# 'DENY THY FATHER AND REFUSE THY NAME':* NAMIBIAN EQUALITY JURISPRUDENCE AND MARRIED WOMEN'S SURNAMES

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## 1 *Introduction*

Married women's assumption of their husbands' surnames is regarded as so self-evident, universal and 'natural' that questioning the practice is often greeted with astonishment and ridicule by both men and some women. Why waste time on such inconsequential issues when women lack access to economic, educational and other more tangible resources, and when women themselves choose to take their husbands' surnames, seem to be the arguments (Morgenstern Leissner Omi 'The problem that has no name' (1998) 4 *Cardozo Women's LJ* 321 at 323, 332–3).

However, the issue is not likely to remain in obscurity or 'unnamed' for much longer. Judgment in the first Namibian case to deal with equality and non-discrimination on the basis of sex was recently delivered by the Supreme Court of Namibia. *Müller v President of the Republic of Namibia & another* 2000 (6) BCLR 655 (NmS) concerned an application by the husband of a Namibian citizen who wanted to adopt her surname, Engelhard, as their family name. In his native country of Germany spouses may adopt either the husband's or the wife's surname as the family name (BGB1355; 48 *BverfGE* 327, 337–40 (1978)). Müller was employed in his wife's family business, which was conducted under the name of Engelhard. He wanted to assume the name to make clear his connection to the business. Moreover, his child had been registered under her mother's surname and he wished to emphasize the family bond by adopting the same name.

According to the Aliens Act 1 of 1937 a married woman can assume the surname of her husband without any formalities, and may after the dissolution of the marriage assume any surname which she had previously used. No similar provision is made for husbands who wish to assume their wives' surnames. They have to follow the formal procedure for changes of name provided for in the Act. The applicant/appellant challenged the constitutionality of the legislation on the basis that it infringed his constitutional rights to privacy and family life and constituted sex discrimination (arts 13(1), 14 and 10, respectively, of the Namibian Constitution Act 2 of 1990).

The case is interesting not only for the formulation of an equality test in relation to the Namibian Constitution, but because the legislation

* William Shakespeare *Romeo and Juliet* Act II, scene ii:
'Deny thy father and refuse thy name:
Or, if thou wilt not, be but sworn my love,
And I'll no longer be a Capulet.'

which is challenged originates in South African law. The Aliens Act no longer applies in South Africa, where the issue is regulated by the Births and Deaths Registration Act 51 of 1992, s 26(1) of which determines that:

> '(1) Subject to the provisions of this Act or any other law, no person shall assume or describe himself or herself by or pass under any surname other than that under which he or she has been included in the population register. . . . Provided that this subsection shall not apply when—
> (a) a woman after her marriage assumes the surname of the man with whom she concluded such marriage or after having assumed his surname, resumes a surname which she bore at any prior time;
> (b) a married or divorced woman or a widow resumes a surname which she bore at any prior time; and
> (c) a woman, whether married or divorced, adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.'

Apart from the addition of para (c), the current South African legislation is similar to the Namibian law in that a married woman is allowed to use her husband's name or resume a surname which she used previously. No provision is made for a married man either to use his wife's surname, or to add her surname to his without formally changing his name.

This note has a dual purpose. I intend to analyse and criticize the Namibian decision, but at the same time I want to concentrate on the arguments and reasoning which may be used to challenge equivalent South African legislation. For this reason my focus will continually shift from the specific arguments in the *Müller* case to issues in a potential South African case. In relation to the South African law, my project is further to investigate the best way to formulate the arguments so as to avoid the pitfalls to which the Namibian challenge succumbed.

In the *Müller* case the rule in the Aliens Act was challenged on the basis of sex equality, because the Namibian Constitution does not specifically include gender as a basis for equality. Article 10 determines that:

> '(1) All persons shall be equal before the law.
> (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.'

