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ARTICLES

THE BEGINNING OF WISDOM IS TO CALL THINGS BY THEIR RIGHT NAMES*

KIF AUGUSTINE-ADAMS**

Lamenting a woman who had kept her own name, surely the cause of her current divorce, a gentle friend with spidery hands admonished me: "I hope you love your husband enough when you marry to take his name." A student's seventeen-year old sister burst into tears when the student considered keeping her name. "You don't really love Richard, do you?" the girl sobbed. A neighbor found herself identified as "one of those women," as if keeping her name was tantamount to prostitution.

When I recently moved into a new neighborhood, the first woman I met, a community leader, balked at calling me by anything but my husband's surname. Every time she introduced me, she stumbled, before rushing ahead with just my husband's name. When I asked her to use both last names, she stated defiantly, "I just don't think the women around here will feel comfortable with that." A colleague more affectionately calls me "the woman with too many names."

I. INTRODUCTION

Naming practices reflect conceptions of individuality, equality, family and community that are fundamental to identity. Social custom

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* Chinese Proverb.

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and tradition define naming practices and thereby set certain community standards and boundaries. Law may also positively articulate particular conceptions of individuality, family and community through constraints on naming choices. Anthropologists and sociologists have long studied how naming practices elucidate the structure and values of a particular society.[1] Much research exists on how the selection of children's names reflects family structures, kinship ties and cultural values. For example, in a number of cultures, a child's surname communicates his or her parents' compliance with community sexual mores. A child bearing her father's surname indicates parental respect for those mores (legitimacy), while a child bearing her mother's surname shows disregard (illegitimacy).[2] Little research, however, has been done on the social meaning of women's naming choices.[3]

As names may be linguistic correlates of social structure,[4] women's naming options are particularly instructive in the context of feminist

1. In the voluminous literature, see, for example, CLAUDE LÉVI-STRAUSS, THE SAVAGE MIND (1966); George A. Collier & Victoria R. Bricker, *Nicknames and Social Structure in Zinacantan*, 72 AM. ANTHROPOLOGIST 289 (1970); Nathan Miller, *Some Aspects of the Name in Culture-History*, 32 AM. J. SOC. 585 (1927); Rodney Needham, *The System of Teknonyms and Death-Names of the Penan*, 10 SW. J. ANTHROPOLOGY 416 (1954); Alcida R. Ramos, *How the Sanumá Acquire Their Names*, 13 ETHNOLOGY 171 (1974).

2. *See* UNA STANNARD, MRS. MAN 233-34, 338 (1977); Richard Breen, *Naming Practices in Western Ireland*, 17 MAN 701, 703 (1982) (noting that at baptism a legitimate child was given the father's surname, an illegitimate child the mother's surname); Daniel J. Crowley, *Naming Customs in St. Lucia*, 5 SOC. & ECON. STUD. 87, 88 (1956) (recognizing that Catholic clergy in St. Lucia baptize illegitimate children on a different day, do not play the church-bell concert, and use the mother's surname rather than the father's on the baptismal certificate although the secular community itself does not stigmatize illegitimacy); *see also* HERBERT G. GUTMAN, THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925 (1976) (examining the Black family before and after slavery, including naming practices); DARRETT B. & ANITA H. RUTMAN, A PLACE IN TIME: EXPLICATUS 83-106 (1984) (looking at children's naming practices to reconstitute colonial family structure); Daniel Scott Smith, *Child-Naming Practices as Cultural and Familial Indicators*, 32 LOC. POPULATION STUD. 17 (1984) (identifying children's first names as quantitative indicators of family relationships in England and colonial North America); Edward H. Tebbenhoff, *Tacit Rules and Hidden Family Structures: Naming Practices and Godparentage in Schenectady, New York 1680-1800*, 18 J. SOC. HIST. 567 (1985) (discussing naming practices in the predominantly Dutch community of Schenectady).

3. *See* Laurie Scheuble & David R. Johnson, *Marital Name Change: Plans and Attitudes of College Students*, 55 J. MARRIAGE & FAM. 747, 747 (1993). Scheuble's and Johnson's research forms the basis for further study regarding why women make the surname choices they do. *See also* RICHARD D. ALFORD, NAMING AND IDENTITY: A CROSS-CULTURAL STUDY OF PERSONAL NAMING PRACTICES 88 (1988) (identifying a single sociocultural variable which correlates with female name change at marriage—name changes were more likely in technologically complex societies).

4. *See* John Bregenzer, *Naming Practices in South America*, 35 J. MINN. ACAD. OF SCI. 47 (1968).

legal thought. Across cultures, such options at marriage, both social and legal, reveal the diversity of meanings that attach to naming practices. More specifically, divergent naming practices and choices in various cultures confront essentialism in feminist legal thought—the assumption of a universal women's experience, of natural or inherent principles underlying the law, or the reduction of social relations to a single continuum of gender issues.[5] Naming practices argue against essentialist analysis of any individual choice or community practice: what is patriarchal or privileged in one culture may be feminist in another; what marks family solidarity in the United States may communicate incest in Peru, Korea or among the Hmong.

Tension over women's naming choices may not be as dramatic or as obviously problematic for women, their communities, or feminist legal thought as issues related to employment, pornography, human rights and reproduction. Naming practices emphasize, however, what I find of greatest value in feminism: that women have choices, that women empower themselves in their choices and with respect to the values and cultures they cherish. Through identification of naming practices and concomitant social meaning, this Article encourages recognition of alternative and multiple social realities and seeks to foster nonessentialism both in feminist thought and in approaches to social change.[6]

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5. *See* KATHARINE T. BARTLETT, GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY 871-72 (1993); FEMINIST LEGAL THEORY: FOUNDATIONS 335 (D. Kelly Weisberg ed., 1993). Many scholars have addressed issues of essentialism in feminist legal thought; see, for example, JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY 1-3 (1990); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Deborah K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of A Black Feminist Ideology*, 14 SIGNS 42 (1988); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988); Jennifer Nedelsky, *The Challenges of Multiplicity*, 89 MICH. L. REV. 1591 (1991). Other scholars have defended their work against essentialism; see, for example, Beatrice A. Cameron, *Nametaking: A Model for Feminist Identity*, 6 WIS. WOMEN'S L.J. 141 (1991); Catharine A. MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991).

6. See Mark Cammack, Lawrence A. Young & Tim Heaton, *Legislating Social Change in an Islamic Society—Indonesia's Marriage Law*, 44 AM. J. COMP. L. 45, 72 (1996), for their discussion of how law may enable individuals to imagine alternative social realities and thus affect social change. Through their research on the Indonesian 1975 marriage law, Cammack, Young, and Heaton argue that the Indonesian government has been unable "to utilize the legal apparatus to directly alter marriage practices in the face of deeply held religious convictions." *Id.* Nonetheless, the law and other state resources "enable the state to undermine and reshape assumptions about appropriate marriage practices grounded in religion." *Id.* at 73. Specifically, the 1975 marriage law has enabled "people to imagine alternative social realities" by contributing to "the destabilization of institutionalized beliefs regarding parental authority and female autonomy" which in the long term may contribute to "achievement of the government's social

Part II identifies women's changing legal opportunities to name themselves in the United States and women's responses to those legal changes in actual practice. Part III briefly compares legal constraints and opportunities in a number of other countries, and accompanying practices. Legal constraints aside, Part IV explores, across various cultures, the social meaning of surnames generally and women's names specifically with respect to family and individuality, religious affiliation, privilege, ethnicity and nationalism. Part V identifies practical implications of both recognizing and failing to recognize diverse naming practices. Part VI concludes with implications for feminist legal thought and essentialism.

II. UNITED STATES

A. LEGAL CONSTRAINTS

Historically, various courts, government entities and treatises in the United States legally assigned a married woman her husband's surname under the common law and otherwise.[7] For example, by statute, Hawaii required married women to "adopt the names of their husbands as a family name."[8] In Massachusetts, a 1926 note to a divorce

reform objectives." *Id.* at 72. For a recent discussion of the limitations of law in creating alternative social realities, see Jean Wegman Burns, *Horizontal Jurisprudence and Sex Discrimination*, 49 HASTINGS L.J. (forthcoming 1998).

7. *See, e.g.*, Forbush v. Wallace, 341 F. Supp. 217, 221 (N.D. Ala. 1971), *aff'd per curiam*, 405 U.S. 970 (1972) (noting Alabama's adoption of a common law rule that the wife takes the husband's surname at marriage); *In re* Kayaloff, 9 F. Supp. 176 (S.D.N.Y. 1934) (refusing to naturalize a woman under her maiden name); 19 Comp. Gen. 203 (1939, A-84336) (allowing married woman to be paid in her own name but maintaining that her legal name was her husband's); 4 Comp. Gen. 165 (1924, A-4147) (requiring married female Federal government employees to use their husbands' surnames on the payroll); People *ex rel.* Rago v. Lipsky, 63 N.E.2d 642, 644 (Ill. App. Ct. 1945) (interpreting common law to require married women to use their husbands' surnames); Bacon v. Boston Elevated Ry. Co., 152 N.E. 35 (Mass. 1926) (invalidating registration of car in married woman's birth surname rather than her husband's surname); Chapman v. Phoenix Nat'l Bank, 85 N.Y. 437, 449 (1881) (recognizing that for a woman "upon her marriage . . . [h]er maiden surname is absolutely lost, and she ceases to be known thereby"); Appeal of Hanson, 198 A. 113 (Pa. 1938) (allowing the Board of Law Examiners to refuse to admit married women to the Bar in their maiden name); 2 JOEL PRENTISS BISHOP, COMMENTARIES ON THE LAW OF MARRIAGE AND DIVORCE § 704a (6th ed. 1881) (noting the "rule of law and custom . . . that marriage confers on the woman the husband's surname"); JAMES SCHOULER, A TREATISE ON THE LAW OF THE DOMESTIC RELATIONS § 40 (5th ed. 1895) (finding "[m]arriage at our law does not change the man's name, but it confers his surname upon the woman").

8. An Act to Regulate Names, § 1, 1860 Haw. Sess. Laws 32, 32. The Hawaii Act also forbade married women and others from changing their names: "It shall not be lawful to change any name adopted or conferred under this law." *Id.* at § 2. A court challenge in 1975, Cragum v. State, No. 43175 (Haw. Civ. Ct. 1975) (cited in 1 WOMEN'S L. REP. 1.162 (1975)), and legislative action in 1976 overturned this statute. *See infra* note 23.

law declared that marriage changed a woman's name to that of her husband.[9] Around the country, various passport offices repeatedly refused to grant passports to women who insisted on using their maiden names, although from 1925 to 1966, regulations allowed a married woman to receive a passport in her maiden name.[10] By 1971, the Department of State took the position that "[t]he legal name of a married woman is her husband's surname," and refused to issue passports to married women in their maiden names.[11]

Whether courts, attorneys general and legal treatises correctly interpreted the common law or distorted and misinterpreted it to further a particular view of women's dependence is debatable.[12] Clearly, married women were dependent and largely invisible under the common law doctrine of merger, under which a married woman's legal identity was subsumed into that of her husband and she could not acquire or sell property, make contracts, sue or be sued independently.[13] As a practical matter, the custom of a married couple sharing a surname furthered the fiction of merger.[14]

Some courts, however, noted the general freedom of choice for men at common law regarding names and name changes. "[T]he custom is wide spread and universal, for all males to bear the name of their parents,"[15] but there is at common law, "nothing . . . prohibiting a man

9. See MASS. GEN. LAWS ch. 208, § 23 (1926). Section 23 provides "[t]he court granting a divorce to a woman may allow her to resume her maiden name or that of a former husband." The case notes reference Bacon v. Boston E.R. Co., 152 N.E. 35 (Mass. 1926) for the proposition that "[i]n view of this section, as [a] matter of law, after her marriage, a married woman's legal name becomes that of ther husband." *Id; see also* STANNARD, *supra* note 2, at 243-44.

