strategies. This does not imply that the project of constructing a framework for politically motivated property damage should be abandoned, but rather that these efforts, especially concerning the establishment of legitimacy standards for this form of protest, should be complemented by deeper considerations of the nature of the property discourse itself.

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⁹³ See Adela Suliman, *World’s Museums Urge Climate Activists Targeting ‘Irreplaceable’ Art to Stop*, WASH. POST (Nov. 15, 2022), <https://www.washingtonpost.com/lifestyle/2022/11/11/climate-change-protesters-art-museums/>.



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