In South Africa a similar case would probably be decided on the basis of gender, since the challenged rule embodies and reflects social rather than biological distinctions between men and women (see Katherine O'Donovan *Sexual Divisions in Law* (1985) 62). Given the differences between the two Constitutions, the Namibian court's approach to equality is also interesting. Strydom CJ held (at 664–5) that:

> '[t]he approach of our courts towards article 10 of the Constitution should then be as follows—
> (a) Article 10(1)
> The questioned legislation would be unconstitutional if it allows for differentiation between people or categories of people and that differentiation is not based on a rational connection to a legitimate purpose. . . .
> (b) Article 10(2)
> The steps to be taken in regard to this sub-article are to determine—
> (i) whether there exists a differentiation between people or categories of people;

(ii) whether such differentiation is based on one of the enumerated grounds set out in the sub-article;
(iii) whether such differentiation amounts to discrimination against such people or categories of people; and
(iv) once it is determined that the differentiation amounts to discrimination, it is unconstitutional unless it is covered by the provisions of Article 23 of the Constitution [which deals with apartheid and affirmative action].'

The court dismissed the challenge of sex discrimination on the basis that in order for treatment to be discriminatory it has to have a detrimental effect on the affected party (at 665–7). Since the applicant could change his name by the normal procedure for name changes, he suffered no discrimination (at 668F–H). His second argument, that the law infringed his rights to privacy and family life, were likewise dismissed on the basis that the legislature could curb citizens' fundamental rights in pursuance of the legitimate governmental purposes of 'legal security and certainty of identity' (at 669C–F).

2 *Formal and substantive equality*

It was argued on behalf of the respondents in the *Müller* case that the rules relating to the names of married people did not violate the standard of substantive, as opposed to formal, equality (at 659E). Although the judgment does not deal with this argument in detail, I wish to point out that it represents an oversimplification of the concepts of formal and substantive equality. The mere fact that a certain rule does not treat different categories of people in the same way (ie the rule is not formally equal), does not necessarily mean that it represents substantive equality. The latter concept is concerned with whether the outcome of different treatment would advance the interests of previously disadvantaged groups (see generally Alison M Jaggar 'Sexual difference and sexual equality' in Deborah L Rhode (ed) *Theoretical Perspectives on Sexual Difference* (1990) 239; Denise Meyerson 'Sexual equality and the law' (1993) 9 *SAJHR* 237). In this case a strong argument can be made that the differential treatment of men and women, although apparently favouring women, actually facilitates and thus reinforces existing practices which compel women to take their husbands' names, while discouraging men from assuming their wives' surnames. Therefore, it amounts to both formal and substantive inequality. This is not unique, since many rules which treat men and women differently, such as those that excluded women from the professions, also result in the oppression of women.

Besides being theoretically unfounded, the argument conceals an important and flawed assumption. The argument claims that since it is more difficult for men to change their surnames, women are favoured above men. Because it favours women, the rule is an instance of substantive equality. However, this loses sight of the *content* and *social value* of the ability which women possess in such an advantageous measure. The ability to relinquish one's name and identity is not necessarily a valuable capacity. It originated in patriarchal values and continues to cause practical

and other problems. What men therefore are less capable of than women is something which is by no means an inherently desirable action. In effect, the rule allows women to give up their identity more freely than it allows this 'privilege' to men. This does not enhance gender equality in society.

3 *Patriarchal rules and practices in contemporary societies*

At first glance it may seem strange that a legal rule, which provides married women with opportunities which married men lack, could constitute gender discrimination. If a woman were to bring a similar application in South Africa, questions would be raised about the ability of women to complain of discrimination when they are automatically allowed to assume their husbands' names, while men need to go to some administrative trouble to achieve the same effect.

It is a peculiar effect of patriarchal traditions and practices that, when applied in modern societies, they sometimes seem to favour women and are challenged by men as instances of so-called 'reverse discrimination'. The reason for this phenomenon is that some few women occupy economic, educational and social positions of privilege which allow them to manipulate discriminatory rules to their own benefit. This ability is somehow ascribed to all women and the originally patriarchal rule is perceived as actually favouring women.