10. *See* STANNARD, *supra* note 2, at 256 (discussing Part V(20) of the United States Passport Regulations and its "implementation" by clerks in passport offices).

11. *Id.*

12. *See, e.g.*, STANNARD, *supra* note 2, at 239-61 (exploring how the legal system made it difficult for women to use their maiden names); Una Stannard, *Manners Make Laws: Married Women's Names in the United States*, 32 NAMES 114 (1984) (examining the stiff societal resistance that women encountered when they did not adopt their husbands' names, despite the fact that American common law did not compel such an act).

13. *See* Thompson v. Thompson, 218 U.S. 611 (1910); NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH-CENTURY NEW YORK 17-29 (1982) (noting common law merger of married woman's identity with her husband's, and his control of her property); 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 442-45 (9th ed. 1783); JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 367 (3d ed. 1993) ("At the instant of marriage, a woman moved under her husband's protection or *cover* (becoming a *feme covert*). She ceased to be a legal person for the duration of the marriage. Husband and wife were regarded as one, and that one was the husband.").

14. *See* Margaret Eve Spencer, *A Woman's Right to Her Name*, 21 UCLA L. REV. 665, 666 (1974).

15. *In re* Snook, 2 Hilt. 566, 572 (N.Y. 1859); *see also* Smith v. U.S. Cas. Co., 90 N.E. 947, 950 (N.Y. 1910) (discussing the common law rule that a man may change his name at will).

from taking another name if he chooses."[16] Several courts and state attorneys general also found no rule restraining that common law choice for married women.[17]

Whatever the correct reading of the historical common law, legal challenges in the 1970s against voting registrars, motor vehicles departments, county health departments and private companies firmly established in the United States that a "woman upon marriage adopts the surname of her husband by thereafter customarily using that name . . . [but] [i]f she continues to use her antenuptial surname, her name is unchanged by the fact that marriage has occurred."[18] For example, in

16. *In re Snook*, 2 Hilt. at 57.

17. *See* State *ex rel.* Krupa v. Green, 177 N.E.2d 616 (Ohio Ct. App. 1961) (holding that the common law did not compel the custom of married women taking their husbands' surnames); State *ex rel.* Bucher v. Brower, 21 Ohio Op. 208 (C.P. Montgomery County 1941) (finding that a woman may marry and retain her birth surname); Rice v. State, 38 S.W. 801, 802 (Tex. Crim. App. 1897, no pet.) (recognizing a woman's change of name at marriage as "a mere question of choice"); Lane v. Duchac, 41 N.W. 962, 965 (Wis. 1889) (finding no law in Wisconsin requiring a married woman to use her husband's surname); 1921 MD. ATT'Y GEN. ANN. REP. & OFFICIAL OPINIONS 188-89 (advising that law did not require married women to reregister to vote under husbands' surnames); 1934-35 MICH. ATT'Y GEN. BIENNIAL REP. 255-56 (finding no law prohibiting a married woman from running for reelection as a judge in her maiden name); 1923-24 MICH. ATT'Y GEN. BIENNIAL REP. 138 (finding that married women may retain voter registration under their maiden names); 1927-28 WASH. ATT'Y GEN. BIENNIAL REP. 507 (advising that adopting a husband's surname is only custom, not law); 13 WIS. OP. ATT'Y GEN. 632 (1924) (concluding that the law does not require a female county officer, nominated and elected under her maiden surname, to use her new husband's surname in her official acts).

18. Kruzel v. Podell, 226 N.W.2d 458, 459 (Wis. 1975); *see also* Ball v. Brown, 450 F. Supp. 4 (N.D. Ohio 1977) (finding error in an election board's purging of voter registration where a woman did not take her husband's surname at marriage); State v. Taylor, 415 So. 2d 1043, 1047 (Ala. 1982) (finding that "in view of the fact that the common law regarding 'names' has not been altered by the legislature," Alabama adopts the common law of England that a woman's change of name upon marriage is in fact rather than in law); Malone v. Sullivan, 605 P.2d 447 (Ariz. 1980) (finding error in a trial court's refusal to entertain a woman's divorce petition unless she amended her pleading to reflect her surname as her husband's); Weathers v. Superior Court of Los Angeles, 126 Cal. Rptr. 547 (Ct. App. 1976) (allowing a married woman to sue for divorce in her own name); Custer v. Bonadies, 318 A.2d 639 (Conn. Super. Ct. 1974) (finding that neither common law nor statute compels a married woman to take her husband's surname, although it is the custom); Brown v. Brown, 384 A.2d 632, 632 (D.C. 1977) (finding no limitation in the common law for "any adult or emancipated person" to change his or her name at will); Marshall v. State, 301 So. 2d 477 (Fla. Dist. Ct. App. 1974) (allowing a married woman to claim her nonmarital name as her legal name); *In re* Hauptly, 312 N.E.2d 857 (Ind. 1974) (holding that a married woman has the same right to change her name as anyone else); Stuart v. Bd. of Supervisors of Elections for Howard County, 295 A.2d 223 (Md. 1972) (holding that marriage did not, as a matter of law, change the wife's surname to that of the husband); Secretary of the Commonwealth v. City Clerk of Lowell, 366 N.E.2d 717 (Mass. 1977) (recognizing that a woman may change her name at will, without resort to legal proceedings); *In re* Natale, 527 S.W.2d 402, 404-05 (Mo. Ct. App. 1975) (noting that restricting a woman's right to use the name of her choice is inconsistent with developments granting women equal legal rights); Simmons v. O'Brien, 272 N.W.2d 273 (Neb. 1978) (finding error in lower court's refusal to grant a divorce in wife's separate surname because common law did not compel married woman to bear the same surname as

Dunn v. Palermo, the Tennessee Supreme Court found that a registrar wrongfully purged a woman's voting registration when she refused to assume her husband's surname or register to vote under it.[19] Likewise, in *Davis v. Roos*, a Florida court concluded that the law did not compel a woman to take her husband's surname, and thus the state motor vehicles division could not refuse her a driver's license in her maiden name.[20] In a challenge under Title VII of the Civil Rights Act of 1964, the Sixth Circuit Court of Appeals awarded back pay to a newly married female employee of the county health department when the department suspended her for refusing to change her surname on personnel forms to that of her husband.[21] The court stated that "[a] rule which applies only to women, with no counterpart applicable to men, may not be the basis for depriving a female employee who is otherwise qualified of her right to continued employment."[22] By the late 1970s and early 1980s many state legislatures codified a

her husband); *In re* Lawrence, 337 A.2d 49, 51 (N.J. Super. Ct. App. Div. 1975) (finding a "woman may retain her maiden name by antenuptial agreement or by holding herself out consistently by that name after marriage"); *In re* Halligan, 361 N.Y.S.2d 458 (App. Div. 1974) (holding that the potential confusion which might arise when a woman bore a name different from her husband's was an insufficient reason to deny her application for judicial name change); *In re* Mohlman, 216 S.E.2d 147 (N.C. Ct. App. 1975) (stating that at marriage a woman does not give up her right to change her name as anyone else might change his or hers); Traugott v. Petit, 404 A.2d 77, (R.I. 1979) (upholding the common law right of a divorced woman to use the name of her choice); *In re* Miller, 243 S.E.2d 464 (Va. 1978) (noting that no statute in Virginia requires a married woman to assume her husband's surname, despite custom); *In re* Strikwerda, 220 S.E.2d 245 (Va. 1975) (finding that nothing in the wording of statute purports to exclude a married woman from petitioning the court to change her name from her married name to her maiden name); FLA. ATT'Y GEN. ANN. REP. § 076-66, at 120 (1976) (advising that for purposes of voter registration, the "true" name of a married woman who chooses to retain her birth surname is her given name and her birth surname, not her given name and her husband's surname); ME. OP. ATT'Y GEN. (1978 WL 33940 Me.A.G.) (ruling that both women and men have option of retaining their surnames after marriage); MASS. OP. ATT'Y GEN. Number 5, at 48 (1974) (finding that Massachusetts law does not compel a woman retaining her maiden name after marriage to assume her husband's surname for any purpose).

19. 522 S.W.2d 679 (Tenn. 1975). Similarly, a federal district court in Walker v. Jackson, 391 F. Supp. 1395 (E.D. Ark. 1975), found a state requirement that married women register to vote under their husbands' surnames invalid under Arkansas law, and held that a statute requiring women to identify themselves as Miss or Mrs. violated the Equal Protection Clause of the Fourteenth Amendment.

20. 326 So. 2d 226 (Fla. Dist. Ct. App. 1976).

21. *See* Allen v. Lovejoy, 553 F.2d 522 (6th Cir. 1977).

22. *Id.* at 524.

woman's right to name herself, at marriage and otherwise,[23] and several state attorneys general reassessed prior interpretations to recognize a woman's nontraditional naming choice.[24] Louisiana uniquely does not allow a woman or a man a choice regarding her or his legal name after marriage. Although spouses may use each other's surnames as a matter of custom, Louisiana follows the civil law that "[m]arriage does not change the name of either spouse."[25]

Given the legal flurry, it is not surprising that during the 1970s numerous legal scholars in the United States focused their attention on a woman's right, or lack thereof, to retain her birth name after

23. *See, e.g.*, GA. CODE ANN. § 19-3-33.1 (Supp. 1997) (requiring applicants for a marriage license to designate the surnames which they will use after marriage, providing that each spouse may choose his or her given surname, the surname from a previous marriage, the spouse's surname, or a combination of the previous listed surnames); 19 GUAM CODE ANN. §§ 3108-3109 (1996) (allowing a woman to elect to retain her maiden name as her surname on the marriage license application, but limiting this right to the wife to the exclusion of the husband and any subsequent children); HAW. REV. STAT. § 574-1 (1993) (providing that each of the parties to a marriage shall declare the middle and last names each will use as a married person, and noting that the names chosen may be "any middle or last name legally used at any time, past or present, by either spouse, or any combination of such names, which may, but need not, be separated by a hyphen"); IOWA CODE ANN. § 595.5 (West 1996) (stating that "[a] party may request on the application for a marriage license a name change to that of the other party or to some other surname mutually agreed upon by the parties"); MASS. GEN. LAWS ANN. ch. 46, § 1D (West 1994) (providing that "[e]ach party to a marriage may adopt any surname, including but not limited to the present or birth-given surname of either party, may retain or resume use of a present or birth-given surname, or may adopt any hyphenated combination thereof"); N.D. CENT. CODE § 14-03-20.1 (Supp. 1995) (stating that "[a] person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname," and also noting that either or both persons may "elect to change the surname by which that party wishes to be known after the solemnization of the marriage"); OR. REV. STAT. § 106.220 (1995) (establishing that "[u]pon entering into marriage, either person may retain the prior surname, and either person may resume the person's prior legal name during the marriage").

24. *See, e.g.*, KY. OP. ATT'Y GEN. No. 74-902, at 2-1404 (1974) (finding no Kentucky law requiring a married woman to use her husband's surname). *Cf.* Whitlow v. Hodges, 539 F.2d 582 (6th Cir. 1976) (stating that, in Kentucky, a married woman must use her husband's surname when applying for a driver's license); *see also* 68 MD. OP. ATT'Y GEN. 418 (1983) (advising that a married woman may obtain a driver's license in her former name, notwithstanding her prior use of her married name and even absent legal process to change her name); NEV. OP. ATT'Y GEN. 75 (1993) (counseling that where a woman chooses not to change her surname after marriage, provisions of Nevada voter registration statutes do not automatically require a woman to reregister to vote after marriage. NEV. OP. ATT'Y GEN. 75 (1993) also rescinds NEV. OP. ATT'Y GEN. 150 (1966), which had established that a married woman must run for elected office using her own given name and her husband's surname, but may insert her maiden name for identification.

