Legal Restrictions on Naming: Administrative Convenience and Linguistic Politics

Gabe DeFreitas

May 14, 2019

Contents

1 Introduction

This paper examines naming practices and policy in several countries from a sociolinguistic perspective. Although naming is held to be the prerogative of parents [2], most states abridge the right to some extent. In case of "bizarre" names like "Adolf Hitler" and "Ghoul Nipple" [26], overruling parental choice is a clear-cut measure protecting child welfare. Other policies aim at controlling the content of names to increase bureaucratic efficiency, implement linguistic policies, or support other state goals. We will compare the naming laws' interaction with linguistic policy in four jurisdictions: the prohibition of diacritics on birth certificates in California, case and spelling assimilation in Latvia, the Personal Names List in Iceland, and character restrictions in People's Republic of China. We observe that the methods and justifications for restricting names are influenced by the country's official language policies and that individuals' names are frequently used as a venue for implementing or preventing linguistic changes.

History and ethnography suggest that naming was traditionally a flexible process, as people used multiple names depending on context or their stage in life [2] [39]. Bureaucrats' need for "synoptic legibility" drove the levelling of onomastic form under centralising governments [39]. Computerised data management by governments has accelerated this process in the last half century. One variety of naming policies we consider, exemplified by cases in California and China, center on the state collection of standardised demographic and identification information (and obliquely, the impact of computers in maintaining this information). Modern data processing implicitly limits the variety of names that may be accepted.

On the other hand, names can be actively used as tools to promote a specific language within a country, as part of a comprehensive language policy. A well-known example is Iceland's Personal Names Committee, which determines whether a name is compatible with the Icelandic language. Other countries like Latvia have similar regulations, which seek to prop up the small national language by mandating its use in names and other areas of society.

Thus we find a distinction between the policies of countries with strong (de facto) official languages like English and Chinese, for which language-based naming restrictions are primarily incidental and based on a strong state apparatus. Countries with small national languages like Icelandic and Latvian, on

the other hand, aim to bolster their languages' stability in the post-colonial era and defend against the looming threat of global English.

Naming restrictions raise human rights concerns, even if they are designed to support a legitimate state interest in the official language. The cases we consider herein center on the right to privacy recognised in the Due Process Clause of the Fourteenth Amendment (in US law) and privacy clauses in international treaties. Given the personal character of naming, citizens may feel burdened by being forced to adopt a new name or conversely, being denied the chance to change their name, for the sake of administrative convenience or linguistic agendas? The question is thus how to balance administrative efficiency with respect for human dignity.

This study contributes a comparative analysis of naming laws and their relations to language policy and language rights. We present background regarding the social and administrative functions of names, as well as the legal view on naming practices in common law and human rights, preparing us for the review of individual case studies. We then consider four cases from California, China, Iceland, and Latvia. The comparative lens illuminates the fact that personal names have been politicised and are used by governments for language management. Finally, we conclude by considering the human rights implications of naming restrictions, which call for the moderation of linguistic policy-making with respect for privacy and self-determination.

2 Functions of names

Personal names have three main functions, which Heymann [17, p. 392] calls *denotative*, *connotative*, and *associative*. The canonical use of names is the denotative (or referential), as names serves as linguistic token selecting an individual for discussion or address. Connotative and associative information is equally present in names, as they can convey cultural information about the named, such as nationality, ethnicity, religion, etc, evoke a conception of the individual's personality, or honour the legacy of a famous person or beloved ancestor. In some cases, the two functions are opposed to one another, and a balance must be struck between legibility and free expression.

2.1 Name standardisation

Name-giving is a cultural universal. Ethnographers have found no society past or present that does not name individuals [2]. Naming is thus deeply rooted as an aspect of human identity. Historians and ethnographers tell us that preindustrial naming differs greatly from industrialised practices. For example, Nuers in Sudan take two given names (maternal and paternal), a ceremonial clan name, and an ox name of a favourite domestic animal [44]. Likewise, nicknames are

liberally bestowed for personal traits and accomplishments and become widely used by community members in groups like the Giriama of Kenya [36] [44]. The notion of names providing a fixed legal identity across time and space is not a given, as names can and do vary greatly by context.

