



The Case of the *Rustat* Memorial – Does *Duffield* Pose all the Right Questions?

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INTRODUCTION

Two recent decisions of the Consistory Court have dealt with faculties for the removal of what is now called ‘contested heritage’. In *Re Rustat Memorial, Jesus College, Cambridge*,¹ the faculty sought by Jesus College, Cambridge was refused. In *Re St Peter, Dorchester*² it was granted on terms. As was observed by Ruth Arlow, Chancellor of the Diocese of Salisbury, in the latter case, each such application has to be taken on its own merits:

As with all faculty petitions, contested heritage applications will arise in almost infinitely variable circumstances. There can be no question of a uniform approach to such cases. Each must be decided upon consideration of the unique set of facts applicable to it.³

In reaching their slightly differing conclusion, each court applied the same law, including the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (‘the 2018 Measure’), section 35 of which provides as follows:

A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.

Due regard was had to the statutory guidance on contested heritage, set out in *Contested Heritage in Cathedrals and Church Buildings* (2021) (hereafter

1 *Re Rustat Memorial, Jesus College, Cambridge* [2022] ECC Ely 2.

2 *Re St Peter, Dorchester* [2022] ECC Sal 4.

3 *Ibid*, para 59.

'Guidance'⁴. With regard to case-law, both decisions also involved the careful application of the *Duffield* guidelines, laid down by the Court of Arches in the decision of *Re St Alkmund, Duffield*.⁵ These are as follows:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary's, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.
3. If the answer to question (1) is 'yes', how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.

Given that many if not all of the buildings where contested heritage monuments are to be found are likely to be listed Grade 1 or 2*, it is not surprising that most of the battles will be fought over the balancing of 'public benefit' against 'harm' at stage 5. This balancing exercise reflects section 35 of the 2018 Measure and makes it possible lawfully to prioritise property over people.⁶ I consider below whether this is what the church currently desires in relation to contested heritage, in circumstances where both the church and the society it serves are divided on this issue.

4 *Contested Heritage in Cathedrals and Church Buildings* (2021), available at <https://www.churchofengland.org/sites/default/files/2021-06/Contested_Heritage_in_Cathedrals_and_Churches.pdf>, accessed 17 October 2022. The guidance is issued by the Cathedrals Fabric Commission for England pursuant to its powers under section 3(3)(a) of the Care of Cathedrals Measure 2011, and by the Church Buildings Council pursuant to its powers under section 55(1)(d) of the Dioceses, Mission and Pastoral Measure 2007.

5 *In re St Alkmund, Duffield* [2013] Fam 158, para 87; cf. *Rustat*, para 78.

6 See 'C of E prefers marble to people', James Crockford (Dean of Jesus Chapel), *Church Times*, 22 April 2022 (<https://www.churchtimes.co.uk/articles/2022/22-april/comment/opinion/c-of-e-prefers-marble-to-people>), which expresses a similar view.

THE CHURCH'S STATUTORY GUIDANCE

It may be helpful to begin with some definitions of 'contested heritage'. At section 2b of its *Guidance*, the CBC says this:

Contested heritage is a complex concept. As the Institute of Historic Buildings Conservation states, 'It is in the nature of almost all heritage that it holds different values to different people'. Historic England has defined contested heritage as objects or places that can be seen as 'symbols of injustice and a source of great pain for many people'. For the Church it is of particular importance that our buildings are welcoming to all, and that such symbols of injustice and sources of pain are acknowledged and addressed.

The congregations of our churches and cathedrals, and their local communities, continue to change, bringing different histories and new perspectives to the perception of church heritage. Addressing contested heritage involves considering these as well as more traditional narratives and working towards a more inclusive understanding of church heritage.

Historic England itself defines it thus on its website:

By 'contested heritage' we mean historic objects, structures, buildings or places where the associated stories or meanings have become challenged. The interest in interpretation of our past has never been greater, and when heritage becomes contested, strongly-held views tend to exist on all sides.

In the 2021 case of *Re St Margaret, Rottingdean (No. 2)*,⁷ Mark Hill KC, Chancellor of the Diocese of Chichester, expressed it thus:

The term contested heritage is a somewhat euphemistic expression applied to memorials and other structures associated with individuals from the past whose conduct is considered abhorrent and inimical to contemporary values and, of particular relevance in faculty cases, to Christian theology and standards of behaviour. Most commonly, the issue arises from property memorialising slave traders or erected on the profits of slave trading.