25. LA. CIV. CODE ANN. art. 100 (West 1993). Article 100 resolved a conflict in the Louisiana law. On the one hand, some cases held that the legal surname of a woman was her maiden name; see, for example, Succession of Kneipp, 134 So. 376 (La. 1931). Alternatively, other cases found that the legal surname of a woman was her husband's surname; see, for example, Wilty v. Jefferson Parish Democratic Executive Comm., 157 So.2d 718 (La. 1963).

marriage.[26] Since then, however, such research has been minimal, perhaps because, as Leila Obier Schroeder stated hopefully in 1986, "[t]he war is presumably won"[27] as the 1970s saw "the last skirmishes in an interesting battle."[28] What U.S. women have not clearly won, however, is broad social acceptance for naming choices that diverge from the traditional.[29]

B. Naming Practices at Marriage

Legal constraints aside, a vast majority of U.S. women maintain the Anglo-American custom of adopting their husbands' surnames at marriage. In the 1985 sociological research of Intons-Peterson and Crawford, college-aged women indicated that social expectations, custom and, particularly, family expectations impacted their perceptions that women should take their husbands' surnames.[30] Interestingly though, both the women and men were undecided whether traditional surnaming patterns in marriage indicated an assumption of traditional marriage roles, or whether nontraditional naming patterns indicated nontraditional, progressive marital roles.[31] Nonetheless, the younger women communicated a strong social imperative that they take their

26. *See, e.g.*, Edward J. Bander, Change of Name and Law of Names 45-59 (1973); Shirley Raissi Bysiewicz & Gloria Jeanne Stillson MacDonnell, *Married Women's Surnames*, 5 Conn. L. Rev. 598 (1973); Kathleen A. Carlsson, *Surnames of Married Women and Legitimate Children*, 17 N.Y. L. F. 552 (1971); Roslyn Goodman Daum, *The Right of Married Women to Assert Their Own Surnames*, 8 U. Mich. J.L. Reform 63 (1974); Patricia J. Gorence, Comment, *Women's Name Rights*, 59 Marq. L. Rev. 876 (1976); M.J. Hamilton, *Female Surnames and California Law*, 6 U.C. Davis L. Rev. 405 (1973); Marija Matich Hughes, *And Then There Were Two*, 23 Hastings L.J. 233 (1971); Joan S. Kohout, Comment, *The Right of Women to Use Their Maiden Names*, 38 Alb. L. Rev. 105 (1973); Julia C. Lamber, *A Married Woman's Surname: Is Custom Law?*, 1973 Wash. U. L.Q. 779; Priscilla Ruth MacDougall, *Married Women's Common Law Right to Their Own Surnames*, Women's Rts. L. Rep., Fall-Winter 1972/73, at 2; William C. Matthews, Jr., Comment, *Married Women and the Name Game*, 11 U. Rich. L. Rev. 121 (1976); Linda J. Mead, Comment, *Married Woman's Right to Her Maiden Name: The Possibilities for Change*, 23 Buff. L. Rev. 243 (1974); *The Right of A Married Woman to Use Her Birth-Given Surname for Voter Registration*, 32 Md. L. Rev. 409 (1973); Jacqueline Rothschild, Note, *The Right to Change One's Name*, 5 J. Fam. L. 220 (1965); Spencer, *supra* note 14.

27. Leila Obier Schroeder, *A Rose by Any Other Name: Post-Marital Right to Use Maiden Name: 1934-1982*, 70 Soc. & Soc. Res. 290, 290 (1986).

28. *Id.* at 293.

29. *See infra* text accompanying notes 43-46.

30. *See* Margaret Jean Intons-Peterson & Jill Crawford, *The Meanings of Marital Surnames*, 12 Sex Roles 1163, 1168 (1985).

31. *See id.* at 1168-69. Another study shows that, although the correlation is not strong, Canadian women who use the title Ms. and retain their birth surnames tend to be stereotyped as "not religious, independent, assertive, well-educated, unattractive and feminist." Donna L. Atkinson, *Names and Titles: Maiden Name Retention and the Use of Ms.*, 10 Women and Language 37, 37 (1987).

husbands' surnames, implying negative societal perceptions of alternative choices.[32]

By 1989, Foss's and Edson's nonrandom survey of eighty-five then-married, college-educated women regarding their naming choices identified three recurring themes—self, relationships, and cultural or societal expectations.[33] The women who used their husbands' surnames exclusively, rather than hyphenating, focused primarily on their relationships and their commitments to their husbands and children, something they felt a shared surname communicated.[34] They also expressed a significant interest in complying with conventional practice in the community around them.[35] Women with hyphenated names gave equal weight to relationship and self, their name choice essentially reflecting a balancing or compromise between the two.[36] Women who retained their birth surnames emphasized personal identity and independence as of primary import.[37] Their name choices tended to reveal the type of relationship they perceived they had with their husbands, relationships based on equality with and independence from their husbands.[38] In contrast to the students in the 1985 research that Intons-Peterson and Crawford performed, women who retained their birth surname in Foss's and Edson's study noted explicitly that their name choice reflected a perception that traditional marriage roles and customs were unworkable and less than desirable.[39]

Four years later, Scheuble's and Johnson's 1993 primary research evidences, at least among young women, a neutral attitude toward nontraditional naming choices coupled with a definite individual preference for traditional naming choices. Ninety-two percent of the female college students they surveyed thought it was acceptable for a woman to keep her maiden name at marriage, while only 2.5% thought a woman's adoption of her husband's surname indicated a

32. *See* Intons-Peterson & Crawford, *supra* note 30, at 1168. Sixty-one percent of the undergraduate women and 75% of the undergraduate men indicated that women should take their husbands' surnames. *See id.* Seventy-one percent of the undergraduate women indicated that their families expected them to take their husbands' surnames at marriage. *See id.*

33. *See* Karen A. Foss & Belle A. Edson, *What's In a Name? Accounts of Married Women's Name Choices*, 53 W. J. SPEECH COMM. 356, 358-60 (1989). Thirty-five women had assumed their husbands' surnames, thirty-one kept their birth surnames, and nineteen hyphenated their names or used new names. *See id.* at 359.

34. *See id.* at 360.

35. *See id.* at 361.

36. *See id.* at 365-66.

37. *See id.* at 363.

38. *See id.* at 364.

39. *See id.* at 365.

greater commitment to the marriage than no name change.[40] In contrast, young men perceived nontraditional naming choices differently. Only fifty-seven percent of the male students perceived a married woman's retention of her birth surname as "all right," while twenty-five percent thought a woman's name change indicated a greater commitment to the marriage than did no name change.[41] Most importantly, whatever their perspective regarding the general acceptability of married women retaining their birth surnames, eighty to ninety percent of the young women expected to take their husbands' surnames when they themselves faced the choice.[42]

In 1994, American Demographics reported that ninety percent of currently married U.S. women use only their husbands' surnames.[43] Of the ten percent not using their husbands' names exclusively, five percent used hyphenated names, two percent used their birth names, and three percent used other alternatives.[44] Although one might guess that younger women would be more likely to choose a nontraditional naming practice, having grown up without legal constraints on their choice, research confirms that younger generations of U.S. women are not making a mad dash to overturn conventional surname practices at marriage, despite their legal ability to do so.[45] The tradition of assuming the husband's name at marriage is strong in the United States.[46]

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40. *See* Scheuble & Johnson, *supra* note 3, at 750.

41. *See id.* Kenneth Soddy has noted that where societal conventions encourage women to take their husbands' surnames at marriage, men and women are likely to perceive such name changes, and the accompanying identity change, differently. CROSS-CULTURAL STUDIES IN MENTAL HEALTH: IDENTITY, MENTAL HEALTH AND VALUE SYSTEMS 22 (Kenneth Soddy ed., 1961).

42. *See* Scheuble & Johnson, *supra* note 3, at 753-54.

43. *See* Joan Brightman, *Why Hillary Chooses Rodham Clinton*, AM. DEMOGRAPHICS, March 1994, at 9; *see also* Sue Shellenbarger, *Odds and Ends*, WALL ST. J., June 29, 1994, at B1 (observing that "[o]nly 2% of women use their maiden names after marriage . . . [while] 8% keep their maiden name as a middle name or hyphenated surname"). In June 1997, USA Today reported that only 39% of individuals surveyed thought a woman should take her husband's name at marriage. *See USA Snapshots*, USA TODAY, June 16, 1997, at A1. Eleven percent thought a woman should hyphenate, but only 2% thought a woman should keep her own last name. *See id.* Forty-four percent stated that they had no preference whatsoever. *See id.*

44. *See* Brightman, *supra* note 43, at 9.

45. *See* David R. Johnson & Laurie K. Scheuble, *Women's Marital Naming in Two Generations: A National Study*, 57 J. MARRIAGE & FAM. 724, 731 (1995) (citing a study in which 7% of married women either kept their maiden name or hyphenated their birth name with their spouse's last name); *see also* Intons-Peterson & Crawford, *supra* note 30, at 1167 (finding 11% of single undergraduate women surveyed preferred to keep their own surname at marriage).

46. A cautionary word is in order. The few studies of women's marital naming practices in the United States generally do not identify the ethnic makeup of the participants. Moreover, the studies provide little, if any, indication of interaction between ethnicity, predominant Anglo-

III. OTHER COUNTRIES: LEGAL CONSTRAINTS

A number of other countries specifically recognized a woman's choice regarding her surname at marriage long before the legal question was settled in the United States. In Russia, a woman's legal ability to retain her birth surname coincided with revolution. Article 104 of the Civil Code in effect immediately preceding the 1917 Bolshevik Revolution required a woman to take her husband's surname on marriage.[47] By October 1918, however, the new Family Code allowed a woman to retain her birth surname at marriage.[48] In Israel, The Names Law, 5716-1956, allowed a married woman to add her husband's surname to her own or to continue to use her birth surname exclusively, although as late as 1972, very few Israeli women did so.[49] In Norway, the 1964 Statute on Names gave a married woman an option to keep her birth surname as her family name as long as she stated her preference prior to the marriage ceremony.[50] By 1972, a Swedish woman could elect to retain her maiden name or to use her birth surname together with her husband's surname, although a married woman acquired her husband's surname by default if she made no choice.[51] Since 1950, Chinese women have had a legal right to retain their birth surnames after marriage,[52] an interesting development, particularly given that historically Chinese women often lost a

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American practice, and naming choices. While Foss and Edson provided a limited ethnic identification of the women surveyed by noting that "two-thirds were white and the remaining one-third were either Black, Asian, or Hispanic," they do not discuss how issues of ethnicity might play into the differing reasons women gave for their naming choices. *See* Foss & Edson, *supra* note 33, at 359.

47. *See* Alice Erh-Soon Tay, *The Status of Women in the Soviet Union*, 20 AM. J. COMP. L. 662, 666 (1972).

48. *See id.* at 669; *see also* Aleta Wallace, *Comparative Legal Status of American and Soviet Women*, 5 VAL. U. L. REV. 439, 451, 475 (1970) (examining the status of women under Russia's 1968 Family Code). Article 11 of Russia's 1968 Family Code establishes that "[w]hen concluding a marriage the spouses, according to their own wishes, shall select the surname of one of the spouses as their common surname, or each of the spouses shall retain his own pre-marital surname." *Id.* at 475.

49. *See* Plea Albeck, *The Status of Women in Israel*, 20 AM. J. COMP. L. 693, 697 (1972).

50. *See* Karin Bruzelius Heffermehl, *The Status of Women in Norway*, 20 AM. J. COMP. L. 630, 633 (1972).

51. *See* Gunvor Wallin, *The Status of Women in Sweden*, 20 AM. J. COMP. L. 622, 624 (1972).

