What Moral Standards Should We Apply to Historical Figures? (Guest Post by Tarunabh Khaitan)

[**Introductory note**: Below is a guest post by Tarun Khaitan, Professor of Public Law and Legal Theory at Oxford, Law Professor at Melbourne University, a Global Visiting Professor at NYU this last term, and author of *A Theory of Discrimination Law*. Tarun's post is, in part, a response to my earlier blog post on the question of morally evaluating historical figures, especially in regard to decisions about erecting or taking down statues and other commemorations].

Edward Colston. Seventeenth-century English philanthropist and parliamentarian. Commemorated in several landmarks in his native city: Colston Tower, Colston Hall, Colston Street, Colston Avenue. Several schools bearing his name. His public statute was pulled down and unceremoniously dumped in Bristol harbour this Sunday during protests sparked by George Floyd's murder. Colston made most of his money in the trans-Atlantic slave trade. On the same day, Winston Churchill's statue was graffitied 'is a racist', probably because of his hostility towards Indians and his adamant refusal to change the British policy of diverting food stocks from Bengal to Europe, even as between two and three million Bengalis starved to death in the 1943 famine.

What we should do with public statues of such complex figures requires a call on a multitude of issues. One such issue is this: how should we judge historical figures like Colston or Churchill? Or Cecil Rhodes, British imperialist in South Africa, whose ill-gotten fortune has funded a world-class education for thousands—including many like me, who would have had no chance of getting an Oxford education otherwise. What moral standards should we apply to judge historical figures? That is the question I seek to address in this post.

Two caveats before I attempt a response:

(i) Moral evaluation of a person in relation to particular acts is not the same thing as the moral evaluation of that person's entire life and character. Good people do bad things and think evil thoughts. Bad people do good things. I have argued elsewhere that 'A life's overall success is to be judged across its entire span, and not in relation to a particular moment in time or in the context of any particular event(s)' and 'holistically from the point of view of the person whose life it is, in light of the resources and opportunities available to her.' This post is only concerned with the narrow question of judging historical persons for specific actions they took or beliefs they had. A holistic, overall, judgment may be kinder or harsher to them, depending on what else they did or believed.

(ii) Whether a public statue should be allowed to stay, removed, or re-contextualised requires a complex all-things-considered judgment. The moral quality of a person portrayed, and those of her actions, is surely relevant to that judgment. So is the expressive meaning of that statue and its manner of display in our times. And any lingering effects of the actions of the person in question. And many other factors besides. This post does not say anything about which statues should remain and which ones should go, if any.

Back to my question then: how should we judge the actions of historical figures?

One starting point most of us could all agree upon: it is unfair to blame someone for a wrong they committed in moral ignorance. Just as we excuse crimes committed by small children or people with certain types of mental disability, the suggestion is that applying our standards to historical figures without making any allowance for their moral culpability is unfair.

But being fair when judging is not the same thing as refusing to judge entirely. Those who demand that we withhold our judgment of historical figures are often trying to rationalize the denial of racist legacies that linger today. They are also frequently hypocritical—they only demand that we refrain from adverse judgment. Praising powerful historical figures, as Churchill is often praised, is frequently not seen as problematic.

Between these two extreme positions of making no allowances for moral ignorance and not judging at all, Professor Rick Hills of NYU Law School argues that we should judge historical figures by the moral temper of their times ('historical relativism'). Washington's slave-ownership, on this view, should be judged harshly by us only if most people around him would have viewed slave-ownership as immoral. On this view, if our moral standards broadly accord with those of our herd, we are off the hook.

Before I criticise this view, let us be clear about one thing: Professor Hills is only discussing how one should judge wrongdoers, not the wrong itself. He is absolutely not arguing that slavery was ever morally permissible, let alone in eighteenth-century America. A five-year old who fires a gun to kill it not at fault, despite having committed a wrong. The right question to ask, then, is this: do Colston, Rhodes, Churchill, or Washington have an excuse for their racist actions/views?

Being slow to judge is a virtue. Generosity and deliberation are key requirements for sound judgment; so is a willingness to subject oneself to the same standards as one demands of others. But Professor Hills is too generous to the accused. Sharing the moral standards of our herd can, at best, mitigate the harshness of our judgment. It cannot absolve us of blame. Ordinary Germans who were complicit in Nazi atrocities were not permitted the defence that they were mere moral sheep, following their herd, and rightly so.

Rather than asking whether they acted in accordance with the moral beliefs of their herd, the correct test we should apply to determine whether to blame historical figures for their racism is this: was the morally correct view discursively accessible to them? It is irrelevant what most people around Colston believed in relation to slave-trade. What matters is whether Colston had the opportunity to be confronted by the view that race-based slavery (or, for that matter, any form of human slavery) was wrong. This moral confrontation could arise in any form—in a conversation with a friend, through an article in a newspaper, on a pamphlet shoved into your hands, in a passage in a religious text, via an angry denunciation by a slave he was selling.

Moral confrontation is an opportunity to rethink, to revise, and to repent. A person opposed to same-sex marriages in early twentieth century Europe may have had the excuse of unchallenged moral ignorance; not so in early twenty-first century. We may be excused for following our herd's flawed moral outlook unthinkingly only if there arose no opportunity for us to reflect upon it and revise it. If we hold on to our flawed moral inheritance despite being challenged by morally correct views, we can no longer claim the excuse of moral innocence. Our generation should, consequently, also prepare for being judged harshly in the future for our attitudes and actions in relation to animals and the environment—for we can no longer claim we didn't know any better.

Sometimes, it may be difficult to know if a historical figure was in fact faced with the correct moral view. At the very least, Rhodes and Churchill would clearly have been confronted about their racism—the anti-colonial movements they sought to suppress would themselves have provided ample opportunities for moral reflection. Colston and Washington too, despite being further removed from us in history, are likely to have had access to counterarguments. Their refusal to revise their views, despite the opportunity to do so, should be an important factor, among others, in deciding how we remember these complex, flawed, and sometimes great historical figures.

In his email rejoinder to a draft of this post, Professor Hills argued that 'discursive availability' standard sets the bar for moral criticism too low, and that the 'herd morality' standard is more appropriate. He gives the following example:

> "A medical doctor who relies on bleeding in the 18th century is not guilty of malpractice even if there are widely publicized tracts suggesting that the four humors of the blood are mythical (there were, by the way). So too, a moralist is not guilty of malpractice for relying on the weight of their fellow humans' mistaken views to reject outlying arguments that practices like slavery—or, perhaps, the eating of meat—are morally abhorrent."

The parallel is attractive, but ultimately fails. There is a key difference between truths that are amenable to expert authority and truths that are not. Truths about medicine, the natural world, of the occurrence of an event require specialist knowledge of experts or witnesses. In such cases, unless a person has access to superior expertise or information, it is not only morally permissible but may even be morally required to accept the weight of extant mainstream expert opinion (short of having reasons to suspect the

veracity of such opinion). The doctor in the example above is, therefore, fully excusable for relying on bleeding to cure a patient.

Moral truths, on the other hand, are not amenable to determination by any authority. Our notions of personal moral responsibility would become meaningless if they were. It is a defining feature of persons that when faced with moral choices in relation to a given set of non-moral facts, they are capable of choosing correctly without needing expert advice. This is why we should accept the ‘discursive availability’ standard. Being slow to judge requires us to excuse those historical figures who genuinely lacked the opportunity to overcome their moral ignorance. Others should be fair game.