I work with these definitions, although it must be open to doubt whether any one 'story' or 'meaning' associated with such monuments—or, indeed, any single

7 *Re St Margaret, Rottingdean (No 2)* [2021] ECC Chi 1, para 20.

perspective on the worthiness of the persons memorialised—has ever been universally accepted, even amongst Anglicans. Further, as I have written elsewhere,⁸ I struggle to accept the proposition that Christians of an earlier age were in any way incapable of seeing the transatlantic slave trade as ‘utterly abhorrent, and repugnant to all right-thinking people’, to use the characterisation given to it in the *Rustat* decision.⁹ Nevertheless it is important to appreciate that the aim of the *Guidance*:¹⁰

... has been to find ways of mediating discussion that will help churches and cathedrals and their wider communities to develop solutions that will ultimately tackle the issues behind the feelings that contentious memorials evoke. ***It is important to remember that this is not about judging people in the past by the standards of the present***, but about how items of contested heritage and wider issues of under-representation affect our ability to be a Church for all in the 21st century. [Emphasis added.]

At section 2a, however, the *Guidance* also goes on to say:

The effects of enslavement continue to impact the lives of many UK ethnic minority communities to whom, at best, these objects may be reminders of an ‘overcome’ past, a horror from which we celebrate our extrication; ***at worst, for these objects to remain in place with no discussion or interpretation could be taken to imply that the oppression and disenfranchisement they evoke for many in affected communities is socially and theologically acceptable to the Church***. [Emphasis added.]

Deputy Chancellor Hodge KC in *Rustat* had regard to the *Guidance*, as he was bound to do,¹¹ but appears to have given more weight to the *Guidance*’s reluctance to judge a historical figure by the ‘standards of the present’¹² than he did to its concern not to give the impression that ‘the oppression and disenfranchisement [such memorials] evoke for many in affected communities is socially and theologically acceptable to the Church’.¹³

8 A Taylor, ‘False narratives and the Rustat Memorial judgment’ (6 May 2022), available at: <<https://www.fulcrum-anglican.org.uk/articles/false-narratives-and-the-rustat-memorial-judgment/>>, accessed 17 October 2022.

9 *Rustat*, para 6.

10 See the Introduction to *Contested Heritage in Cathedrals and Church Buildings* (2021) (note 4), 7.

11 *Rustat*, para 127.

12 *Contested Heritage in Cathedrals and Churches* 2021 (note 4), 7; and see *Rustat*, para 75, for the submissions of the expert, Professor Goldman, which were accepted by the court at para 124 (Professor Goldman also counselled against ‘judging the past by the standards of the present’).

13 *Contested Heritage in Cathedrals and Churches* 2021 (note 4), para 2a, 11.

Thus, at paragraph 132 of the judgment it was held that:

The College has failed to satisfy me that the relocation of this memorial to an exhibition space where it can be contextualised is the only, or indeed the most appropriate, means of addressing the difficulties to which the continued presence of the Rustat memorial in the College Chapel is said to give rise. . . The Dean accepted that the College's students were not stupid and that they were confronted with difficult issues with which they had to wrestle on a daily basis. They should be afforded the opportunity to approach, and view, the memorial to Rustat [*in situ*] on a sound factual basis.

Furthermore, in the following paragraph of the judgment, freestanding notice boards and moveable displays were offered as potential educative solutions.

As a consequence, it appears not only that the Rustat memorial is socially and theologically acceptable to the Church, but that the College—not subject to the jurisdiction of the Consistory Court—should make an effort to change the minds of those who find it otherwise.