52. *See* Marriage Law of the People's Republic of China of 1950, art. 11 *in* FUNDAMENTAL LEGAL DOCUMENTS OF COMMUNIST CHINA 269 (Albert P. Blaustein ed., 1962), stating that "[b]oth husband and wife shall have the right to use his or her own family name"; *see also* Art. 10, Marriage Law (1980) *in* LAW IN THE PEOPLE'S REPUBLIC OF CHINA: COMMENTARY, READINGS AND MATERIALS 381 (Ralph H. Folsom & John H. Minan eds., 1989) (stating that "[h]usband and wife each has the right to use his or her family name"). Prior to the Marriage Law of 1950, a woman could use her own family name only in conjunction with her husband's

personal name at marriage or had no personal name at all but were referred to solely by relational names such as Elder Sister or First Aunt.[53] By law, Spanish and Portuguese women may keep their birth surnames or add parts of their husbands' name to their own.[54] Likewise, in numerous Latin American countries, the law provides that a woman keeps her surname at marriage, but may add her husband's name to her own.[55]

In certain countries, such as South Korea,[56] and within particular groups or religions, like the Kongo of Zaire[57] or Islam,[58] where a married couple traditionally retain separate names, explicit legal recognition of a woman's right to retain her birth surname is not necessary, although recognition of other naming choices may be.

Other countries have recognized women's naming choices more recently. Since 1983, the Mexican state of Hidalgo has allowed a woman to declare the surname she wishes to use after marriage, either her own premarital family names or her husband's.[59] If she does not choose, the husband's surname is added by default.[60] In 1985, Finnish women gained the right to retain their birth surnames as their sole surname after marriage.[61] In Switzerland, by operation of law, the wife takes the husband's surname.[62] Since 1988, however, Swiss

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family name. *See* Civil Code of the Republic of China, Article 1000, *cited in* M.J. MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 71, 73 (1971).

53. *See, e.g.*, MAXINE HONG KINGSTON, THE WOMAN WARRIOR (1982); ALICE MURONG PU LIN, GRANDMOTHER HAD NO NAME (1988); Rubie S. Watson, *The Named and the Nameless: Gender and Person in Chinese Society*, 13 AM. ETHNOLOGIST 619, 626 (1986). Hereditary family names emerged in Chinese culture thousands of years before they did in other cultures. *See* JUSTIN KAPLAN & ANNE BERNAYS, THE LANGUAGE OF NAMES 51 (1997); Amy A. Kass & Leon R. Kass, *What's Your Name?*, FIRST THINGS, Nov. 1995, at 14, 20.

54. *See* Regulations on the Civil Register, Article 137, no.2 (Spain); C.C. Art. 1677, par. 1 (Portugal) *cited in* Walter Pintens & Michael R. Will, *Names*, *in* 4 Int'l Encyclopedia Comp. L. 45, 66 (1995).

55. *See* C.C. Art 240 (Brazil); C.C. Art. 137, par. 3 (Venezuela); Law No. 18248, Art. 8, as modified by Law No. 23515 of 8 June 1987 (Argentina); C.C. Art. 24 (Peru) *cited in* Pintens & Will, *supra* note 54, at 66.

56. *See infra* notes 126-28, 139-40 and accompanying text.

57. *See* Ungina Ndoma, *Kongo Personal Names Today: A Sketch*, 25 NAMES 88 (1977).

58. *See* Pamela Bone, *Australia: Life Behind a Veil of Islam*, THE AGE, Mar. 3, 1992, *available in* LEXIS, World Library, Allnws File.

59. *See* Julián Guitrón, *Mexico: A Decade of Family Law 1983-1993*, 33 U. OF LOUISVILLE J. FAM. L. 445, 446 (1995).

60. *See id.*

61. *See* U.S. DEPT. OF STATE, 1991 HUMAN RIGHTS REPORT: FINLAND § 5 (1992).

62. *See* CODE CIVIL [Cc] Art. 160(1) (Switzerland), *in* IVY WILLIAMS, I THE SWISS CIVIL CODE: ENGLISH VERSION 49 (Siegfried Wyler & Barbara Wyler eds., 1987) ("The husband's name is the surname of the husband and the wife.") (in force since 1984; amended version effective Jan. 1, 1988).

authorities may allow an engaged couple to choose the wife's surname as the family name "if there are grounds worthy of consideration."[63] Likewise, since 1988, a Swiss wife has had the option of declaring to the registrar that she wishes to have her former name placed in front of her husband's surname, but the couple must bear at least one surname in common.[64] Until a 1991 Federal Constitutional Court ruling, a married West German woman could legally retain her birth surname after marriage only through using a double surname or if the husband adopted the wife's birth surname.[65] If the spouses made no choice, the husband's name prevailed.[66]

Some countries significantly limit a woman's naming choice. The particular constraint varies by country. Turkey, Liechtenstein, Malta and Cambodia require the wife to bear the husband's surname.[67] In Italy, a married woman bears both her birth surname and her husband's surname as a legal name, although in practice, the woman may continue to use only her own surname.[68] Under the civil law systems of France, Belgium and the Netherlands, women retain their birth surnames as their legal name, but may use their husband's surnames by custom.[69] Shortly after the French Revolution, laws forbade any French citizen "to bear any first name (*prenom*) or surname, than that which is expressed in the registry of his birth, or to add any surname to his proper name."[70] Likewise, the Civil Code of Quebec mandates that "[i]n marriage, both spouses retain their respective names, and

63. Cc Art. 30(2) (Switzerland) *in* WILLIAMS, *supra* note 62, at 12 ("Where an engaged couple requests that the wife's surname should be the surname of the family after the wedding, the request is to be granted if there are grounds worthy of consideration.") (in force since Jan. 1, 1988).

64. *See* Cc Art. 160(2) (Switzerland) *in* WILLIAMS, *supra* note 62, at 50 ("The bride is entitled to declare in the presence of the registrar that she wants her former name to be placed in front of the husband's surname.") (in force since Jan. 1, 1988).

65. *See* BVerfG 5 March 1991 and FamRZ 1991, *cited in* Pintens & Will, *supra* note 54, at 68-89; *A Marriage by Any Other Name,* THE WEEK IN GERMANY, Mar. 22, 1991, at 6.

66. *See* Pintens & Will, *supra* note 54, at 69; *A Marriage by Any Other Name, supra* note 65.

67. *See* CC Art. 153 (Turkey); Law on Marriage, Art. 45, par. 1 (Liechtenstein); CC Art. 4 par. 1 (Malta); Names Ordinance, Art. 2 (Cambodia), *cited in* Pintens & Will, *supra* note 54, at 69.

68. *See* Law on Names § 6 (1975) (Italy), *cited in* Pintens & Will, *supra* note 54, at 68.

69. *See* Pintens & Will, *supra* note 54, at 65-66; *see also* TRAITÉ ELÉMENTAIRE DE DROIT CIVIL DE MARCEL PLANIOL § 513, at 207 (Georgès Ripert ed., 4th ed. 1948) (noting that French women do not legally acquire their husbands' names upon marriage).

70. *In re* Snook, 2 Hilt. 566, 572 (N.Y. 1859); *see also* G.S. Arnold, *Personal Names,* 15 YALE L.J. 227, 230 (1905). As of 1957, the prohibition on the use of a name other than that recorded on the birth certificate, absent a legal change of name, was still in effect. *See* Phanor J. Eder, Comment, *The Right to Choose a Name,* 8 AM. J. COMP. L. 502, 505 (1959).

exercise their respective civil rights under those names."[71] In the civil law tradition, the U.S. state of Louisiana follows the same rule.[72]

Japan requires married couples to legally register under the same surname.[73] Although the Japanese Civil Code allows the couple to choose the surname of either the husband or the wife as the family name, in practice, ninety-eight percent of couples choose the husband's surname.[74] Interestingly, a female professor lost when she sued her employer at a state-run college in 1988 for refusing to accept the use of her maiden name.[75] In the workplace, just over twenty percent of medium and large Japanese companies allow their female employees to use their maiden names at work.[76]

Absent a family tradition, Iceland forbids the use of a hereditary surname, providing instead for a second name based on the first name of the father or mother.[77] Both men and women then retain this second name at marriage.[78]

IV. SOCIAL MEANING OF NAMES

A. Essentialist Approaches to Women's Naming

Feminism continues to grapple with essentialist issues, even with ten years of antiessentialist criticism behind it.[79] Moreover, the nuances and subtleties of the antiessentialist critique have not filtered beyond academia into popular culture, which often ignores the alternative and multiple social realities of women's lives. On occasion, popular culture portrays feminism as limiting women's options and as condemning certain choices that can be characterized as traditional, rather than

71. Civil Code, ch. IV, § 1, art. 393 (Québec).

72. *See supra* note 25.

73. *See* Minpō, art. 750 (Japan).

74. *See* Yamanoue Reiko, *One Marriage, Two Names*, 41 Japan Q. 263 (1994); Makiko Tazaki, *Japanese Conservatives Block Change in Marriage Laws*, Agence France Presse, May 28, 1996, *available in* LEXIS, World Library, Allnws File. Pintens & Will note that in all cultures use of the woman's name as the common family name is extremely uncommon, attracting "less than one percent" where such choice is allowed. *See* Pintens & Will, *supra* note 54, at 55.

75. *See* Emiko Terazono, *Japan feminists fight to keep their surnames*, Financial Times, Apr. 20, 1996, at 3.

76. *See Over 20% of Companies Permit Use of Maiden Name*, Japan Weekly Monitor, Oct. 31, 1994, *available in* LEXIS, World Library, Allnws File.

77. *See* Persons Names Act of 27 March 1991, § 2, ¶ 3, § 9 (Iceland) *cited in* Pintens & Will, *supra* note 54, at 45 n.412. Pintens and Will note that legislation outlawed hereditary surnames in 1925 and provided for a return to the ancient practice of children's proper names being followed by their fathers' first name with an added "-son" or "-dottir" (son or daughter) at the end. *See id.* at 52.

78. *See id.* at 52, 54.

79. *See supra* note 5 and accompanying text.

advocating broadly for women's choices and women's empowerment, in light of and with respect to the cultures they value. Two recent examples make the point.

In their 1997 book, *The Language of Names*, Justin Kaplan and Anne Bernays represent feminism as essentialist through their analysis of women's naming choices at marriage. Although they rightly recognize that women who do not follow conventional naming practices may be viewed as subversive,[80] they assert that a woman who takes her husband's name at marriage is operating under a false consciousness. Such a woman is unaware that her husband "has swallowed her whole, leaving no trace, not even a few bones or feathers to mark the person" she once was, thus guaranteeing her, "whether she's conscious of it or not," a lopsided marriage.[81] Kaplan and Bernays thus substitute their supposedly authoritative vision for the individual and particular experiences of women making naming choices. They further an essentialist picture of feminism by asserting that "[n]o doubt, feminists view as repugnant [Beatrix] Potter's abandonment both of her writing and her name" at marriage, as if the purpose of feminism were to judge women's choices against some absolute, universal criteria.[82] What Kaplan and Bernays fail to articulate is that nonessentialist feminist thought seeks to value women's choices and individual experiences, and would celebrate that Beatrix Potter in fact made "conscious choices, clearly articulated and executed with joy."[83]

Of course, those advocating nonconventional naming are not the only ones who present their analysis in essentialist terms. Advocates of traditional Anglo-American naming practices at marriage have done the same. Like Kaplan and Bernays, Amy and Leon Kass fail to value women's choices by arguing that women who name themselves unconventionally are also operating under a false consciousness. "A woman who refuses this gift [her husband's name at marriage] is, whether she knows it or not, tacitly refusing the promised devotion or,

80. *See* KAPLAN & BERNAYS, *supra* note 53, at 138.

81. *Id.* at 140, 142.