Rules relating to the parentage and names of illegitimate children provide a clear example of this process. The rule that there is no family bond between an illegitimate child and its father was not originally designed to favour women. In societies where the economic and social protection provided by a man was crucial to the well-being of a woman, this rule effectively punished and stigmatized unwed mothers and their children for sexual intercourse outside of marriage. It constituted an incentive for women in such positions to marry the fathers of their illegitimate children (Carol Smart *Feminism and the Power of Law* (1989) 153–7) and ensured that illegitimate children could not inherit from their fathers. Except for pressure from the women's families, fathers of illegitimate children could effectively choose whether to acknowledge their children by marrying the mothers (B S S 'Like father, like child: The rights of parents in their children's surnames' (1984) 70 *Virginia LR* 1303 at 1343–5; Omi op cit at 396). As soon as some women obtained sufficient economic and social status to enable them to raise children without the father's assistance and thus to utilize the rules to exclude paternal rights, the rules were energetically challenged and eventually modified (see, for instance, David van Onselen 'TUFF—The unmarried fathers' fight' 1991 *De Rebus* 499; and the Natural Fathers of Children Born out of Wedlock Act 86 of 1997).

Similar challenges of reverse discrimination can be expected against the legislation dealing with the names of married women. However, the fact that some women can use the rule to their advantage does not mean that

it favours all women vis-à-vis men or that using their husbands' surnames is a matter of choice for all women. For the majority of women and especially for those with the least political, social and economic power, this rule may still retain the original patriarchal purpose and effect of forcing women to adopt their husbands' names.

In fact, the exact content of the legal rule should be determined by assessing its practical effect. In other words we should be careful to establish whether the rule relating to surnames is one which actually allows women to choose to adopt their husbands' surnames, or whether it has the practical effect of coercing most women to change their names. In this regard it is necessary to examine other social pressures which form the context within which the legal rule operates.

4 *Women's choice to adopt their husbands' surnames*

Middle-class women who marry after having established professional careers and reputations may easily decide to retain their own surnames after marriage. Their choice is generally perceived as reflecting rational career and economic motives. However, where these reasons are lacking, social pressure on women to adopt their husbands' surnames is considerable. Banks, employers and providers of services often simply assume that women have the same names as their husbands. A woman who retains her own name sometimes has to go to significant trouble because of this fact (Kif Augustine-Adams 'The beginning of wisdom is to call things by their right names' (1997) 7 *Southern California Review of Law and Women's Studies* 1 at 9; Omi op cit at 354–5).

In the past the Department of Home Affairs seemed to share the assumption that women will assume their husbands' surnames when they marry. Identity documents and passports were automatically issued under husbands' names, causing administrative difficulties for women who wanted to retain their names. It seems that this stance was altered in 1999 when a new edition of the marriage register was put into use. Although not available to all marriage officers as yet, the new register requires the official to ask the wife whether she wishes to retain her name, use her husband's name or add his name to hers (personal communication with the Department of Home Affairs, 17 May 2000).

Families, friends and acquaintances may also apply pressure to force women to adopt their husbands' names. In this regard, the law itself, by determining that a married woman's children bear the surname of their father (s 9(2) of the Births and Deaths Registration Act) adds to the pressure. If a woman wishes to share a name with her children, the simplest solution is to adopt her husband's name.

When this combination of social, family and official pressure is taken into account, it seems that the legal rule, although ostensibly giving married women a choice of names, actually allows a choice only for some women. Even those women who exercise their choice do not find it unconstrained in the face of many pressures to conform to patriarchal

tradition. However, most women are compelled, by family and other demands, to relinquish their names. This is particularly so for the most disadvantaged women who do not have access to information about the choice provided by the legal rule nor the resources to resist official assumptions that they will use their husbands' names. The rhetoric of 'choice' furthermore obscures the fact that there is no need for men to make the same choice. A gender-specific rule which allows women informally to assume men's surnames will obviously reinforce actual inequalities in women's and men's abilities to choose to retain their names after marriage.