Similar observations can be made in relation to the Gordon Memorial in *Re St Peter, Dorchester*, given that it is to be replaced by a plaque inside the church:

reflecting *verbatim* the inscription on the current memorial, excluding the offensive wording and including the Horace quote '*Omnes una manet Nox*' as a sobering reminder to us all.¹⁴

Whilst this arguably strikes a balance between care and conservation on the one hand and mission and worship on the other, it does still leave a memorial to a slave owner in place, recording his 'bravery' and 'humanity' in putting down Tacky's Revolt (a slave rebellion in the British Colony of Jamaica in the 1760s), qualities which must both be open to serious doubt. And, by contrast with Tobias Rustat who did at least put his ill-gotten gains to worthwhile use, no good is known of Dr Gordon other than that he was less cruel than other slave owners. The fact remains that when formerly free people actively demanded that they be free once more, his answer was, 'No'.

WOKE CULTURE

From the perspective of black people, to whose pastoral wellbeing paragraph 2a of the statutory *Guidance* is addressed, both outcomes are disappointing. In *Rustat* in particular, the objectors' arguments and, accordingly, the judgment,

¹⁴ See note 18, to para 70(ii) of the judgment.

appear to work from a definition of ‘woke’ which we do not recognise. Definitions will vary,¹⁵ but the version now apparently accepted in the mainstream media is the one recently analysed as follows, by Professor David Starkey:¹⁶

... the resemblance between woke and the Reformation goes beyond means to content. Both begin in universities. Both have a strong streak of solipsism ... Both are consciously elite movements: the ‘elect’ then and the woke now.

This is news to black people.

The ‘woke’ we know is, in fact, a grassroots movement, originating amongst some of the poorest people in America—that is, the very antithesis of an educated elite. When used correctly, ‘woke’ describes black people who know not just that they are disadvantaged in society, but have *woken up* to why this is so and are thus equipped to do something about it. They may be contrasted with, for example, the unawoken black readers of *Ebony* magazine who, in March 1969, threatened to withdraw their subscriptions when it put a black Jesus on its cover and ran a piece entitled: *The Quest for a Black Christ*.

‘Woke’ black people see beyond the symptoms of racism to the roots of the disease. In particular for present purposes, they find the version of Christianity preached to them by enslavers and colonisers to be part of the problem.

The vast disconnect between the true definition of ‘woke’ and the mainstream characterisation of it reflects a divide within society that black people would consider structural. Even our words are not our own; they are liable to be seized upon, de-contextualised, re-fashioned and then used against us. Academia and the media have arrived at a definition of ‘woke’ which supplants our own and which they prefer. Presumably, they believe black people are wrong about the true meaning of ‘woke’.

This is one of the many reasons why on an issue, such as slavery, which forms part of a bitterly contested culture war, I contend that it is important for both law and religion to stand to one side or rise above the arguments. These arguments have various groups of white people locked in combat,¹⁷ whilst ignoring entirely

15 See, for example, this online dictionary definition: <<https://www.dictionary.com/e/slang/woke/>>; and this analysis: <<https://www.vice.com/en/article/kz445w/how-woke-culture-took-over-the-2010s>>, which tends to support my view that the term has been hijacked (both accessed 17 October 2022).

16 D Starkey, ‘From Worms to Woke’, *The Critic Magazine*, June 2022, available at: <https://thecritic.co.uk/issues/june-2022/from-worms-to-woke/>>, accessed 17 October 2022.

17 Including the ‘well-funded outside groups’ referred to in the First Biannual Report of the Archbishops’ Commission for Racial Justice (Spring 2022) at 23, with regard to the objectors in

the question of what is due to the *black* people—their fellow-Christians—who ought to be at the heart of the debate.

However, in *Rustat*, with particular regard to the fifth element of the *Duffield* guidelines, woke and anti-woke arguments as to pastoral concern and public benefit seem to have been accepted as valid legal arguments. The position was somewhat different with the Gordon Memorial in *Re St Peter, Dorchester*. Nevertheless, the outcome in that case still focuses on the removal of a now-offensive term for black people from a replacement plaque, reducing the size and impact of the memorial. Putting an end to name-calling is a good start, but the extent to which it actually addresses any of the social justice issues affecting black people's lives is moot.

MISSION, WORSHIP AND THE MIND OF THE CHURCH

Not so long ago, I asked a Reader in our diocese: 'Why are you not ashamed [of this country's history of slavery and colonialism]?' I put the question seriously and received some thoughtful answers. The first was: 'We never really think about it'. This is not surprising. We have other work to do and dwelling on something which, for many, is in the past would be a distraction from today's problems—possibly an indulgence, even. There are so many pressing social and spiritual issues on which the church and its members can properly focus.

