Rebranding the past

What's in a name? John Gould on when historical ideals fall out of step with the modern day

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'That which we call a rose
By any other name would smell as sweet'

Barristers have always practised alone. Once upon a time, the only collective identity required was that provided by the name of the head of chambers or their address. A grand head of chambers might produce some reflected glory for those toiling away below, but generally addresses provided more continuity and allowed even the slowest-witted solicitor to avoid becoming muddled about where to send their briefs.

Addresses have always seemed like a safe, if somewhat unimaginative, bet. They tend to include words like 'new' or 'old', reference uncontroversial building materials such as stone or brick, pick up institutional references like the King's Bench or the Crown Office, or deploy architectural features such as fountains, pumps or gardens. Outside of the Inns, barristers might have to make do with everyday addresses.

Slowly, however, the fact that barristers undertaking similar work tended to flock together led to thoughts of chambers' identity. Things started modestly: carpets and curtains were introduced and toilets refurbished by the most progressive chambers; meetings in paper-crammed rooms gave way to conference rooms with beverages and biscuits; professional administrators began to appear… and then, inevitably, came branding.

Names like the Chambers of Anthony Aloysius St John Hancock QC wouldn't seem to convey all that might be hoped. 23 Railway Cuttings Chambers wouldn't be good enough either, particularly if there were other chambers at numbers 1 to 22. What was needed was a simple and memorable name which conveyed the brand and values of the set. Ideally it might involve the name of some ennobled judge with a standard text or two to his name to add lustre. Yet change does not come easily to lawyers. Sets were becoming quasi-entities, but they were, and are, by no means homogenous. Even with professional help, choosing a name that suits everyone is hard.

It probably seemed best to choose a name which not only contained the address likely to be favoured by traditionalists, but also a reference to some distantly deceased judge selected and revered by the long departed luminaries of an Inn of Court.

Which, by a roundabout route, brings me to Philip Yorke, 1st Earl of Hardwicke (1690–1764), sometime Attorney General and Lord High Chancellor of Great Britain (pictured).Philip Yorke was extremely successful at an early age, becoming, as a barrister of four years standing and one year after election to Parliament, Solicitor General and a knight of the realm at the age of 30. He had powerful and influential patrons who made sure that his undoubted talents as a lawyer did not go to waste.

His career as a lawyer, judge and politician was full of event. How are we now to weigh him in the moral balance as a lawyer and a person? His promotion of laws to allow the naturalisation of Jews and to prevent abusive clandestine marriages may seem to align with modern standards; his development of the law and the way the English system came to operate seems important; his treatment of Scottish Jacobites was either politically astute or nasty and vindictive; he lived in an age of political incompetence and corruption. He does not seem to be either a particularly good or particularly bad person of his time.

From 19 July, the well-known set of chambers established in Hardwicke Building will become the chambers previously known as Hardwicke Chambers. They have 'proudly' announced that thereafter they will be operating as Gatehouse Chambers, having been alerted by legal bloggers, after some delay, to the fact that Lord Hardwicke was the joint author of an objectionable opinion in 1729.

Joint head of chambers, Brie Stevens-Hoare QC, explained the decision in a chambers statement: 'The discovery of the provenance of our business' name did not sit comfortably with our values as an organisation, or the inclusive and diverse nature of our people and our clients. We have spent many years building up a reputation for excellence, innovation and diversity. We are proud to move forwards with our new name which accords with who we are as an organisation.'

The name change takes place at the same time as a move to new premises at 1 Lady Hale Gate, Gray's Inn, and so the revelation of the doubtful nomenclature was well-timed to both reaffirm and signal values and maintain a traditional linkage between name and address.

What, you may ask, was the impermissible opinion held by Mr Yorke, later to be Hardwicke? The answer requires a little background.

The application of English law to African slaves in the 18th and early 19th centuries was problematic (see 'African Slaves and English Law', VCD Mtubani, *Pula: Botswana Journal of African Studies* 3 (2): 71–75, 72). Until the position was resolved in 1807 by the Abolition Act, the courts struggled to reconcile the common law and statutes such as the Habeas Corpus Act 1679 with the Navigation Acts protecting English trade and

the application of English law in the colonies.