5 *Discrimination against women*

The applicant in the *Müller* case was a man and the issue of discrimination against women accordingly did not arise. Such discrimination may, however, be relevant in a South African situation and I will therefore examine the argument of sex discrimination against women. Ultimately, this examination also indicates that it may have been best for the Namibian case to have been brought by a woman or by a couple.

Although the Namibian Constitution does not require that discrimination be 'unfair', the *Müller* judgment nevertheless linked discrimination to the inherent dignity and equality of all persons:

> '. . . I am of the opinion that the words "discriminate against" in Article 10(2) were intended to refer to the pejorative meaning of the word "discriminate", and not to its benign meaning.' (at 666I–J)

Although the Aliens Act afforded men and women differential treatment, this was not found to impair the dignity of the applicant or the group of married men as such (at 668B–G).

Understanding the difference between formal and substantive equality facilitates an understanding of why legal rules which favour women taking men's names at marriage constitutes discrimination. I have shown how the form of the legal rule—allowing women a choice of names—disguises its practical effect of facilitating and reinforcing expectations that women should assume husbands' names (section 3 above). Such expectations harm women in different ways. On a symbolic and discursive level, they deny women's identities and subsume them into their husbands' families after marriage, thus reinforcing stereotypical perspectives of women as self-sacrificing, even to the extent of sacrificing their identities (Omi op cit at 356, 363).

This, in turn, echoes the now discredited idea that upon marriage man and wife are treated as one legal person, and that this person is represented by the husband (Jana B Singer 'The privatization of family law' 1992 *Wisconsin LR* 1442 at 1462; Omi op cit at 342–5, 364). The 'marital unity doctrine' underlies the marital power and the husband's position as head of the household, and in the past justified the legal rules that a husband could not be found guilty of the rape of his wife and that the wife's domicile was that of her husband (Augustine-Adams op cit at 5). Despite

the abolition of these rules in South African family law (see s 11 of the Matrimonial Property Act 88 of 1984 with regard to the marital power, s 30 of the General Law Fourth Amendment Act 132 of 1993 in relation to the husband's position as head of the household, s 5 of the Prevention of Family Violence Act 133 of 1993 concerning marital rape, and s 1 of the Domicile Act 3 of 1992 about the wife's independent choice of domicile), the symbolic unity of husband and wife is maintained by rules which encourage wives to take their husbands' surnames. Moreover, the wife's connections to her birth family, which continue to play an important role in women's lives after marriage, are symbolically denied by calling her by her husband's name. The need to recognize the links with her birth family may vary across different cultural groups and a uniform rule regarding a married woman's surname may further offend against some cultural interests.

More practical consequences are that women who assume their husbands' names lose professional reputations and credit histories acquired under their own names and may also lose contact with people who only knew them under their birth names (Esther Suarez 'A woman's freedom to choose her surname: Is it really a matter of choice?' (1997) 18 *Women's Rights Law Reporter* 233 at 236–7; Omi op cit at 364). Women who want to retain their own names bear the administrative and economic burden of convincing state and commercial agencies that they have retained their names—a burden not shared by married men (Augustine-Adams op cit at 19–20; Omi op cit at 364–5).

Women who have children when they are married also automatically lose the important ability to transmit their surnames to their children (J C Sonnekus 'Naamsvoering binne die familiereg—Versoenbaar met fundamentele menseregte?' (1993) 4 *TSAR* 608 at 623; s 9(2) of the Births and Deaths Registration Act). This ability symbolizes parental power over, or kinship with, the child and the fact that within wedlock women are deprived of this seriously devalues their bonds with their children (B S S 'Like father, like child' op cit at 1342). (Both boy and girl children are deprived symbolically of the connections with their maternal families which bearing their mothers' surnames would stand for (Omi op cit at 359–60).) Moreover, the fact that women generally lose their own names at marriage explains the higher social value placed on boys, rather than girl children, since male children are associated with the continuation of the family name. This is attested to by the popular notion of the family 'dying out' when there are no male descendants (B S S 'Like father, like child' op cit at 1343–5; Omi op cit at 361–2).