The second answer I received—on the basis that the Reader was 'just thinking about it now'—was 'I suppose it's because we won'. This makes a kind of sense, too. I grew up in a Britain where children gleefully tow-row-rowed for the British Grenadiers and enjoyed films which celebrated the conquests of the British Empire. I particularly remember watching *The Four Feathers* (1939), which opens with this rousing declaration:

In 1885, the rebellious army of cruel dervishes enslaved and killed many thousands of defenceless natives in the Sudan, then laid siege to Khartoum. The scanty garrison's heroic commander, General Gordon, appealed for help from England—but no help reached him.

The adjectives tell the tale: *rebellious, cruel, defenceless, scanty, heroic*. It went without saying that the British were doing the right thing and that, if the natives didn't accept this, that was clear evidence that they were savages or benighted or, in the case of the Mahdi, motivated by a lunatic religious fanaticism utterly at odds with Christianity.

the *Rustat* case; available at: <<https://www.churchofengland.org/sites/default/files/2022-06/ACRJ%20First%20Report%20-%20Spring%2022.pdf>>, accessed 20 September 2022.

The third answer to my question was also interesting. The Reader came from a proud working-class background and told me that, if anything, Britain's workers identified with the slaves rather than their masters. They regarded the entire enterprise of slavery and colonialism as yet one more upper-class endeavour, in which the British poor, as foot-soldiers or press-ganged sailors, were sacrificed just as much as the people who were enslaved. This reminded me of the scene in Barry Unsworth's *Sacred Hunger*, where the brutalised sailors derive great pleasure from 'dancing the slaves', enjoying the agony caused by the slaves' shackles as they were forced to dance or face being flogged or thrown overboard.

Ultimately, the answer to my question was: we are not ashamed because we weren't part of it. This sums up much of the attitude in the church and our wider society today. People simply feel that slavery is a historical event which has nothing to do with them, even though research at University College London has demonstrated that, at abolition, there were no fewer than 40,000 slave-owners in mainland Britain.¹⁸ We were, very much, a part of it.

There are, nevertheless, many Anglicans who are ashamed. They wish to dissociate themselves from, even atone for, a past built on some exceptionally cruel forms of exploitation—or, at the very least, they would like their church to stop glorifying them. British society as a whole, however, does not yet appear ready to reckon with this aspect of its past, let alone to concede that it still has consequences in the present.

A recent example is the speech of Prince William, a future Governor of the Church of England, during his state visit to Jamaica in March 2022. He expressed 'profound sorrow' for the 'appalling atrocity' of slavery, going on to state that:¹⁹

Slavery was abhorrent and it never should have happened. I strongly agree with my father, the Prince of Wales, who said in Barbados last year that the appalling atrocity of slavery forever stains our history... While the pain runs deep, Jamaica continues to forge its future with determination, courage and fortitude.

The tone of the speech is comparable to that of the *Rustat* judgment, in its utter and unequivocal condemnation of enslavement matched, nevertheless, by its resolute refusal to acknowledge that any of its sequelae are still infecting today's body politic, let alone the Body of Christ. It also sets slavery clearly in

18 See the UCL website: <<https://www.ucl.ac.uk/lbs/>>: 'Colonial slavery shaped modern Britain and we all still live with its legacies. The slave-owners were one very important means by which the fruits of slavery were transmitted to metropolitan Britain', and its online Encyclopaedia of British Slave-ownership: <<https://www.ucl.ac.uk/lbs/project/details/>>, both accessed 19 September 2022.

19 'Prince William expresses profound sorrow for slavery', *The Gleaner*, 23 March 2022, available at: <<https://jamaica-gleaner.com/article/lead-stories/20220323/full-text-prince-william-expresses-profound-sorrow-slavery>>, accessed 20 September 2022.

the past—as in, over and done with. Even paragraph 2a of the CBC *Guidance*, set out above, refers to ‘reminders of an “overcome” past, a horror from which we celebrate our extrication’ can be read in this way.