In *Butts v Penny* (1677) 83 ER 518 it was found that there could be property in Africans. In 1701, Chief Justice Holt ruled that slavery was contrary to common law, following up in 1706 in *Smith v Gould* (1706) 92 ER 338 ruling that 'by common law no man can have a property in another'. It is said, however, that no one took any notice and slaves continued to be bought and sold in England.

Those opposed to slavery argued that *Butts v Penny* only applied to non-Christians, and that baptism meant freedom. Slave owners, alarmed as campaigners drummed up baptisms, applied for the joint opinion of the then Attorney General and Solicitor General, Messrs Yorke and Talbot. It is said that the opinion was expressed after dinner in Lincoln's Inn Hall, but was nevertheless a formal pronouncement under the authority of those offices.

The opinion appears to have been expressed very briefly. They were: '… of the Opinion, that a Slave by coming from the West-Indies to Great Britain, doth not become free, and that his Master's Property or Right in him is not thereby determined or varied: And that Baptism doth not bestow freedom on him, nor make any Alterations in his Temporal Condition in these Kingdoms'.

Mr Yorke's opinion was that a person who was a slave in the West Indies did not become free upon either arrival in England or through baptism. I do not know whether his view of the law at the time was correct, or even arguably correct. Reported criticism of the opinion appears to suggest that the absence of cited authorities and its subsequent use by slave owners allows a number of rather un-lawyerly inferences to be drawn. Perhaps, for all I know, it was not his actual opinion of the law but cynically produced to serve the interests of slave owners. If it was his actual legal opinion, then it might be considered odd for barristers today to excoriate him for expressing it.

If one were looking for a reason to condemn him, his judgment 20 years later *in Pearne v Lisle* (1749) 27 ER 47 seems much more fertile ground. He overturned *Smith v Gould* and held that a slave 'is as much property as any other thing'. His judgment includes other words which are so objectionable to modern ears that I am unwilling to repeat them but VCD Mtubani characterises them well: 'This ruling, cold, pitiless and shocking as it may be, came closest to describing the utter dehumanisation of the African slave. It gave a much clearer and more realistic picture of the white man's view of the African in the eighteenth century than the more moral view expressed in the 1706 ruling for example. African slaves were regarded and treated as chattels and property, whatever Chief Justice Holt and other men of liberal inclination might wish or declare. English law, despite the Habeas Corpus Act, did not give protection to the black slave. In the fundamental Conflict between the Habeas Corpus Act and the Navigation Acts, the latter won.

'Even where humanity seemed to have won, as in the case of *Smith v Gould*, such victory was never realised in practice. The reality is that each ruling seemed to interest the lawyers rather than change the condition of the black slaves.'

Shifting symbolism

Which brings us back to names. Individuals are rarely memorialised, whether by the naming of buildings or institutions or by the erection of statues, on the basis of a holistic view of their moral worth. Memorials are created on the basis of people as symbols of something which has meaning to those doing the naming and with which they wish to be associated. Military glory, holding offices of state, scientific discovery, philanthropy and titles have all led to statutes and naming. The name is but a symbol of something by association. If I call my research facility after Alexander Fleming, I am associating myself with the public good done by the discovery of penicillin rather than his laboratory discipline.

A problem then arises if the name Fleming is subsequently branded as a symbol of something else. Am I to continue to use it as the symbol I intended, or must I, by continuing to use the name, be inevitably associated with that other thing which I deplore? Who is to determine which symbolic meaning is correct?

It is questionable whether distantly historical figures should ever be used as symbols of particular modern attributes or values. It is doubtful that whatever it is they are thought to stand for has much application to contemporary values or virtues. If, given when he lived, you cannot say meaningfully that Lord Hardwicke was a racist, I'm not sure that you can say he was an exemplary lawyer either. He can, however, be a symbol of something. Once, he was a symbol of something thought to be worth associating with, perhaps high office or cleverness or success; and now he has been appropriated as a symbol of something else, something which is bad.

The chambers previously known as Hardwicke are right to change their name for a whole host of reasons, not least of which is that they obviously knew little or nothing about him and had no intention of being symbolically associated with anything he represented in the first place. The rightness is not, however, because of Hardwicke's unproven lack of moral worth by the standards of the 18th century, but because he has been digitally disentombed as a symbol of something wrong and very relevant to the here and now. Something with which no one would wish to associate themselves.

He has, as they say, been rebranded. NLJ

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