That this is an issue of gender equality is recognized in art 16(1)(g) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), which was ratified by South Africa in 1995. The Convention requires that states parties undertake measures to eradicate discrimination in the context of marriage and family relations, particularly to ensure 'on a basis of equality of men and women

. . . [t]he same personal rights as husband and wife, including the right to choose a family name'.

Earlier cases decided by the European Commission of Human Rights held that legal rules which encourage women to take their husbands' names upon marriage did not constitute discrimination in terms of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (*Hagmann-Husler v Switzerland* 12 Eur Comm HR Dec & Rep 202 (1977); *X v The Netherlands* 32 Eur Comm HR Dec & Rep 175 (1983); Aeyal M Gross 'Rights and normalization: A critical study of European human rights case law on the choice and change of names' (1996) 9 *Harvard Human Rights J* 269). However, in the latest case, *Burghartz v Switzerland* (1994) 18 EHRR 101, the European Court of Human Rights held that Swiss legal rules which prevented a couple from using the wife's surname as their family name and the husband from using his own name in addition to his wife's violated the right of privacy as well as constituting sex discrimination.

The fact that women's choices are limited either to retaining the names of their fathers or assuming the names of their husbands is one of the inescapable ironies attendant upon attempts to impose egalitarian norms in a society deeply rooted in patriarchy. However, this effect should disappear as more women retain their surnames and provided that women's surnames are also transmitted to their children (B S S 'Like father, like child' op cit at 1348; Morgenstern Leissner Omi 'The name of the maiden' (1997) 12 *Wisconsin Women's LJ* 253; Omi 'The problem that has no name' op cit at 359–65).

6 *Are men discriminated against?*

I have argued that the ostensibly preferential treatment of women may nevertheless constitute discrimination against women. In the context of the Namibian judgment the next question is whether such treatment, while offending against gender equality for women, would at the same time discriminate against men. The logic of the *Müller* judgment on this point is questionable. In terms of the court's definition of discrimination as unfavourable treatment vis-à-vis another group, the fact that men bear additional burdens in order to assume their wives' names must automatically mean unfavourable treatment and thus discrimination. The court acknowledged the less favourable treatment of men, but held that the Aliens Act merely recognized a long-standing tradition whereby married women took husbands' names (at 668E). Also, it did not impair the dignity of the applicant:

> 'The impact of this differentiation on the interests of the appellant is, to say the least, very minimal, nor does it affect his standing in the community in any detrimental way.' (at 668F–G)

At the outset it should be made clear that neither long-standing tradition, nor women's apparently voluntary assumption of their husbands' surnames, can justify a discriminatory rule (*Burghartz* (supra)

para 28). The Namibian court's invocation of tradition is either naïve or cynical in the light of the fact that in Namibia, as in South Africa, the adoption of constitutional norms of non-discrimination was specifically intended as a symbolic and practical reaction to and break with a past suffused with traditions which discriminated on various grounds. In any event, research shows that a uniform practice of women adopting husbands' names at marriage is not of long-standing in any society and may be another 'tradition' manufactured in the interests of conservative social arguments (see *Ex parte Dodds* 1949 (2) SA 311 (T); Sonnekus op cit at 614–17; Suarez op cit at 233–4). The real reason for the finding that the discriminatory rule does not impact negatively on the applicant is probably linked to the fact that the opportunity to which men have less access is not one which is highly valued or valuable.

In the context of formal and substantive equality, the fact that the treatment formally discriminates against men should not be seen in isolation from its reinforcement of social pressures on women to assume husbands' names and women's consequent substantive inequality. The two are inextricably linked and can only be separated by way of artificial and selective classification. Moreover, this renders visible the conceptual link between women's interests in equality and the interests of men who want to transcend stereotypical gender roles. By their wish to oppose existing sexist norms, such men align themselves with the interests of women as a group.