82. *Id.* at 155. Kaplan's and Bernays' judgment is not a single misstatement. They verge on ridicule of women's traditional naming choices when noting that the Lucy Stone League, a group that encouraged women to retain their birth names at marriage, was "[f]ifty as against millions of married women, who not only didn't care a bit about the psychology of identity but viewed their newly acquired names as insignia of respectability and status to be cherished and flaunted like a four-carat, emerald-cut diamond set in platinum." *Id.* at 147. They doubt an older woman's explanation of her choice to exclusively use her husband's name after several decades of using both her birth name and her husband's name as "not terribly convincing anecdotal material . . . for abandoning (a harsher word would be 'betraying') her own cause." *Id.* at 151.

83. *Id.* at 155.

worse, expressing her suspicions about her groom's trustworthiness as a husband and prospective father."[84]

In their essentialist conclusions, neither Kaplan and Bernays nor Kass and Kass take into account the divergent social meaning attached to similar naming practices across cultures and the varied contexts in which women make naming choices. It is, however, precisely those varied contexts and divergent social meanings that do, or should, inform nonessentialism in feminist thought.

B. Surnames as Markers of Family and Equality

1. *Family Unity*

Within Anglo-American culture, a shared surname has traditionally signified family and has communicated appropriate marital roles. As expressed by certain U.S. courts, the negative meaning often associated with separate surnames for a married couple centers around family unity, children, and the stigma associated with cohabitation.

In 1965, a Texas court refused to allow a married woman to use a legal surname distinct from that of her current spouse because "to all outward appearances" separate surnames indicated cohabitation, with attendant social shame.[85] The court saw the husband's "hesitant and, sometimes, evasive" answers to how he would introduce a wife with a separate surname as support for its conclusion of social opprobrium.[86] Although overturned on appeal, another Texas court initially denied a married woman a name change because "to grant the change of name would give 'the appearance of an illicit co-habitation against the morals of society,'. . . would not be in the best interests of their minor children, and . . . 'would be detrimental to the institution of the home and family life and contrary to the common law and customs of this state.'"[87]

Courts outside Texas also expressed concern for families and children where spouses bore separate surnames. In *In re Lawrence*, a New Jersey court feared the "traumatic effect" separate parental surnames would have on future children were it to grant a judicial name

84. Kass & Kass, *supra* note 53, at 24.

85. *See In re* Marion Faye Evetts, 392 S.W.2d 781, 784 (Tex. Civ. App. 1965, writ ref'd). In 1972, a Wisconsin judge granted a married school teacher a name change, but not before expressing somewhat obliquely a concern "'about the implications of a man and wife living in a community with different surnames.'" MacDougall, *supra* note 26, at 13.

86. *In re Evetts*, 392 S.W.2d at 784.

87. *In re* Erickson, 547 S.W.2d 357, 359 (Tex. Civ. App. 1977, no writ) (citing the lower court's findings of fact and law). The appellate court allowed the name change, noting that the woman testified that her family and husband were in agreement with her name change. *See id.*

change to the wife.[88] Similarly, in 1974, an Indiana trial court denied a married woman's petition to change her name back to her maiden name, holding that the use of her husband's surname did not negatively affect a woman's sense of dignity, her ambitions and identity, although the woman herself begged to differ.[89] The state had argued against the woman's requested name change, asserting that her decision might embarrass her child and would emasculate her husband by publicizing that she was the breadwinner of the family.[90] When a Maine court granted a woman a name change, the dissent argued vociferously, using essentialist claims, that allowing married women to unilaterally change their surnames posed a serious loss to the state's interest in family unity.[91] "[T]he loss of identity of its members to the family unit, especially of the spouses themselves, would so neutralize familial and marital ties as practically to deny the very concept of the family."[92] The dissent further asserted "[t]hat there should be a single surname available to identify the spouses and children of a marriage is inherent in the very concept of the marriage partnership."[93] Even where family unity had ceased to exist, a number of states limited a divorced woman's ability to name herself through the judicial process where children were involved.[94] Clearly, to such courts, a

88. 319 A.2d 793, 801 (Bergen County Ct. 1974), *reversed by In re* Lawrence, 337 A.2d 49 (N.J. Sup. Ct. 1975).

89. *In re* Hauptly, 312 N.E.2d 857, 858-59 (Ind. 1974) (reversing trial court's denial of name change petition and citing the trial court's findings).

90. *See id.* at 860-61. *But see In re* Mullinix, 262 S.E.2d 540 (Ga. Ct. App. 1979) (reversing trial court's denial of name change petition based on the trial court's belief that a married woman's name change would cause misunderstanding and embarrassment, in spite of lack of objections by the woman's husband and child); *In re* Miller, 243 S.E.2d 464 (Va. 1978) (finding that a mother's name change would have an embarrassing effect on her children is pure speculation).

91. *See In re* Reben, 342 A.2d 688 (Me. 1975).

92. *Id.* at 701.

93. *Id.* at 702. The dissent also objected to interpreting the term "person" in a name change statute to include a married woman by noting that "[i]t is unrealistic to believe that the Legislature of 1873 . . . intended to change the lifestyle of women in the married status to the extent of destroying the family identity by sanctioning the proliferation of different surnames by the several members of a single family." *Id.* at 700.

94. *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 12-601 to 602 (West 1956) (allowing a court to restore a maiden name to a divorced woman unless marriage produced a minor child); MICH. COMP. LAWS §§ 711.1, 711.2 (1968) and § 552.391 (1967) (restoring to divorced woman her maiden name, name of a prior marriage or another name, unless a minor child is involved); S.D. CODIFIED LAWS §§ 21-37-1 to 21-37-10 (Michie 1967, Supp. 1972) and § 12-4-18 (1967) (allowing a divorced woman her maiden name or other name she legally bore before the marriage, unless she had custody of a minor child); W. VA. CODE §§ 48-5-1 to 48-5-6 (1966, 1972 Supp.) (allowing a divorced woman her maiden name or the name of a former deceased husband, where there were no children from the marriage); WIS. STAT. ANN. § 247.20 (West Supp. 1972) (allowing a

shared surname signalled a positive cultural message of family unity and community tradition.

Where spouses in the United States retain separate surnames, negative inferences are not a thing of the past. Appellate decisions recognizing women's naming choices, like those discussed above, do not completely reflect government practices or the underlying assumptions and constructs of society. Currently for example, several states, including California and Connecticut, determine whether a child is born out of wedlock for statistical and some budgetary purposes by comparing the surnames of the mother, father and child on the child's birth certificate.[95] Where the father and the mother have separate surnames and the child bears the father's surname, the parents are presumed unmarried.[96] Although the social stigma attached to cohabitation and out-of-wedlock birth has decreased markedly in the last few decades, numerous women were astounded to discover the results of their name choices. "I am an unmarried woman and my child was born out of wedlock? . . . I can't wait to tell my mother-in-law," one married California Assemblywoman wryly exclaimed.[97] Another pointed more poignantly to "a yawning gap in how I see the world and how the world sees me."[98] Whatever a nontraditional naming choice meant to these women individually, they perceived the state's statistical and budgetary classification as negative and marginalizing.

Likewise, the U.S. woman who names herself unconventionally may have to argue with airlines about who is using her frequent flier miles.[99] She may receive requests for affidavits of paternity for her

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divorced woman her maiden name only if she did not have custody of any children from the marriage). *See generally* BANDER, *supra* note 26, at 65-80.

95. *See* Liz Halloran, *Method Skews Statistics on Out-of-Wedlock Births*, HARTFORD COURANT, May 4, 1996, at B1; *Statistical Flaw Taints Illegitimacy Figures*, L.A. TIMES, May 2, 1996, at A3 [hereinafter *Statistical Flaw*].

96. *See Statistical Flaw*, *supra* note 95. In its yearly report, Connecticut explains its reasoning: because of statutory limitations, there is no "marital status" line item on Connecticut birth records. Marital status is inferred by comparing child's and parents' surnames. A birth is classified as occurring to a married couple if: (1) the parents' surnames are the same; or (2) if the child's and father's surnames are the same and the mother's current surname is missing in the birth certificate. A birth is classified as occurring to an unmarried couple if : (1) the father's name is missing; or (2) the parents' surnames are different. CONNECTICUT DEP'T OF PUBLIC HEALTH, STATE OF CONN., 146th REGISTRATION REPORT OF BIRTHS, MARRIAGES, DIVORCES AND DEATHS FOR THE YEAR ENDING DEC. 31, 1993, at 29 (Apr. 1996).

97. *Statistical Flaw*, *supra* note 95, at A3, A15 (quoting Assemblywoman Martha Escutia).

98. Barbara T. Roessner, *I am an 'unwed mother,'* HARTFORD COURANT, May 16, 1996, at A17.

99. *See* Martha M. Hamilton, *United Tightens Frequent Flyer Program Rules*, WASH. POST, Apr. 16, 1988, at D11 (noting that United Airlines had previously prohibited transfer of frequent

children.[100] She may find her hyphenated last name strangely permuted from Greenhalgh-Weinkrantz to Greenhalgh-Weink to GreenhalghWeinkran, or, she may have to repeatedly remind those around her that her name is not just Weinkrantz.[101] She may find differential treatment at the Library of Congress, which, until recently, would alphabetize a woman's scholarship under the second name of her hyphenated name and drop the first, but alphabetize men with hyphenated names under the first name, retaining the second name.[102] Courts may refuse to call her by her chosen name, as the Ninth Circuit Court of Appeals recently did in a political asylum case, even while denying the validity of the marriage that purportedly gave her the name the court used.[103] Legal decisions have not necessarily changed underlying societal assumptions regarding a woman's name.

Like some in American society, many Japanese express reservations regarding separate surnames for a married couple. In a recent national survey in Japan, sixty percent of the respondents said they preferred the same surname for a husband and wife, usually citing possible confusion for the children of parents with different surnames and fear of loosening the family bond.[104] Even in the absence of legal constraints, eighty-one percent of the survey respondents said they would use the husband's surname for the entire family.[105] This percentage is remarkably similar to the eighty to ninety percent of U.S.

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flyer miles except to members of the flyer's immediate family who share the surname of the flyer).

100. *See* Denise Stamp Yannone, *His Name or Yours?*, 36 MODERN BRIDE, Feb. 1984, at 210.

101. *See* Jane L. Greenhalgh-Weinkrantz, *What's in a Name? Too Much for Computers*, NEWSDAY, Feb. 5, 1988, at 82.

102. *See* STANNARD, *supra* note 2, at 88.

103. *See* Fisher v. INS, 79 F.3d 955 (9th Cir. 1996). In dissent, Justice Noonan noted that:

> To begin with, the petitioner identified herself at the immigration hearing as Saideh Hassib-Tehrani. Despite the fact that the INS and this court have continued to identify her as "Fisher," that appellation seems cruelly ironic when the majority denies that she was ever validly married to Fisher. It is always appropriate to refer to people by the names they give themselves. Consequently, in this dissent Saideh Hassib-Tehrani will be identified by the name she calls herself.

Id. at 967 (Noonan, J., dissenting).

104. *See 37% Prefer Surname Option, But Most Wouldn't Exercise It*, REPORT FROM JAPAN, June 11, 1991, *available in* LEXIS, World Library, Allnws File. In a survey Japan's Justice Ministry conducted, eighty-nine out of Japan's 108 courts and 406 of 782 bar associations, universities, women's rights groups and individuals surveyed supported the idea of allowing both spouses to retain their surnames. *See Most Courts Favor Allowing Separate Surnames for Couples*, MAINICHI DAILY NEWS, Aug. 20, 1995, at 12. But, a public opinion poll showed that more than half of the respondents were against allowing couples to have different surnames. *See id.*

105. *See 37% Prefer Surname Option*, *supra* note 104.

women who take their husband's surname at marriage, although U.S. law now does not constrain a woman's surname choice.[106]

Prior to 1994, the European Commission on Human Rights echoed U.S. courts and Japanese public opinion in emphasizing a positive cultural message of family unity in a shared surname. In a 1977 report, *Hagmann-Husler v. Switzerland*, the Commission found no violation under the privacy and family life provisions or the equality provisions of the European Convention on Human Rights where Swiss officials refused to allow a woman to run for election using only her maiden name.[107] Specifically, the Commission found that Swiss law, by treating women's marital names differently than men's, served the State's interest in identification of families.[108] Likewise, in 1983 in *X. v. The Netherlands*, the Commission refused to hear a woman's application claiming differential treatment on the basis of sex when she was placed on the electoral list under her husband's surname.[109] The Commission once again emphasized the State's interest in community tradition and family identity in finding that differential treatment of the marital names of men and women did not constitute discriminatory action.[110]

2. *Individuality and Equality*

More recently, the European Court of Human Rights has found the cultural message of family identity and community in marital naming rules less persuasive than issues of individual choice and equality.[111] A Swiss couple married in Germany and, as authorized under Article 1355 of the German Civil Code, chose the wife's surname, "Burghartz," as the family name, while the husband registered his birth surname in front of the family name, to be known as "Schnyder

106. *See supra* notes 43-46 and accompanying text.