Many people, not just the Prince, are unable or unwilling to accept just what a recent memory slavery is for many black Britons, or that its ramifications are still powerful forces in their present lives, playing a part in current social justice issues such as maternal death rates, the strip-searching of children, unemployment, the ‘hostile environment’/the Windrush scandal and the criminalisation of drill music. For us, it is not so much the ‘pain’ which ‘runs deep’, to quote the Prince; it is the prejudice and its consequences.

Even amongst Christians, there is still little talk of reparations, let alone on the Zacchaeus scale. Leaving Black Lives Matter and critical race theory entirely to one side, no-one seems to have read James 5:4²⁰ or Jeremiah 22:13,²¹ or focused on the implications for Christian nations of having built their prosperity on the backs of centuries of unpaid (and cruelly treated) labour.

The *Sewell Report*, of March 2021,²² was another disappointing backdrop for those anticipating a new policy direction on racial justice. There was such a furore about this Report that it seems to have been quietly shelved.²³ But there must be many people, some of them Anglicans no doubt, who felt that the Report was right to deprecate the use of phrases like ‘institutional racism’ and would support its key conclusion that the ‘ethnic disparities’ it investigated are generally due to something other than racism. They will have welcomed the outcome in *Rustat* and *Re St Peter, Dorchester*.

The society in which the Church operates also has what Chancellor Arlow describes as:²⁴

... a genuine and understandable fear that our national heritage will be harmed by the removal of the memorial from its original location and that this application is an overreaction to recent political pressures.

The possibility of history being erased is also addressed in the judgment in *St Margaret, Rottingdean*.²⁵

20 ‘Listen! The wages of the labourers who mowed your fields, which you kept back by fraud, cry out, and the cries of the harvesters have reached the ears of the Lord of hosts’ (NRSVA).

21 ‘Woe to him who builds his house by unrighteousness, and his upper rooms by injustice; who makes his neighbours work for nothing, and does not give them their wages’ (NRSVA).

22 *Commission on Race and Ethnic Disparities: The Report* (March 2021), available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974507/20210331_-_CRED_Report_-_FINAL_-_Web_Accessible.pdf>, accessed 19 September 2022.

23 Although two of its authors, Dr Tony Sewell and Dr Dambisa Moyo, are to be rewarded with life peerages (<https://www.gov.uk/government/news/political-peerages-2022>).

24 *Re St Peter, Dorchester* [2022] ECC Sal 4 at para 49.

25 *Re St Margaret, Rottingdean* (No. 2) [2021] ECC Chi 1 see paras 30, 45, 47 and 52.

My personal view is that fellow-Christians such as Rustat and Gordon should certainly not be forgotten, but that what they need to be remembered for is their iniquities. They are as much members of God's family as John Newton and William Wilberforce, but they should not be memorialised in the same way. Nor can their memorials be considered comparable to other forms of heritage, such as rood screens or depictions of martyred saints,²⁶ which record and remind us of holiness and sacrifice.

THE TASK OF THE CONSISTORY COURT

It is against this divided social background that the Consistory Court has to exercise its judgment on contested heritage. The task of care and conservation is made no easier if having 'due regard to the role of a church as a local centre of worship and mission' under section 35 of the 2018 Measure, means that it must express the mind of the Church on a very divisive issue. In its response to the *Rustat* judgment, the Spring 2022 Report of the Archbishops' Commission for Racial Justice, addressed this concern, criticising both the Consistory Court process (as did the Master of Jesus College) and the 'noticeable lack of ethnic diversity among the participants in this case'. The section concludes:²⁷

There is continuing racial injustice here which the Church of England must put a stop to and we will return to this subject in future reports to monitor its progress in so doing.

Care and conservation

For what it is worth, my respectful opinion is that the judgments reached in both *Rustat* and *St Peter's, Dorchester* were lawful within the scope of the *Duffield* guidelines, as regards care and conservation. It is because of this, I argue, that the guidelines could be considered to be unfit for purpose where the heritage concerned is contested heritage.

Whilst the Rustat Memorial will remain *in situ*, the Gordon Memorial will be removed, replaced by a plaque and preserved at the Dorset County Museum, whilst remaining subject to the faculty jurisdiction.²⁸

It also seems that, as a matter of the applicable conservation law, the question posed by the Dean of Jesus Chapel in *Rustat* was answered correctly. He wanted to know: If you cannot get a faculty to remove a memorial like Rustat's, what can you get a faculty for? The Deputy Chancellor said this:²⁹

²⁶ See *Rustat* at para 9.