Patriarchal societal norms not only inhibit the behaviour of women, but they constrain all members of society to behave in ways which reinforce and perpetuate patriarchy. Although men are not a previously disadvantaged group, an argument could be made that rules which deter them from assuming their wives' surnames render them complicit in the maintenance of a sexist social order which they (or some of them) do not agree with. They are legally compelled to remain perpetrators of patriarchal norms instead of having an opportunity to transcend them.

The question remains, however, whether that constitutes discrimination against men, since the system is designed for the advantage of men as a group in order to maintain male hegemony. The discrimination argument in *Burghartz* (supra) may be helpful in this regard. The Commission found that the Swiss legislation which allowed couples to assume the husbands' but not the wives' names as family names, as well as the refusal of permission to the husband to add his wife's surname to his own, constituted sex discrimination against both the applicants. The argument was simply that this constituted different treatment on the basis of sex and that there was no objective and reasonable justification for such differentiation (paras 58–68 of the Commission's Report).

In South African constitutional terms the argument would be translated as follows, using the test in *Harksen v Lane NO* 1998 (1) SA 300 (CC); 1997 (11) BCLR 1489, para 53. The legal rules regarding the surnames of married people treat men and women differently on the basis of gender.

Since this differentiation serves no legitimate government purpose (see my argument in section 7 below), it would be unconstitutional under s 9(1) of the Constitution of the Republic of South Africa, Act 108 of 1996.

Alternatively one could argue that different treatment on the basis of gender, one of the enumerated factors in s 9, is presumed to be unfairly discriminatory. Looking at s 36, the limitation clause, it seems clear that the discriminatory law bears no relation to a legitimate governmental purpose, but instead serves to undermine the important constitutional imperative of gender equality. It is therefore unconstitutional in terms of s 9(3).

Although at first glance it may seem that men cannot successfully challenge these rules, I have shown that this may be possible. It would, however, probably be more expedient if the rules were challenged on behalf of women or jointly on behalf of men and women by a couple who wished to adopt the wife's name, as in *Burghartz* (supra).

7 *Other affected constitutional rights*

The argument on the basis of discrimination is attended by the above difficulties. However, additional reasons for challenging the rule appear when one examines other fundamental rights which may be affected by the rule.

The *Burghartz* decision (supra) was partly based on the rights of the applicants in terms of art 8 of the European Convention, which determines that '[e]veryone has the right to respect for his private and family life'. In the Namibian case counsel for the applicant also relied on the rights to privacy and family life in the Namibian Constitution (arts 13(1), 14(1) and 14(3)). Particular emphasis was placed on the second part of art 14(1), which determines that men and women should have 'equal rights as to marriage, during marriage and at its dissolution' (at 668–9).

The argument in relation to privacy was dismissed on the basis that the legislation did not infringe upon the privacy of the applicant's home, correspondence or communications and did not authorize illegal searches (at 668I–J). The South African right to privacy is both more comprehensively phrased (s 14: 'Everyone has the right to privacy, which includes . . .'), and more generously interpreted to include the right to autonomy in personal relationships (*National Coalition for Gay & Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC); 1998 (12) BCLR 1517, para 32). It could therefore possibly be argued that the state should not fetter the freedom of couples to make decisions as to the adoption or not of family names after marriage.

The express right to equality during marriage guaranteed by art 14(1) of the Namibian Constitution was also dismissed as a basis for Müller's application. The court held that limitations of fundamental rights were permissible where they bore a rational connection to a legitimate government objective. Since the rule about surnames after marriage promoted

legal certainty and 'certainty of identity', and given the minimal impact of the rule upon Namibian society, the limitation upon this fundamental right was held to be justified (at 669E–F). This is false reasoning. A rule which gives only some people the ability to assume and discard surnames at will can hardly be said to contribute to certainty of identity, especially in the light of the contemporary reality of multiple marriages, divorces and remarriages. That purpose would be served equally well by a rule allowing men the same scope for assuming names. It would be even better served by a rule which prevented both spouses from changing their names, except by way of formal procedures. The limitation of the right therefore bears no rational purpose to the objective of legal certainty and the rule should have been found to be unconstitutional.