107. *See* App. No. 8042/77, 12 Eur. Comm'n H.R. Dec. & Rep. 202, 205-06 (1977). Article 8 of the European Convention on Human Rights guarantees respect for a person's private and family life. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 5, at 25. Article 14 affirms that the rights of the Convention shall be applied without discrimination. *See id.* at 27.

108. *See Hagmann-Husler*, 12 Eur Comm'n H.R. Dec. & Rep. at 206.

109. App. No. 9250/81, 32 Eur. Comm'n H.R. Dec. & Rep. 175 (1983).

110. *See id.* The Commission specifically took account of the Dutch tradition that women bear their husband's surname and the administrative functions of the electoral register. *See id.* at 177. For a further discussion of these cases, see MAUD BUQUICCHIO-DE BOER, EQUALITY BETWEEN THE SEXES AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS, HUM. RTS. FILES No. 14, at 44-48 (1995); Aeyal M. Gross, *Rights and Normalization: A Critical Study of European Human Rights Case Law on the Choice and Change of Names*, 9 HARV. HUM. RTS. J. 269 (1996).

111. *See* Burghartz v. Switzerland, 280-B Eur. Ct. H.R. (ser. A) 22, 28-30 (1994).

Burghartz."[112] On their return to Switzerland, the Swiss registry office recorded Schnyder, the husband's surname, as the family surname.[113] Through the domestic legal system, the couple successfully appealed the denial of their application to use the wife's name as their family name. In an interesting gender twist, however, the Swiss courts refused to allow the husband's request to register his surname before the family name, although Swiss law would have allowed a woman to do so.[114] When the couple brought their case before the European Court of Human Rights, the Court found that the Swiss refusal to allow the husband to register his surname before the family name violated the privacy/family life and equality provisions of the European Convention on Human Rights,[115] the same provisions previously at issue in *Hagmann-Husler* before the European Commission.[116]

In contrast to the European Commission's earlier emphasis on the cultural message of family unity when faced with marital naming issues, the Court identified equality of the sexes as a major goal in the European Union,[117] a goal that marital naming options communicated. While the Swiss government argued that the unity of the family name manifests the unity of the family, the European Court found no objective and reasonable grounds for allowing women but not men to formally append their birth surname to the family name.[118]

Although the Court noted that names stand at the intersection of public and private life, it emphasized the message of individual choice and gender equality:

> As a means of personal identification and of linking to a family, a person's name none the less concerns his or her private and family life. The fact that society and the State have an interest in regulating the use of names does not exclude this, since these public-law aspects are compatible with private life conceived of as including, to a certain degree, the right to establish and develop relationships

112. *See id.* at 24.

113. *See id.*

114. *See id.* at 24-25.

115. *See id.* at 30.

116. *See supra* notes 107-08, and accompanying text.

117. *See Burghartz*, 280-B Eur. Ct. H.R. at 29.

118. *See id.* The Austrian Constitutional Court has also ruled that if the wife's name becomes the family name, the husband has the right to append his surname, a right previously limited to the wife. *See* VfGH5 March 1985, ÖJZ 1986, 251, ÖStA 1985, 59 (Austria) *cited in* Pintens & Will, *supra* note 54, at 69.

> with other human beings, in professional or business contexts as in others.[119]

In short, as a legal matter, the Court recognized that names convey a cultural message, and chose to emphasize individual identity and choice without ignoring issues of community tradition and family unity.[120]

In 1991, the German Federal Constitutional Court made a similar decision. It ruled that, where a husband and wife did not choose a family name, giving default priority to the husband's name was unconstitutional, violating the principle of equal treatment of men and women.[121] In 1993, the German legislature passed a new law that recommended that couples should choose a family name [Ehename], but

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119. *See Burghartz*, 280-B Eur. Ct. H.R. at 28. The European Commission, in its report to the Court in Burghartz, voiced a broader range of views regarding names as concerning individuality or community. The majority of the Commission viewed names as inherent in individual identity and observed that "[t]he right to develop and fulfil one's personality necessarily comprises the right to identity and, therefore, to a name." *Id.* at 37. In contrast, dissenting commissioners emphasized differing levels of community—family and individual, on one hand, and Contracting States and the European Union, on the other—to argue that the Swiss State's balancing "the unity of the family and the interest of the individual" with respect to the husband's surname did not overreach the margin of appreciation left to Switzerland when it joined the European Union. 280-B Eur. Ct. H.R. (ser. A) (1994) (partially dissenting opinion of Messrs. C.A. Norgaard, G. Jorundsson, A.S. Bozubuyuk, A. Weitzel and B. Marxer). Another dissenting commissioner went even further in his emphasis on community and public life:

> a person's patronymic is his or her most obviously public characteristic, since it allows him or her to be identified by everyone, public authorities and private persons alike, . . . it cannot be claimed that this form of identification forms a part of an individual's private life. . . one's private life ends where the individual comes into contact with public life.

280-B Eur. Ct. H.R. (ser. A) (1994) (dissenting opinion of JC Geus).

120. Several international conventions or agreements emphasize principles of equality with respect to women's naming choices. The United Nations Convention for the Elimination of All Forms of Discrimination Against Women recognizes a married woman's equal voice concerning the family surname. Article 16(1)(g) provides:

> States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women . . . . [t]he same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation.

Likewise, The Council of Europe's Resolution 78/37 emphasizes equality in choosing a family name. This resolution recommends three choices for member states' laws: (1) surname choice by the spouses' mutual agreement, (2) both spouses keeping their own surname, or (3) a mandatory name composed of the name of both spouses. *See* Pintens & Will, *supra* note 54, at 65.

121. *See* BVerfG 5 March 1991 and FamRZ 1991, 535 (Germany) *cited in* Pintens & Will, *supra* note 54, at 69; *A Marriage by Any Other Name*, *supra* note 65. Until at least 1972, Austria required the wife to "receive[ ] the name of the husband." THE GENERAL CIVIL CODE OF AUSTRIA 12 (Paul L. Baeck trans., 1972). Austria also allows a couple to chose either his or her surname as a common marital name; where the couple does not choose, the husband's name prevails. See CC § 93 (Austria) *cited in* Pintens & Will, *supra* note 54, at 69. Either the wife or the husband may append her or his name to the common marital name. See CC § 93 *as modified*

provided that each partner in a marriage keep his or her own name if no choice was made.[122]

3. *Incest and Forbidden Marriage Partners*

In contrast to historically negative perceptions of *separate* surnames in the United States, Japan and several European countries, the perceptions of a *shared* surname for married persons are profoundly negative in other cultures. In some cultures, the fact that the husband and wife bear the same surname does not communicate family unity, but discord. In the *barriada* (squatter) settlements of Lima, Peru, a single surname for married persons intimates incest. "When people are together as a couple and use the same last name, it sounds as though they are brother and sister."[123] In addition to incest prohibitions, barriada women give a variety of reasons for retaining their own surnames at marriage. Women do not cease to be who they are at marriage, as a name change might indicate.[124] Women do not become part of their husbands' families, but remain members of their families of orientation with concomitant obligations and rights, particularly to sibling groups.[125]

In Korea, a married couple does not bear the same surname, as surnames separate appropriate and forbidden marriage partners, thereby identifying concomitant incest boundaries. With extremely limited exceptions only recently allowed, a Fourteenth Century law, codified in the Civil Code of 1958, prohibits Koreans from marrying a person with the same clan surname.[126] Since most Koreans share one of a only a few dozen surnames, and almost forty-five percent of the

by the Law on the Change of the Marital Name of 1986 (Austria) *cited in* Pintens & Will, *supra* note 54, at 69.

122. Germany, BGB (Civil Code) § 1355 as changed by the Family Name Reform Law of 16 Dec. 1993. Where the couple chose one of the spouse's names as a family name, the spouse whose name was not chosen could add his or her name to the family name [Begleitname], but that name could not be given to any children. *See Law on Names Liberalized: Marriage Partners May Keep Their Own*, THE WEEK IN GERMANY, Apr. 22, 1994, *available in* LEXIS, World Library, Allnws File.

123. SUSAN LOBO, A HOUSE OF MY OWN: SOCIAL ORGANIZATION IN THE SQUATTER SETTLEMENTS OF LIMA, PERU 88 (1982).

124. *See id.*

125. *See id.* at 88-89.

126. *See* Civil Code § 809, ¶ 1 (1958) (Korea) *cited in* Pintens & Will, *supra* note 54, at 46; Ju-Yeon Kim, *Guilty Names in Affairs of the Heart*, THE SCOTSMAN, Dec. 11, 1995, at 16.

population is surnamed Kim, Lee or Park, for any particular individual a large percentage of the population is legally off-limits as a marriage partner.[127] Conservative Korean Confuscianists "classify same-clan marriages as incest even if the couple are far removed in blood relationship."[128]

Similarly, in the past, a shared surname also indicated legally forbidden marriage partners in China[129] and Vietnam.[130] Although the formal legal constraint no longer exists, the customary norm has survived in some areas of China.[131] One scholar recounts a murder in the mid-1980s of a young Chinese girl who became romantically involved with a fellow villager who shared the same surname.[132] With the support of the local community and under traditional beliefs that "people who are 'from the same village and of the same surname' . . . should not 'discuss love or marriage,'" the girl's parents strangled her "to bring peace to the family and save their reputations."[133]

Likewise, whether she lives in the United States or in Southeast Asia, a Hmong surnamed Tang immediately knows that under incest prohibitions and clan marriage rules she may not marry anyone surnamed Tang, Chang, Kew, Kong, Klu, Zang Tchai, Chao or Ka, among others, as all such surnames belong to the Green Hmong clan.[134] The Khasi of northeastern India also require marriage outside of the clan, but under a matrilineal naming system where women retain their birth surnames and pass them on to their children.[135]

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127. *See* Sarah Boxer, *Now Mr. Kim Can Marry Miss Kim*, N.Y. TIMES, Oct. 1, 1995, § 4, at 2; *Centuries-old Ban on Same-Clan Marriages Eased in South Korea*, AGENCE FRANCE PRESSE, Dec. 23, 1995, *available in* LEXIS World Library, Allnws File; *In Brief*, SAN FRANCISCO EXAMINER, Oct. 1, 1995, at B8. Individuals with the same surname are not necessarily of the same clan, but surname is an initial indicator of a potential problem. For example, several Kim clans exist, with the Kims from Kimhae totalling 5% of the population. *See* Ju-Yeon Kim, *supra* note 126.

128. *Centuries-old Ban on Same-Clan Marriages Eased in South Korea*, *supra* note 127.

129. *See* Qing Code, Art. 107 *in* GEORGE JAMIESON, CHINESE FAMILY AND COMMERCIAL LAW 38 (Vetch & Lee Ltd. 1970) (1921) (discussing a section of Chinese marriage law which mandated that "[i]f any marriage takes place between persons of the same surname, the principals negotiating the marriage on either side shall be liable to 60 blows and the marriage shall be null and void. The woman shall be returned to her family and the marriage presents shall be forfeited to the Government").

