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White Saviors

Brandon Hasbrouck*

Bury me in the ocean with my ancestors
who jumped from ships, 'cause they knew
death was better than bondage.¹

I am an assistant professor of law at Washington and Lee University School of Law. I am a tenure-track faculty member. I am Black. Two of my Black colleagues, Cary Martin Shelby and Carliss Chatman, endorse my entire statement below in full. Together, we make up the permanent Black faculty at the law school.

It is time for Washington and Lee University to drop *both* George Washington and Robert E. Lee from the University name. The predominantly White faculty at Washington and Lee recently announced that it will petition the Board of Trustees to remove Lee from the University name.² This is the first time in Washington and Lee's history that the faculty has drafted such a petition. It is worth exploring *why* the faculty has decided to make a collective statement on Lee *now* and *why* the faculty has

* Assistant Professor of Law, Washington and Lee University School of Law. Black Lives Matter. This statement draws on my work published in *The Washington Post*. See Brandon Hasbrouck, *Both Namesakes of Washington and Lee University Perpetrated Racial Terror. The School Should Be Renamed.*, WASH. POST (July 4, 2020, 7:00 AM), <https://perma.cc/M8AE-KMMK>. Since this piece has been published (and my correspondences with the faculty were leaked by a faculty member), I received the most hateful, insulting, threatening, and disrespectful emails from many people affiliated and unaffiliated with Washington and Lee University. People have referred to me as the "N" word and commented that it would be better if Blacks were still enslaved.

1. BLACK PANTHER (Marvel Studios 2018).
2. See Elizabeth Bell, *Washington and Lee University Faculty Request Removal of All References to the Confederacy, Including Robert E. Lee's Name*, ROANOKE TIMES (June 25, 2020), <https://perma.cc/FR7T-BUAS> ("A petition to W&L president Will Dudley and to the board will be created by the end of the month, Casey said.").

not included a demand to drop Washington in *their* petition. The answer is simple—it is no longer acceptable, profitable, or convenient to be associated with Lee but it is for Washington. At least for now.

Bryan Stevenson, the Director of the Equal Justice Initiative, delivered an impassioned commencement address at Washington and Lee University in 2019. There, he encouraged our graduates and our community to engage in truth and reconciliation around race to facilitate healing. That is, “[t]o repair the harms caused as a result of an era of enslavement, an era of racial terror lynching and violence, an era of Jim Crow segregation, and an era of mass incarceration, we have to commit ourselves to building an era of truth and justice.”³ As part of the truth-telling process here at Washington and Lee, we need to confront our history with race and must engage with that history more honestly. I’ll go first. Both Washington and Lee were perpetrators of racial terror and, for that reason, should be removed from the University name. That is a necessary beginning. Truth and justice, however, require that we not bypass institutional actors. Indeed, institutional racism is created and sustained by such actors, which includes the predominantly White faculty at Washington and Lee. In order to move forward—indeed to transform our institution—the faculty must acknowledge its significant part in perpetuating white supremacy and engage in genuine and continued work that advances racial equality and justice.

George Washington enslaved more than 300 Black people.⁴ Washington’s brutality, inhumanity, and cruelty are well documented. Washington would have his enslaved Blacks whipped for no reason at all, such as walking on his lawn.⁵ As

3. *Community Remembrance Project*, EQUAL JUST. INITIATIVE, <https://perma.cc/F3JB-7WB5>.

4. *See 10 Facts About Washington & Slavery*, GEORGE WASHINGTON’S MOUNT VERNON, <https://perma.cc/HEN4-RE4R> (“At the time of George Washington’s death, the Mount Vernon enslaved population consisted of 317 people.”).

5. *See* Gillian Brockell, *George Washington Owned Slaves and Ordered Indians Killed. Will a Mural of That History Be Hidden?*, WASH. POST (Aug. 25, 2019, 7:00 AM), <https://perma.cc/F9UD-GVJU> (“But there’s also a record of him ordering an enslaved man to be whipped for walking on the lawn, Thompson said.”).

president, Washington came up with elaborate schemes⁶ to travel with enslaved people to Philadelphia in an effort to avoid Pennsylvania's Gradual Abolition Act of 1780,⁷ which provided enslaved Blacks a pathway to freedom. Washington understood that America's economy rested on the backs of Blacks and the protection of the institution of slavery.⁸ This is why he signed the Fugitive Slave Act of 1793,⁹ which allowed enslavers, like Washington, to stalk and torture runaway enslaved Blacks in free states and criminalized those who helped enslaved Blacks escape.¹⁰ Indeed, Washington had a reputation as being the most aggressive slave catcher.¹¹ In one of his trips to Philadelphia, Ona Judge, an enslaved Black woman, escaped.¹²

6. See Michelle L. Norris, *George and Martha Washington Enslaved 300 People. Let's Start with Their Names.*, WASH. POST (June 26, 2020, 8:27 PM), <https://perma.cc/4HXB-WMWV> (“So the Washingtons came up with an elaborate shuffling plan to cycle in and out of Pennsylvania so their slaves would never hit the legal threshold for freedom.”).