In the South African context no explicit right to family life exists, but an additional argument is suggested by the fundamental rights to human dignity and privacy (ss 10 and 14, respectively, of the Constitution). It could be argued that they imply a right to respect for one's individual identity, including a right symbolically not to lose one's identity at marriage. They could also encompass the right to self-definition and self-identification and thus include the rights of couples to decide whether or not they will share a surname after marriage.

8 *Conclusion: Possible solutions*

If the present rule is inadequate, the final question is what it should be replaced with (for the different solutions adopted in various jurisdictions see Suarez op cit at 240–1; Augustine-Adams op cit at 12–15, 17–23). Parliament could make a rigid rule that people can never change their names upon marriage. This would favour state and commercial interests in lifelong certainty of identity, especially in a society where marriages often disintegrate and where remarriage is a common occurrence (Sonnekus op cit at 628). It would also help to ensure that cohabitants, whether same-sex or opposite-sex, received the same treatment as married people and would thus indicate equal state recognition for different family groups.

However, this alternative could cause problems when applied to women who have already assumed their husbands' surnames. If the rule were applied retrospectively, they could be required either to re-assume their birth names or retain any married name which they have acquired. I would argue, however, that it would be less complicated if the rule only applied to future marriages. Further problems could arise when women assume husbands' surnames in contravention of the rule. Upholding the rule may entail applying sanctions to women who, for instance, conclude contracts under their husbands' names. This would punish women for conforming to strong social pressure and would operate especially severely against illiterate or rural women who may be unaware of the changed legal rules (Claire L'Heureux-Dubé 'The Quebec experience: Codification of family law and a proposal for the creation of a Family Court system' (1984) 44 *Louisiana LR* 1575 at 1596).

Sonnekus advocates retaining the same name for official purposes while allowing women to use their husbands' names for daily social purposes. At the time of the marriage spouses would be able to make an administrative declaration to determine the social name to be used by the wife or by the family. This social name would be recorded in the parties' identity documents (Sonnekus op cit at 631–2). The distinction between official and social purposes is, however, unclear. Sonnekus (op cit at 628–9) seems to imply that state and administrative identification are official purposes, while all other matters, including business, would be daily social purposes. However, this suggestion does not really further the aims of legal certainty or the eradication of oppressive naming practices.

A more modest version of the same rule would involve making it equally difficult for men and women to change their surnames after marriage. Women who want to adopt their husbands' surnames would have to go through the procedure currently prescribed for changing surnames officially. The virtue of such an approach would be that, while allowing women to change their names, the administrative process might discourage it and raise women's awareness of the issue. However, this does not diminish the social expectations which underlie the practice and burden women with extra administrative costs and efforts. In effect, women would be encumbered with the duty of changing a practice which operates to their detriment and which in reality involves the whole of society.

Alternatively, changing their names upon marriage could be made as easy for men as it is presently for women. Despite ensuring formal equality, this measure would not, however, alleviate the pressure on women to change their names in an unchanged social context. Despite the significance of state approval for the practice, without widespread social expectations that men should change their names, a change in the law may be largely ineffective to ensure substantive equality. Similarly, a solution which allows parties, upon marriage, to choose a single name to be used by their family, as in German law, would not mean that it would become more socially acceptable, except in a few extraordinary cases, to choose the wife's surname:

> 'For those individuals who are denied the power of naming their own reality, doubt arises as to the validity of their observations, experiences, and perceptions. They themselves are likely to dismiss their own reality, because few people are conscious that what they think and say is circumscribed by the words and symbols at their disposal.' (Omi 'The problem that has no name' op cit at 323)

In the introduction to this note I have indicated that the issue of name changes upon marriage is often regarded as trivial and even ridiculous. The charge of triviality is, however, belied by the complex issues, especially in relation to equality, which it raises. Moreover, the drastic nature of the reactions to suggestions of changing these rules, often from the very people who dismiss the issue as insignificant, indicates that patriarchal society has an interest in retaining the status quo—which should alert us to the need for transformation.