130. See Code Civil annamite (1812) art. 100 (Vietnam), *cited in* Pintens & Will, *supra* note 54, at 46 n.418.

131. *See* Michael Palmer, *The People's Republic of China: Problems of Marriage and Divorce*, 27 J. FAM. L. 57, 61 n.18 (1988).

132. *See id.* at 61-62.

133. *Id.* at 62.

134. *See* Gary Yia Lee, *The Relationship of the Hmong* (visited Aug. 11, 1997) <http://www.stolaf.edu/people/cdr/hmong/hmong-au/lineage.htm>.

135. *See* Syed Zubair Ahmed, *What Do Men Want?*, N.Y. TIMES, Feb. 15, 1994, at A21.

Although Khasi men have indicated their desire for more rights in the matriarchal society, a leading Khasi scholar warns that a shift to a patrilineal naming tradition "would result in cross-marriages between clans, which is taboo in Khasi society."[136]

Even where surnames do not indicate incest boundaries, surnames may nonetheless convey significant information about social class and the perceived value of a potential suitor. In mid-nineteenth century Paraguay, indigenous Guarani last names, as opposed to Hispanicized names, connoted low prestige.[137] Parents consequently discouraged suitors with Guarani surnames from pursuing their daughters.[138]

C. Surnames as Markers of Privilege

The cultural meaning of separate surnames is not unfailingly feminist. Separate surnames do not universally indicate a nonsexist, nonpatriarchal culture. Married men and women customarily retain their birth surnames in Korea,[139] but traditional Korean society is highly patriarchal.[140] Similarly, Muslim women in Saudi Arabia keep their surnames after marriage,[141] but Islam privileges men in the public realm.[142]

Further, while a hyphenated surname or a double last name may be a stand against patriarchy in the United States, it may be associated with class privilege in England. David Williamson, co-editor of *Debrett's Peerage and Baronetage*, points out that "most double-barrelled names originated in the 19th century when landowners without sons, would often stipulate that a prospective son-in-law must preserve the family name in order to inherit the family property."[143]

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136. *Id.*

137. *See* Christina Bolke Turner & Brian Turner, *The Role of Mestizaje of Surnames in Paraguay in the Creation of a Distinct New World Ethnicity*, 41 Ethnohistory 139, 143-44 (1994)(citation omitted).

138. *See id.* at 144.

139. *See* Karen Feldman Smith, *Korean Etiquette Makes Demands on Western Sensibilities, Senses*, St. Petersburg Times, June 12, 1988, at 2E; *Surnames in Marriage*, Mainichi Daily News, Feb. 29, 1996, at 2.

140. *See* Lee Dong-won, *The Changes in the Korean Family and Women*, *in* Challenges for Women: Women's Studies in Korea 230 (Chung Sei-wha ed. & Shin Chang-hyun et al. trans., 1986).

141. *See* Ridah M. Larry, *City Talks: Civil Status Cards for Women*, Moneyclips, June 11, 1994, *available in* LEXIS, World Library, Allnws File.

142. *See* Reuben Levy, The Social Structure of Islam 91-134 (1962) (setting forth the status of women in Islamic society); Joseph Schacht, An Introduction to Islamic Law 126 (1964) (describing the legal position of women in Islam).

143. Brian Pendreigh, *A Dash of Panache for the Double-Barreled*, The Scotsman, Mar. 9, 1994, *available in* LEXIS, World Library, Allnws File.

Consequently, in England, hyphenated names "became a sign of property and distinction, with all the attendant snob value; or, depending on your viewpoint, a sign of class and privilege with attendant stigma."[144] Individuals have at times judged the character of their fellow English solely on the basis of last names. As a World War II English soldier stated, "[A]nd I knew from the first, by his hyphenated name he was one of the idle rich."[145]

Next door in Wales, however, hyphenated names do not carry a connotation of privilege and snobbery, primarily because the joining of surnames at marriage is a practical measure that helps distinguish families, given the unusually limited number of surnames available in Welsh.[146] Nor does one find the connotations of privilege and wealth in many Latin American countries and Spain, where double surnames—hyphenated or otherwise—are the norm and identify both maternal and paternal lines.[147]

D. RELIGION

Certainly, in many cultures, surnames convey significant information about family, incest boundaries, potential marriage partners and privilege. But, alternatively, a surname may signify broader religious commitment and, in essence, reject cultural messages of family unity, family lineage, and status identified with particular surnames. Among the Sikhs, in India and around the world, women bear the surname Kaur and men the surname Singh, regardless of marriage.[148] In the late seventeenth century the tenth Sikh prophet, Gurū Gobind Singh, envisioned a casteless society of Sikhs dedicated to principles of equality and justice.[149] In renouncing family lineage and occupation as determinants of social status, men received the surname Singh

144. *Id.*

145. Peter Cunliffe-Jones, *Britain and Class: Dropping the Double-Barrels*, AGENCE FRANCE PRESSE, Jan. 19, 1992, *available in* LEXIS, World Library, Allnws File.

146. *Id.*

147. *See* MICHAEL KENNY, A SPANISH TAPESTRY: TOWN AND COUNTRY IN CASTILE 199 (1962); LOBO, *supra* note 123, at 87-89 (discussing the Peruvian naming practice of carrying both the mother's and father's last names); Leonard R.N. Ashley, *Changing Times and Changing Names: Reasons, Regulations, and Rights*, 19 NAMES 167, 178 (1971) (noting the use of both mother's and father's sunames in Spain); *see also* C.C. art. 114 (1889)(Spain); C.C. art. 109 (1981) (Spain); C.C. art. 31 (1886 as amended 1973) (Costa Rica); C.C. art. 148 no. 1 (1916) (Panama); C.C. art. 20 (1984) (Peru); C.C. art. 235 (1946 as amended 1982)(Venezuela), *cited in* Pintens & Will, *supra* note 54, at 54.

148. *See* Elisabeth Bumiller, *Rite of Passage in India*, WASH. POST, Mar. 3, 1985, at H1.

149. *See* ETHNE K. MARENCO, THE TRANSFORMATION OF SIKH SOCIETY 26 (1974); W.H. MCLEOD, THE EVOLUTION OF THE SIKH COMMUNITY 14-16 (1975); NIKKY-GUNINDER KAUR SINGH, THE FEMININE PRINCIPLE IN THE SIKH VISION OF THE TRANSCENDENT 118-20 (1993).

(lion) and women the surname Kaur (princess).[150] Gurū Gobind Singh marked religious and military commitment in a community surname, and, from his perspective, freed both men and women from caste or status concerns connected with hereditary family names and occupation.[151] With a single community surname, women were no longer obliged to take their husbands' names at marriage.[152]

In the United States, in the 1960s and 1970s, followers of Elijah Muhammad often received an "X" in place of a former surname to, among other things, denote their conversion to the Nation of Islam.[153] Malcolm Little became Malcolm X, essentially "obliterating family, friends, culture, lineage, even ethnicity. To be X is to be Muslim and nothing more."[154]

E. Surnames as Markers of Ethnicity and Nationalism

1. *Forced Differentiation or Assimilation*

Whatever cultural message regarding family, status, or religion a name communicates, governments may use surnames to enforce submission to government rules, denying integration and participation in national identity to some groups. The imposition of surnames on Jews living in Austria, France, Prussia, Bavaria and Russia made it easier for the respective governments to identify and control Jewish populations.[155] The Nazi name decrees of the 1930s restricted Jews to specific Jewish personal names, and denied surname and other name changes that would "conceal his [ethnic] identity."[156] Essentially, names became a way of marking Jews as different, dangerous to the German state, and eventually facilitated extermination. If a Jew's name did not sufficiently identify him or her as Jewish, men were required to adopt the name Israel and women the name Sarah as a middle name.[157] The adopted middle name then had to be added to official documents, such as birth certificates, and used in all official

150. *See* Singh, *supra* note 149, at 119-20.

151. *See id.* at 119-20, 245; Indubhusan Banerjee, 2 Evolution of the Khalsa: The Reformation 116 (1980).

152. *See* Singh, *supra* note 149, at 120, 245.

153. *See* Steven Barboza, American Jihad: Islam After Malcolm X 122 n.17 (1993); Martha F. Lee, The Nation of Islam: An American Millenarian Movement 37 (1996).

154. Kaplan & Bernays, *supra* note 53, at 87-88.

155. *See id.* at 57; Alex Shoumatoff, The Mountain of Names: A History of the Human Family 88-91 (1995).

156. Robert M. Rennick, *The Nazi Name Decrees of the Nineteen Thirties*, 18 Names 65, 73-74 (1970).

157. *See id.* at 76.

communication upon threat of fine or imprisonment.[158] The Nazi name decrees sought to "properly" identify individuals, including Jews, by "true" race/ethnicity, nationality, gender, and family.[159] In contrast, the Italian Constitution guarantees that no one may be deprived of his name for political reasons.[160]

A government may alternatively manipulate or impose surnames as a means of forcing assimilation and integration into the dominant culture, rather than as a tool of exclusion. Under the General Allotment Act of 1887, the United States Office of Indian Affairs implemented rules which facially supported retaining Native American surnames.[161] These instructions, however, were actually used to replace existing indigenous names with Anglicized versions when Native Americans sought the private land titles the Act required.[162] The rationale behind the renaming was to move Native Americans closer to Anglo-American culture and break up the tribal system.[163] Likewise, throughout Bulgarian history, and as recently as 1985, governments have both encouraged and forcibly imposed Bulgarian surnames on ethnic and religious groups—particularly Moslem Turkish groups—in an effort to create and publicly present a unified Slavic nation and eradicate minority culture and language.[164] Through "Operation Surname," the Canadian government sought to impose surnames on Inuit

158. *See id.* at 76, 80.

159. *See id.* at 69.

160. *See* COST. art. 22 (Italy).

161. See B.30 U.S. BUREAU OF AMERICAN ETHNOLOGY, HANDBOOK OF AMERICAN INDIANS NORTH OF MEXICO, pt.2, at 18 (1910), which lists the Office of Indian Affairs' principles covering the recording on agency rolls of Indian names:

> (1) [t]he father's name should be the family surname; (2) the Indian name, unless too long and clumsy, should be preferred to a translation; (3) a clumsy name may be arbitrarily shortened (by one familiar with the language) without losing its identity; (4) if the use of a translation seems necessary, or if a translation has come into such general and accepted use that it ought to be retained, that name should be written as one word.

162. *See* Daniel F. Littlefield, Jr. & Lonnie E. Underhill, *Renaming the American Indian: 1890-1913*, AM. STUD., Fall 1971, at 33, 33-36.

163. *See* Littlefield & Underhill, *supra* note 162, at 36, 42-43. An undated federal government report states that:

> [u]pon final allotment of their lands, most of our Indians have accepted the situation gracefully and are "catching" the habits and ways of their white neighbors. This status of the Indian problem of the United States is nearing the desired end toward which our Government has been working for many years and in bringing about which we have spent millions of dollars.

Id. at 43.