7. See Alexandria Cannon, *Gradual Abolition Act of 1780*, GEORGE WASHINGTON'S MOUNT VERNON, <https://perma.cc/8AVF-H6W7> (“Section Ten prohibited non-residents of Pennsylvania from keeping their slaves in the state longer than six months.”).

8. See Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://perma.cc/89TG-QWDH> (“Nearly one-fourth of all white Southerners owned slaves, and upon their backs the economic basis of America—and much of the Atlantic world—was erected.”).

9. See *Fugitive Slave Acts*, HISTORY (Dec. 2, 2009), <https://perma.cc/RNH7-VUZX> (last updated Feb. 11, 2020) (“Enacted by Congress in 1793, the first Fugitive Slave Act authorized local governments to seize and return escapees to their owners and imposed penalties on anyone who aided in their flight.”).

10. See Charles M. Blow, *Yes, Even George Washington*, N.Y. TIMES (June 28, 2020) <https://perma.cc/S3X3-GCZM> (“George Washington . . . signed the Fugitive Slave Act of 1793, authorizing slavers to stalk runaways even in free states and criminalizing the helping of escaped slaves.”).

11. See Erica Armstrong Dunbar, *George Washington, Slave Catcher*, N.Y. TIMES (Feb. 16, 2015), <https://perma.cc/D27K-7L8V> (“Washington and his agents pursued Judge for three years, dispatching friends, officials and relatives to find and recapture her. Twelve weeks before his death, Washington was still actively pursuing her, but with the help of close allies, Judge managed to elude his slave-catching grasp.”).

12. See *President George Washington Offers Reward for Capture of Black Woman Fleeing Enslavement*, EQUAL JUST. INITIATIVE, <https://perma.cc/8SAC-HL3P> (“On May 23, 1796, a newspaper ad was placed seeking the return of

Washington hired head-hunters, offered a reward, and placed ads in newspapers seeking Ms. Judge's return. Ms. Judge "evaded capture, married, had several children and lived for more than fifty years as a free woman in New Hampshire."¹³ Enslaved people were tortured under Washington's ownership. His "dentures were made from the pulled teeth of slaves."¹⁴ Enslaved women were raped on his estate by his adopted son.¹⁵ Washington's connection to the University—then Liberty Hall Academy—is based on his gift to the University of stock worth \$20,000, which allegedly saved the school from insolvency.¹⁶ It is important to underscore that this gift would not have been possible had Washington not accumulated his wealth on the backs of enslaved Blacks. In recognition of that gift, the school was renamed Washington Academy (later changed to Washington College).

Robert E. Lee, General of the Confederate Army during the Civil War, was a slave-owner too. Lee believed that Black people were inferior and that slavery was "necessary" because we needed "instruction," "discipline," and leadership.¹⁷ Lee's reputation for racial violence and hatred is well known. He was a monster. Black bodies were desecrated and skin mutilated by Lee himself.¹⁸ If enslaved Blacks survived his wrath, they likely

Ona 'Oney' Judge, an enslaved black woman who had 'absconded from the household of the President of the United States,' George Washington.").

13. *Id.*

14. Norris, *supra* note 6.

15. See Matthew Barakat, *George Washington's Family Legacy Includes Children Born from Slaves*, BOS. GLOBE (Sept. 17, 2016, 6:15 PM), <https://perma.cc/7J3N-WDJP> ("Before long, [George Washington Parke Custis] was back home at Mount Vernon, where he would be accused of fathering children with slaves.").

16. See William C. Dudley, *Taxing George Washington's Legacy—Like Chopping Down the Cherry Tree*, WASH. POST (Jan. 17, 2018, 8:00 AM), <https://perma.cc/B3FL-TJ9N> ("The donation, which formed the largest component of Liberty Hall's meager endowment, not only permitted the school to keep its doors open but also promised a permanent revenue stream that would benefit generations of students.").