²⁷ *The Archbishops' Commission for Racial Justice* (note 17), 24.

²⁸ *Re St Peter, Dorchester*, paras 67 and 71.

²⁹ *Rustat*, para 131.

I would venture to respond (without in any way wishing to pre-judge the outcome of any actual petition or to suggest that these should be regarded as necessary qualifications, as opposed to possible sufficient conditions, for removal): a memorial of no intrinsic artistic or historic merit, contained within an unlisted church building, commemorating, and glorifying, a person who was actively engaged in the transport and ill-treatment of enslaved people.

As an application of the *Duffield* guidelines, this cannot be faulted. The adverse effect on mission and worship would easily outweigh the 'harm', if any, done to a church building of no architectural significance, by a monument of no great aesthetic value. The 'public benefit' would be straightforward to assess.

Nevertheless, given that the slave trade was abolished in the mid-nineteenth century, it is unlikely that any such unprepossessing monument would be located anywhere other than a listed building, as the Gordon Memorial case perhaps illustrates. Furthermore, it is difficult to see how Rustat himself failed to fall into the category of:³⁰

a person who was actively engaged in the transport and ill-treatment of enslaved people.

If a monument to him was not a sufficient impediment to mission and worship to justify granting the faculty, why should it be so for another enslaver in a church of humbler architectural merit? If 'anti-woke' arguments as to public benefit prevailed in *Rustat*, why should they not do so in a non-listed church?

Since applying the *Duffield* guidelines lawfully produces what I regard as problematic outcomes, the answer might lie in revising the statutory *Guidance* to be more prescriptive about what the church expects of its courts. Some form of revision appears to be under way already. It is worth noting that the Spring Report of the Archbishops' Commission on Racial Justice states the following:³¹

We would reiterate the emphasis in the Church's Guidance on the distinctive questions that arise about such monuments and artifacts in a church context quite distinct from issues of heritage and planning, and the imperative that the focus should be on the impact of such monuments on worshippers and on the missional obligatory call to transform unjust structures. We believe, however, that this guidance needs to be urgently reviewed and strengthened in the light of the

³⁰ Ibid.

³¹ *The Archbishops' Commission for Racial Justice* (note 17), at 21.

experience of its application by church authorities and the Consistory Court system.

I have already considered this aspect in a more specifically religious context,³² advocating abandoning the concept of forgiveness, at least as expounded in the *Guidance*, or revising it to be more reflective of scripture, and replacing or supplementing it with a theology of wealth, which could be applied to all so-called benefactors, not just enslavers. This, I feel, would enable the church and its laws to take a longer view of good works which may turn out to be tainted and avoid being slated in the press as ‘woke’, if we ‘exalt the humble and meek’ and/or ‘send the rich empty away’.

The problem, after all, is not limited to slave traders and the church is not the only institution wrestling with it. One has only to consider the number of establishments currently distancing themselves from the Sacklers—a family whose fortune was almost solely derived from another abhorrent trade in death and misery, namely opioids. Tobias Rustat is not the only ‘philanthropist’ found not, in fact, to have been a lover of mankind.

It should, however, be noted that the court’s conclusion was that he was, indeed, a good man, worthy of a memorial (even if he commissioned it himself), but for his unfortunate, but admittedly active, participation in two of King Charles II’s slave-trading ventures.

The goodness of Dr Gordon is less easy to discern. It might be thought that his direct involvement in slave-owning and forcing the rebels back into slavery (albeit on slightly less inhumane terms) would bring him squarely within the scope of the definition suggested in *Rustat*. Nevertheless, the degree of harm to a listed building and other considerations under *Duffield* made it possible even for a man such as this to retain his place of recognition inside a church building.

The weight to be given to pastoral concerns

In accordance with *Duffield*, it is necessary for a petitioner seeking a faculty to put forward sufficient evidence to rebut the presumption that, in the absence of good reason, change should not be permitted. As the judgment puts it:³³

... the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted.