164. *See* Daniel G. Bates, *What's in a Name? Minorities, Identity, and Politics in Bulgaria*, *in* 1 IDENTITIES: GLOBAL STUDIES IN CULTURE AND POWER 201, 208-10 (1994).

peoples, who preferred no surname but were previously identified for government purposes by numbered disks hung around their necks.[165]

2. *Chosen Assimilation or Differentiation*

An individual may choose a name as a means of assimilating into or differentiating from the dominant culture. For an ex-slave, "[a] new name was both a symbol of personal liberation and an act of political defiance; it reversed the enslavement process and confirmed the free Negro's newly won liberty just as the loss of an African name had earlier symbolized enslavement."[166] African-American ex-slaves in New York and Pennsylvania often chose common English surnames, for example Johnson, Brown or Smith, that allowed them to blend in with the dominant Anglo society, rejecting African names and the names of prominent slave holders or their former masters.[167]

Surnames may also mark a distinct ethnic group and contribute to a distinct national identity. In Paraguay, a certain group of surnames mark "a distinct ethnonationality called 'Paraguayan'" with surnames serving as "a quick shorthand for determining membership in the ethnic group."[168] Through both individual choice and group pressure, development of what Paraguayans term distinctly Paraguayan surnames—certain Spanish surnames and Hispanicized indigenous Guarani surnames—can be seen as central to the creation of Paraguay as a nation state.[169] Likewise, Hebraizing surnames helped create a new

165. *See* VALERIE ALIA, NAMES, NUMBERS, AND NORTHERN POLICY: INUIT, PROJECT SURNAME, AND THE POLITICS OF IDENTITY (1994); KAPLAN & BERNAYS, *supra* note 53, at 30; Valerie Alia, *Women, Names, and Power*, 8 WOMEN & LANGUAGE 34, 35 (1984).

166. IRA BERLIN, SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH 51-52 (1974). Both Booker T. Washington and Ralph Ellison echo this sentiment. In his autobiography, Washington states "a feeling got among the coloured people that it was far from proper for them to bear the surname of their former owners, and a great many of them took other surnames. This was one of the first signs of freedom." BOOKER T. WASHINGTON, UP FROM SLAVERY 14 (William L. Andrews ed., 1995) (1901). Ellison argues that "we must first come into the possession of our own names. For it is through our names that we first place ourselves in the world. Our names, being the gift of others, must be made our own." RALPH ELLISON, *Hidden Name and Complex Fate*, *in* SHADOW AND ACT 144, 147 (1964).

167. *See* BERLIN, *supra* note 166, at 52; GARY B. NASH, RACE, CLASS, AND POLITICS: ESSAYS ON AMERICAN COLONIAL AND REVOLUTIONARY SOCIETY 293-98 (1986). In contrast, Linda Anderson Smith notes that members of the dominant Anglo-American culture may perceive unique African-American personal names as signifying African-Americans' "inability or unwillingness 'to fit in.'" *See* Linda Anderson Smith, *Unique Names and Naming Practices Among African American Families*, 77 FAMILIES IN SOC'Y 291 (1996).

168. Turner & Turner, *supra* note 137, at 160.

169. *See id.* at 141.

identity for many immigrants to Israel.[170] In Ecuador, adoption of Incan names by non-Incan indigenous persons increased after the Spanish colonial conquest,[171] perhaps as "political nostalgia for Inca rule,"[172] despite the fact that the Incas were previous colonizers. Phenotypic blacks and phenotypic indigenous peoples in Bahia, Brazil, reflect different surname patterns. Even while the adoption of surnames in the late 1800s was itself a mark of acculturation, phenotypic blacks and phenotypic indigenous peoples did so in ways that retained elements of their ethnicity.[173]

Many people in the United States have changed their surnames, either as new immigrants or in later generations, as a conscious self-definition and change in group identification, and as a mark of assimilating into the dominant Anglo-American culture.[174] While the name change itself may be voluntary, significant societal pressures may come to bear as individuals seek to become part of a new community, to make their name more pronounceable, less "foreign," to hide or reveal ethnic origins, to become "Americanized."[175] A voluntary name change may be a mark of self-hatred, an identification of the oppressed with the oppressor,[176] or more sympathetically, "a phenomenon almost inevitable in the first native-born population, they shrink from all the disadvantages that go with their foreignness. . . ."[177]

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170. *See* KAPLAN & BERNAYS, *supra* note 53, at 58; Avner Falk, *Identity and Name Changes*, 62 PSYCHOANALYTIC REV. 647, 654 (1976)(citation omitted).

171. *See* Turner & Turner, *supra* note 137, at 158.

172. Frank Salomon & Sue Grosboll, *Names and Peoples in Incaic Quito: Retrieving Undocumented Historic Processes Through Anthroponymy and Statistics*, 88 AM. ANTHROPOLOGIST 387, 396 (1986).

173. *See* Eliane S. Azevêdo, *The Anthropological and Cultural Meaning of Family Names in Bahia, Brazil*, 21 CURRENT ANTHROPOLOGY 360, 360-62 (1980). Phenotypic indigenous peoples tended to draw surnames from plants and animals, while phenotypic blacks tended to draw devotional surnames from Roman Catholicism. *See id.*

174. *See* Leonard Broom, Helen P. Beem & Virginia Harris, *Characteristics of 1,107 Petitioners for Change of Name*, 20 AM. SOC. REV. 33, 39 (1955); *see also* LOUIS ADAMIC, WHAT'S YOUR NAME? 47-55 (1942) (discussing various methods of name change by immigrants into the United States and their American-born children).

175. *See* KAPLAN & BERNAYS, *supra* note 53, at 50-64.

176. *See* ALBERT MEMMI, THE LIBERATION OF THE JEW 31-42 (Judy Hyun, trans., 1966); *see also* ADAMIC, *supra* note 174, at 59-60. Adamic asserts that a "subtle corrosion of personality" may occur when individuals Anglicize their names. *Id.* at 59.

177. KAPLAN & BERNAYS, *supra* note 53, at 56 (quoting H.L. Mencken). For Jewish populations in the United States, name changing reached its peak in the late 1940s and early 1950s. *See id.* at 63 (citation omitted).

Whatever the particular reason for the change, voluntary name changing can itself be viewed as typically American even if surnames do not accurately convey ethnicity.[178]

V. PRACTICAL CONSEQUENCES

Certainly, within any particular culture, recognizing a diversity of naming practices and attached social meanings has practical consequences both for individuals and the state. Initial social interaction on a day-to-day basis may become less certain. Without a uniform rule of naming, people do not as a matter of course know how to properly address one another.[179] The receptionist fumbles as he calls a patient from the waiting room. The teacher stares blankly at the roll, trying to figure out how to address a new child. But the price of that uncertainty seems small and the problem easily remedied. Although it requires effort and attention, one merely needs to ask another, "What shall I call you?" or "How would you like to be addressed?" The individual is then free to define herself, to respond as she deems best in the context of her own values, culture and aspirations.[180]

Where an individual is not present to identify him or herself, however, complications may arise. Until the recent sixteenth edition, *The Bluebook*, that arcane dictator of a uniform system of legal citation, wrested an individual's control of his or her name by demanding that a citation "[s]horten any middle name (or names) to a middle initial unless the author uses an initial in place of his or her first name, in which case retain the first initial and the full middle name."[181] The rule assumed that an individual citing a work could correctly identify last and middle name(s), and even if correct in so doing, was free to conform the writer's name to an external standard by shortening it, never mind what the name meant to the individual or the community

178. *See* Mary C. Waters, *The Everyday Use of Surname to Determine Ethnic Ancestry*, QUALITATIVE SOC., Fall 1989, at 303 (demonstrating that surnames are not reliable predictors of ethnicity, although individuals use them as such).

179. Miss Manners argues that standardized guidelines preclude hurt feelings and misunderstanding—we ought to know what to call each other without guessing and risking offense. *See* MISS MANNERS GUIDE TO EXCRUCIATINGLY CORRECT BEHAVIOR 29-31 (1982), *referenced in* KAPLAN & BERNAYS, *supra* note 53, at 170, 239.

180. Emily Post, the doyenne of manners, might protest such directness. *See* KAPLAN & BERNAYS, *supra* note 53, at 162. Emily Post advised that if you didn't know someone's name you should consult a third person rather than that person directly. *See* EMILY POST, ETIQUETTE 7 (1922). Some cultures consider names sacred and direct address by names insulting. *See* U.S. BUREAU OF AMERICAN ETHNOLOGY, *supra* note 161, at 17. Thus, pressing for someone's name, as opposed to asking how he or she wishes to be addressed may be problematic in certain situations.

181. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, Rule 15.1.1 (15th ed. 1991).

to which that person belonged. The better rule is the unqualified version newly promulgated in the sixteenth edition: "The first time a work is cited, always give the author's full name as it appears on the publication . . . ."[182] Under this rule, the cultural information encoded in the name remains intact; no surnames are obliterated into middle initials, no double first names ruined. Women and men are identified as they choose to be, assuming, of course, that publishers respect an author's initial name preference. Likewise, when technology configures around and is bound by tradition, letting an individual define oneself may not always be free of complications.[183] However, the problem here also seems easily remedied through more robust technology design.

The failure to recognize a diversity of naming practices and attached social meanings also has practical consequences. For example, an *FBI Law Enforcement Bulletin* describes the serious problems that occur where officers fail to identify both victims and perpetrators of violent crime because they record a name incompletely or incorrectly.[184] Members of a community that follows a naming practice different from the dominant form may simply not recognize to whom a law enforcement officer refers if he or she names that individual conventionally. Advisedly, the *FBI Law Enforcement Bulletin* encourages officers to familiarize themselves with different naming practices and provides basic guidance on some traditions, recognizing that attempts to impose the dominant cultural practice are ineffectual and problematic.[185] Most importantly, the *Bulletin* encourages officers to ask about names, and to listen to those in the community.[186] Essentially, both recognizing and failing to recognize diverse naming practices entails practical consequences.

V. CONCLUSION

Without a uniform naming rule and a shared understanding of accompanying social meaning, certain markers of community and connection are lost. However, imposition of naming conventions through

182. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, Rule 15.1.1 (16th ed. 1996).

183. *See also* KAPLAN & BERNAYS, *supra* note 53, at 27 (noting that the latitude regarding spelling and pronunciation in normal social intercourse "plagues designers of computerized indexes, databases, and alphanumeric codes," as "the information superhighway is as unforgiving of even the tiniest swerve as a lap in the Indianapolis 500").

184. *See* J. Philip Boller, Jr., *A Name is Just a Name—or Is It?*, FBI L. ENFORCEMENT BULL., Mar. 1992, at 4.

185. *See id.*

186. *See id.*

law or insistence on a single cultural tradition may not reflect the reality of people's lives and the varied communities to which they belong. Clearly, women face naming decisions in a myriad of social and legal contexts, some of which recognize the ability to choose and the desirability of choice more readily than others. Whatever the particular social and legal constraints, issues of individual identity, family, and community intersect with feminism and patriarchy, minority and majority culture, ethnicity and nationalism, religion and secularity, race and class. The implications, practical and otherwise, of naming choices vary among communities and for individual women. Women's naming experiences are not universal. Likewise, gender alone does not explain the `choices and limitations women face in naming themselves.

Assessing the naming choices of any particular woman or group of women along a continuum of values—for example, feminism to patriarchy or family commitment to independence—without asking the women involved, undermines the goal of fully understanding and accurately portraying women's varied life experiences. A traditional Muslim woman who uses her birth surname after marriage may do so for reasons that contrast sharply with those her Western secular counterpart gives for doing exactly the same thing. Similarly, a Korean, Hmong, or Khasi woman who names herself in a nontraditional (Korean/Hmong/Khasi) manner faces a social context and social consequences different from those an Anglo-American woman faces when naming herself nontraditionally. The boundaries and cultural information encoded in surnames, both within and across cultures, are different. For any woman, numerous sociocultural factors—religion, ethnicity, chosen assimilation or differentiation, among others—may provide conflicting naming imperatives.

Identification of varied naming practices and concomitant social meanings across and within cultures confronts essentialism with the reality of a world shaped by diverse values and social realities. More constructively, awareness of the rich cultural diversity surrounding naming practices allows feminists and others to recognize alternative and multiple social realities and foster antiessentialism in approaches to social change. Across cultures, a shared surname for a married couple may communicate family unity or intimate family discord. Separate surnames may represent a woman's independence, her religious commitment, or her place in a patriarchal community. As feminism values women's choices, and women's empowerment with

respect to the values and cultures they cherish, antiessentialism identifies the variety of women's experience, reminding us that women's choices are rarely simple.