17. Ta-Nehisi Coates, *Arlington, Bobby Lee, and the "Peculiar Institution"*, ATLANTIC (Aug. 13, 2010), <https://perma.cc/XA9V-ECAE>.

18. See Arijeta Lajka, *Gen. Robert E. Lee Owned Slaves*, ASSOCIATED PRESS (June 12, 2020), <https://perma.cc/QE3X-ELKZ> ("If you judge him by his actions, he separated families through sale, he beat slaves who ran away," said

ended up separated from their family by Lee's hand¹⁹—this was, as Ta-Nehisi Coates described it, “a kind of murder.”²⁰ Lee served as the president of Washington College from 1865 until his death in 1870. Although his time as president has been celebrated for creating a world-class liberal arts program, what stands out to me is that his students were sexual predators—they sexually assaulted Black girls from local Black schools.²¹ “His students formed their own chapter of the Ku Klux Klan”²² and were involved in two attempted lynchings. Award-winning historian, Elizabeth Brown Pryor, concluded, “The number of accusations against Washington College boys indicates that [Lee] either punished the racial harassment more laxly than other misdemeanors or turned a blind eye to it.”²³ The school's name was changed to Washington and Lee University in 1870.

Washington and Lee decided to integrate in 1966.²⁴ Since that time, Black people have had to operate under the oppressive eyes of Washington and Lee. Many students, administrators, support professionals, and professors of color have detailed their painful experiences for years—often wrought with trauma, indignity, and abuse. The statues, portraits, and the name itself—and all that Washington and Lee represented then and now—are symbols that are racist. Too often members of the Washington and Lee community dismiss

Ariela Gross, professor of law and history at University of Southern California.”).

19. See Adam Serwer, *The Myth of the Kindly General Lee*, ATLANTIC (June 4, 2017), <https://perma.cc/W76L-TW5P> (“The separation of slave families was one of the most unfathomably devastating aspects of slavery, and Pryor wrote that Lee's slaves regarded him as ‘the worst man I ever see.’”).

20. Coates, *supra* note 8.

21. See Toni Locy, *Letting Go of Robert E. Lee at Washington and Lee University*, NATION (June 25, 2020), <https://perma.cc/J4GW-FDXT> (“The white college students and cadets also sexually abused young black women and students at the school, McClure wrote.”).

22. Serwer, *supra* note 19.

23. ELIZABETH BROWN PRYOR, *READING THE MAN: A PORTRAIT OF ROBERT E. LEE THROUGH HIS PRIVATE LETTERS* (2008).

24. See *African Americans at Washington and Lee*, WASH. & LEE U., <https://perma.cc/S6EK-8BUD> (“Dennis Haston becomes the first African-American student to matriculate as an undergraduate; the same year, Leslie Smith enters the School of Law. Haston transfers after his first year.”).

Black pain—you know, why did you come to an institution named after Washington and Lee in the first place? That is the thinking of a segregationist, not an antiracist. We must acknowledge that for many, Washington and Lee’s adoration of both Washington and Lee effectively signals adoring and cheering for racial subordination and violence.

As part of truth and reconciliation, there must be a true accounting of the University’s history and the roles power structures played in it. One such structure is the predominantly White faculty. The faculty, in *their* petition, champion themselves as “stewards”—people who look after and are responsible for their students; *all* students. I agree. Unlike many other institutional actors, the faculty can profoundly impact our students’ day-to-day experience at Washington and Lee. Indeed, the everyday work of racial justice and equality rests largely on the faculty’s shoulders. The predominantly White faculty has failed to live up to its obligations as stewards.

This faculty has collectively been deaf to Black suffering, cries, and desperation. That is, until last month. A great awakening—and for some a renewed interest—has occurred among the faculty that the name “Lee” must be dropped from our University. None of the faculty have advanced a resolution to remove Washington from the University name. The faculty is rightly outraged over the most recent cases of Black dehumanization and murder.²⁵ Many believe this provides an occasion to adopt a faculty resolution—stylized as a petition—that requests the Board of Trustees to drop Lee from the University name. The leaders of this resolution are mostly (if not all) White and mostly (if not all) tenured. Despite this movement being driven by Black voices—indeed I have participated in two events over the past month calling for transformative change and sponsored our antiracist resolution²⁶—my White colleagues have received all of the press

25. See Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 68 UCLA L. REV. (forthcoming 2020) (“Black Americans were stamped by police from the beginning as something less than human.”).