However, somewhat dismissively, one might think, the *Rustat* judgment also says: ‘The College’s sole argument for the removal of the memorial is a

³² Taylor (note 8).

³³ *Rustat*, para 79.

pastoral one' and considered that the pastoral problems could be overcome by using the Rustat memorial 'as an educational, religious and moral opportunity'.

In *St Peter, Dorchester*, a similar approach to education was possible. People will still learn of Tacky's Revolt—an event of which many will never have heard—from reading the plaque.³⁴ They will also be able to go the museum next door for further enlightenment. The question remains, however, whether a church is the appropriate place to teach people about slavery. A church is not a museum. What makes it an appropriate setting for this type of education?

The task of the church is, surely, to bring people to Christ and sustain them in their faith, not to enable the congregation to understand the moral complexities of the slave trade and its participants. Furthermore, a memorial is not necessarily comparable to a headstone and it is morally and scripturally problematic that, in the cases of Rustat and Gordon, both memorials celebrate their participation in the slave trade; explicitly in the case of Gordon, by implication in the case of Rustat.

If the court is to make decisions on contested heritage which align with the wishes and policies of the church, it cannot interfere overmuch with the nature and scope of the church's pastoral work. The focus, in accordance with *Duffield*, is to see if the harm caused by removing a notable monument is outweighed by the public benefit of the church finally being able to witness without honouring the memory of a slave trader.

Also, however, the church itself could be more explicit. *Duffield* enables the Consistory Court to prioritise property over people, if the building is listed. If the mind of the Church is that the living stones should now be prioritised, it should perhaps make its wishes plain. The evidence put forward by the College in *Rustat* was, arguably, of insufficient weight to rebut the presumption against change to a listed building. Clearer statutory guidance might have helped it over the line.

Depending on the approach taken, this might make it easier for the Consistory Court to remove monuments, however beautiful, if they are monuments to wealth, vanity or cruelty and/or represent an impediment to pastoral and missional work.

CONCLUSION

The problem of memorials and their interpretation is not going away any time soon. History is a living discipline, susceptible to change through discovery, re-discovery and re-interpretation.³⁵ It is, by definition, partial, both in the sense of being 'incomplete' and also being 'one-sided' or 'subjective'. To quote Chinua Achebe:

34 The judgment itself sets out the factual background at paras 36 to 40.

35 See further on this: J Crockford, 'Contested Memorials and the Discipleship of Christian Memory' (June 2022), available at: <<https://www.tandfonline.com/doi/full/10.1080/1474225X.2022.2088666>>, accessed 17 October 2022.

There is that great proverb—until the lions have their own historians, the history of the hunt will always glorify the hunter.³⁶

As a result, historical narratives change over time, quite naturally. Nothing is set in stone, not even a memorial to a man like Rustat, who may have done ‘good’ things despite being an investor and active participant in an evil and abhorrent trade,³⁷ let alone a man like Gordon of whom no special goodness is recorded. Previous conclusions may well have to be abandoned. It may be possible to make a legal distinction between being a slaver and making money out of slavery. It is difficult to see how a moral distinction can be made. Absolutes have become nuanced.

We are in a very poor position to draw the appropriate inferences from the conduct of historical persons, including Tobias Rustat and John Gordon. In particular, we can only guess at their motives. If, for the purposes of assessing their impact on current mission and worship, we cannot avoid passing judgment, that judgment would, I believe, be better based on scripture than on partial historical fact, which risks being both incomplete and biased.

If the church, as a body, is in the process of repenting (as in ‘turning away from’) its involvement in the misery of millions of enslaved Africans—and its continuing consequences for their descendants in the pews today—it needs to ensure that it gives appropriate guidance to its courts. This, after all, is what the Ecclesiastical Exemption is for: to enable planning considerations to be subject to the primary purpose of a place of worship.

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36 An African proverb, known to the Igbo of Nigeria, the Ewe of Ghana, as well as in Kenya and Zimbabwe (<<http://thelionandthehunter.org/about-this-project/>>).

37 Although it seems clear that Rustat’s donations to Jesus College were not slave-derived, it remains true that, at the time he made them, he was an investor in slavery and was, no doubt, hoping for a return on his investment. By the time his memorial was erected, he had indeed received such a return, having profited from the sale of his shares.