



RED BOX | EDWARD HENRY

Think twice before criticising the Colston verdict

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Juries have the power to put justice before the law, a power they have

exercised for hundreds of years. Authoritarian governments have always hated them for this, and the acquittals of the Colston four have, predictably, precipitated an avalanche of adverse comment.

Much of the parliamentary blasting of the verdict involves dire predictions from Conservative MPs that our heritage, far and wide, has been put at risk by this dangerous precedent. From the tenor of outrage directed at the jurors' decision one might even imagine that resurrecting the star chamber is a distinct possibility, in preference to that awkward squad of twelve credulous individuals, the jury.

The Leader of The House, Jacob Rees-Mogg, not known for his modernity, must have delighted his legions of friends on the Labour benches with his antiquarian

appreciation of this ancient institution, when describing trial by jury as one of Britain's "greatest monuments".

Rees-Mogg, with his long-established connection to the West Country, may have understood, far better than his party, why that Bristol jury had exonerated the defendants. It begins and ends with that city's tortured relationship with the slave trade.

In 1789, not long before the fall of the Bastille, Bristol's dependence on the North Atlantic slave trade was clearly outlined in a petition to parliament opposing abolition.

Even today, when one scours social media covering the outcome of the trial, there are many questioning why Colston's statue should have been toppled given that it was all so long ago, particularly noting his many munificent donations to Bristol.

In spite of all this criticism, the verdict was unsurprising, even if against the weight of the evidence. Why? Because the harrowing impact of the expert evidence given by the historian David Olusoga would have provided cogent ammunition for the Colston four's defence.

In this respect, a full measure of respect should be accorded to HHJ Peter Blair QC, the recorder of Bristol. By all accounts, he is known to be a wise and humane tribunal – the perfect judge for this trial, being not only the senior resident judge, but also honoured by the city council with the title of recorder.

HHJ Blair QC could have excluded David Olusoga's evidence. Had he done so, in my estimation, his decision would have been unappealable. That he did not reveals courage, good sense and a wider appreciation of what this trial meant to the city he serves.

The recorder of Bristol recognised that this wasn't an ordinary criminal damage trial. The city had been torn in pieces, and so the trial was about far more than the

fate of the four defendants. The trial would assume symbolic importance – and if handled correctly, bring some catharsis.

I'm currently rereading *Chocolate on Trial* by Lowell J Satre which explores the slavery that existed in São Tomé at the end of the 19th and the beginning of the 20th century.

The account of that evil trade still has the capacity to make one shudder and might give some inkling of the impact Olusoga's evidence made. The slaves were marched over 1,000 miles from Angola through the 'hungry country' to the sea.

It was 'hungry' because the land was barren, and uninhabited - not by choice but by slavery. The unimaginable terror the slaves endured during their thousand-mile trek, in shackles, would have heightened as they passed through village after deserted village towards the sea, each one abandoned by their poor inhabitants, all abducted before them.

In 1904 the journalist Henry Nevinson acted on assignment to gather evidence of the slave trade in Portuguese West Africa, as a precursor to a series of articles he intended to write.

His reports were full of horrors. Bleached bones, thousands of them, were strewn upon either side of the track. The redundant shackles left by the slavers in the thorn bushes and trees to be collected on the return journey.

During his expedition, he came across a prostrate abandoned slave and sought to rouse him. As he probed for signs of life, he displaced the upper part of the unfortunate man's skull. It became apparent that he had been killed by an axe blow to the back of his head.

The unimaginable cruelty practised upon these innocent men and women remains horrifying, although well over a century has passed. Their children were born into slavery, the property of the slavers, and none ever returned home again.

Returning to the Colston four, Edward Colston's pursuit of profit by expropriating "savages" and leveraging his vast wealth to enslave thousands more, was an enterprise drenched in blood. His historic endowments to Bristol cannot expiate that pitiless heritage, but rather perpetuate it.

In a city built on the profits of slavery, with one of the oldest and most proud black communities in Britain, that statue was, to put it most neutrally, an anachronism. Its baleful continued presence was grossly offensive to many.

It serves no purpose expressing any views on the actions of the Colston four, unless one was present in court.

The prosecution's suggestion that Colston's background was irrelevant to this trial was to be expected. A bold statement, perhaps, but unlikely to persuade a jury who, like the trial judge, saw this case in its historic, indeed symbolic context.

As for the idea that we require new laws to specifically curtail defences which already exist (disparagingly called "loopholes" by Grant Shapps) criminalising public protest with draconian punishment as threatened by the Policing Bill might have a paradoxical effect, because experience has shown that juries dislike unjust laws.

This Conservative government has most regrettably displayed, all too often, an authoritarian streak, and doesn't seem to cherish an instinct for liberty. The real heritage to be protected here is not the statue of a slaver, but the institution of the jury itself. On this subject, Rees-Mogg and I can wholeheartedly agree.

Edward Henry QC is a member of Mountford Chambers, head of the Regulation Practice Group, and is recommended in both the Legal 500 and Chambers & Partners guide to the UK Bar, specialising in crime and fraud