26. See Brandon Hasbrouck, *Faculty Resolution*, WASH. & LEE U. SCH. L. (June 5, 2020), <https://perma.cc/U2NA-YUNR> (acknowledging the faculty’s

lately. One colleague made a compelling case on why Lee must go.²⁷ Two other colleagues were quoted extensively in a piece on the proposed name change.²⁸ Most (if not all) of these colleagues have been associated with the University for years (if not decades) and *the same case against Lee* (and Washington) should have been made for years. There must be an acknowledgment that each year that this predominantly White faculty remained silent, neutral, or worse, harm was committed against Black people.

In fact, this past February (as in five months ago)—when many law students, support professionals, and some professors signed a petition to the Board of Trustees, which would have allowed students to have an option to remove Robert E. Lee’s portrait from their diploma—a significant amount of the White faculty did not sign that petition.²⁹ Nor did they demonstrate any interest in having Lee’s name removed from the University at that time. The Board of Trustees denied that petition.³⁰ The message we received was clear—we were counseled to educate ourselves so that we may learn to appreciate the positive contributions that Lee made to education during his time as University President. During all of this, several students and faculty of color received hate messages. And, still, no collective movement, statement of solidarity, or resolution from our

historical failures and continuing obligation to alleviate the burden of the university’s history under which members of the law school community labor).

27. See Locy, *supra* note 21 (“It is going to get increasingly hard to persuade a generation of high school students who care about diversity to attend a university named after a Confederate general.”).

28. See Elizabeth Bell, *Washington and Lee University Professors Discuss Name Change and Removal of All References to the Confederacy*, RICHMOND TIMES-DISPATCH (June 24, 2020), <https://perma.cc/M4W5-YS2Y> (quoting Jim Casey and Dominica Radulescu on their support for the name change petition).

29. See Susan Svrluga, *These Students Want their Washington and Lee Diplomas—Without the Portraits of Washington and Lee*, WASH. POST (Nov. 26, 2019, 7:00 AM), <https://perma.cc/54RU-ZRF5> (describing support for the petition to give students the option to receive diplomas without portraits of George Washington and Robert E. Lee).

30. See Don Childress & Will Dudley, *Board of Trustees’ Response to Diploma Petition*, WASH. & LEE U. (Feb. 18, 2020), <https://perma.cc/JGL5-LVLU> (“In light of this view, and after careful consideration of the arguments you presented, the Board has decided that Washington and Lee will retain the single diploma design that has been used by the university since the 1870s.”).

predominantly White faculty. Nothing. How about when the Ku Klux Klan distributed leaflets on campus in 2018?³¹ Nothing. There have been countless other incidents of anti-Blackness over the years at Washington and Lee and in America.³² The predominantly White faculty's collective response every single time: Nothing.

In a recent meeting, a White faculty member made a statement that cuts at the heart of the issue—the circumstances today are completely different that the only option left for the Board of Trustees is to pursue a name change. My question is, different for who? Not for Black people.

My colleague, Cary Martin Shelby—a Black associate professor of law—has used the phrase, “profiting from our pain” to illustrate her research on social impact investing.³³ It's related to this idea that White people take advantage of moments or circumstances to position themselves to gain from Black pain. This happens even when the motive is good. This is precisely what is happening at Washington and Lee University now—and part of a larger problem at all institutions.³⁴ A financial model with Lee at the center is no longer feasible long-term in light of the current Black Lives Matter Movement.

31. Will Dudley, *Hate Speech and Violence*, WASH. & LEE: MESSAGES TO THE COMMUNITY (Oct. 29, 2018), <https://perma.cc/4PD5-N55Q> (“[L]eaflets were distributed on and around our campus on Friday, spreading vile messages of hatred and bigotry with the intent to intimidate and frighten. The leaflets were attributed to the Ku Klux Klan, which has previously taken credit for similar campaigns in Lexington and around our region.”).

32. See kihana miraya ross, *Call It What It Is: Anti-Blackness*, N.Y. TIMES (June 4, 2020), <https://perma.cc/NDW4-GBS7> (“[Anti-Blackness is] a theoretical framework that illuminates society's inability to recognize our humanity—the disdain, disregard and disgust for our existence.”).

33. See generally Cary Martin Shelby, *Profiting from Our Pain: Privileged Access to Social Impact Investing*, 109 CAL. L. REV. (forthcoming 2021) (manuscript at 3) (“The privatization of social services for instance, such as foster care, prisons, and even Medicaid has led to devastating harms that are difficult to fully quantify.”).

34. See Bryan Pietsch, *Princeton Will Remove Woodrow Wilson's Name from School*, N.Y. TIMES (June 27, 2020), <https://perma.cc/G3W8-KDY6> (“Princeton University will remove Woodrow Wilson's name from its public policy school and one of its residential colleges, the university's president said on Saturday—a move that comes four years after it decided to keep the name over the objections of student protests.”).

Moreover, any association with Lee right now is not a good look for our predominantly White faculty. The faculty understands this and have collectively become champions for some racial justice.³⁵ But Washington is still acceptable because the faculty can continue to profit—socially, economically, and politically. Until they can't. Professor Derrick Bell, “father” of critical race theory, calls this interest convergence. Interest convergence contends that “[t]he interest of [B]lacks in achieving racial equality will be accommodated only when it converges with the interests of [W]hites.”³⁶

Truth and reconciliation require more—*more everything*. At Washington and Lee University, it *starts* with the following:

1. The removal of both namesakes;
2. Acknowledgement from this predominantly White faculty that you all have profited and benefitted from Black pain—through promotion, tenure, competition, and other ways;
3. Acknowledgment from the predominantly White faculty that you all have been deaf or unresponsive to Black suffering—and that the difference is immaterial;
4. Acknowledgment from the predominantly White faculty that each year you have remained silent, neutral, or worse, harm was committed against Black people;
5. Acknowledgment from the predominantly White faculty that your (at best) neutrality perpetuated racist thinking and policy decisionmaking;
6. Acknowledgment from the predominantly White faculty that it has been students, particularly law students and students of color, who have demonstrated leadership, courage, and advocacy on issues of race and racial justice and equality;
7. Commitment from the predominantly White faculty to antiracism consistent with the resolution I sponsored for the law school. Antiracism demands that we are

35. A request to remove Lee *only* provides the faculty—and many others associated with Washington and Lee University—economic, political, and social coverage to say, “I’m not a racist.” Antiracism, however, demands that we press—with actions—for policies that create racial justice and equity.

36. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

proactive in dismantling racist systems, not reactive. It requires that we support—in actions—antiracist policies;³⁷

8. Commitment to hiring, retention, and promotion of faculty and administrators of color at all levels of recognition for scholarly achievement and university leadership, including, but not limited to, department chairs, endowed chairs, deanships, provost and president positions, and the Board of Trustees. A further commitment from each school to have majority-minority permanent faculty and Board representation by 2030 (the state of Virginia is projected to be majority-minority during this decade);
9. Commitment to increase diversity in our student body to reflect *at least* 50% students of color by 2030 (again, the state of Virginia is projected to be majority-minority during this decade);
10. Acknowledgment that during Lee's presidency of Washington College, students committed atrocities against the local Black community. For that reason, it is necessary to repair deep fractures between the University and local Black community. To that end, we must develop partnerships with the local Black community to help serve our broader community;
11. Fund critical race and ethnic studies and make those courses a general-education requirement. Emory University just voted to approve a general-education requirement across the college for critical race and ethnic studies.³⁸ In addition, there should be a commitment by the predominantly White faculty to diversify courses;
12. Develop and fund a center for antiracist research; and a

37. See generally Hasbrouck, *supra* note 25.

38. See Thomas Kreutz, *College to Implement Race and Ethnicity General Education Requirement in Fall 2021*, EMORY WHEEL (May 19, 2020), <https://perma.cc/X7VL-EUHJ> (“A working group of three faculty members and three students, formed two years after the demands, brought the proposal before the College Senate in April and faculty members passed it on May 6 with 73% in favor.”).

13. Commitment to create a reparations committee to identify the enslaved Black people whose labor—and sale—Washington and Lee, as owners, directly benefited from.³⁹ A further commitment to establish a reparations fund to assist the living descendants of those this institution enslaved.

Unless some are afraid of *too much* racial justice and equality.

39. Kenneth P. Ruscio, *Continuing the Community Conversation: President Ruscio's Message to the Community on July 8*, WASH. & LEE U. (July 8, 2014), <https://perma.cc/4A35-AUQB> (“In 1826, Washington College came into possession of between 70 and 80 enslaved people from the estate of “Jockey” John Robinson. Until 1852, the institution benefited from their enslaved labor and, in some cases, from their sale.”).