With bureaucratisation and industrialisation comes a need for such fixing of the name. A mobile population and impersonal state presence requires accurate and speedy identification of individuals. Hence Scott, Tehranian, and Mathias [39] observe that patrilineal surnames tend to arise wherever centralisation is occurring: Qín China, Norman England, Atatürkian Turkey. As they suggest, patrilineal surnames are perfectly suited to state functions requiring clear identification of individuals: taxation, conscription, and justice [39, p. 18]. In fact, the ideal name from an administrative point-of-view is not a name at all, but a unique serial number assigned to every person.[1]

The point of standardising names is to produce a particular style of knowledge about the populace, which is legible, objective, and public. So the name can become a tracker to follow the person's movements, marriages, kinship, and careers, with the emphasis being placed on the individual's relation to society rather than on the individual themselves. This is not to deny the real importance of administrative objectives in legitimately defining the modern role of names. Since names are the primary way of referring to other individuals, they inherently take on a public function and as such must be legible and usable for most people. But we should remain mindful of the individual's traditional autonomy in naming and ensure that any abridgements thereof by modern bureaucracies are limited and truly necessary for the public interest.

2.2 Symbolic functions

> You see, to some people in the world, your name is everything. If I say my name to an elder Hawaiian (kupuna), they know everything about my husband's family going back many generations…just from the name.
>
> (Janice "Lokelani" Keihanaikukauakahihuliheekahaunaele [45])

The symbolic function of a name is the complex of information it conveys, be it genealogical, cultural, linguistic, religious, etc. The name is a foundational aspect of personal identity and an important choice for parents to make in child-raising. Parents' motives in choosing a name vary widely, but in general, baby names serve either to express some special aspirations that parents have for the child or to honour a particular family relationship (or celebrity), like a grandfather or aunt [14]. These two expressive aspects of naming must themselves be balanced between what Finch [14] calls individualizing functions and connecting functions.

[1] In the 1930s, officials in the Canadian North distributed serialised dog tags to Inuits, to alleviate identification difficulties due to their non-European names and nomadic lifestyles.[39]

The individualizing aspects of naming are those aspects of a name which make a statement on the individual themselves, including the associative and connotative. The clearest manifestation of this is the choice of a child's forename, although this choice clearly makes more of a statement on the parents than the child itself: "In selecting a name (especially for a first-born child) parents are not only determining the personhood of their child but are also taking a key step in defining their own new identity as parents." [14, p. 718] (cf. [17, p. 399]) Hence a parent can name their child something "beautiful" like "Isabella" or something "strong" like "Samson", imparting the connotations of these names without any knowledge of the newborn's future personality.

The related function of association entails a name that is the same as or similar to that of a person whose memory would be honoured or evoked by use of the name. In the case above, "Samson" associates the name's bearer with the biblical hero. A name like "Adolf Hitler Campbell" associates one to an infamous historical figure.

Connecting functions are facets that locate the individual within larger milieu. This takes the form of surnames, which in Anglophone societies identify the paternal family unit to which the individual belongs. "The construction of a name, and its uses through a lifetime, also can embody a sense of connectedness with family - with the parents who gave the name, and with others in a domestic arrangement or a kin network with whom all or part of the name is shared." [14, p. 711] Other connecting functions include giving a first name after an older ancestor connects you to a more specific family relationship or even the linguistic or religious connotations carried within the first or last name, which can connect a person to or set them apart from the dominant society in which they live.

2.3 Legal perspectives

The common law tradition is relatively lax on the form of names given at birth or adopted by adults, as it recognises the right of individuals to adopt any name they choose, unless chosen for a fraudulent purpose [17, p. 403]. Moreover, a person's name choice of name need not be approved by officials, although individuals may seek court approval for its legitimizing value. Rather a name becomes such through its regular use, since common law considers personal names primarily for their denotative function, and courts will look for examples of the name used in context to establish that it indeed carries out the denotative function. For example, the New York Superior Court rejected a name change from "Anatoly Eyzenberg" to "Tony Eisenberg" for a City Council candidate who hoped to appear more American and less Russian. The Court's decision rested on the fact that the petitioner had not actually used the "new name" on any of his personal documents. [12] [17, p. 404].

Courts have a public interest in maintaining the usefulness and legibility of names, although note that a total lack of ambiguity is neither possible nor desir-

able, considering extremely common names, like “John Smith”. Despite common law’s hands-off approach toward names, American courts tend to intervene when the denotative aspect of a name is inherently threatened by its content. For example, in the case of a person named “Adolf Hitler Campbell”, while the name indeed functions as a reference, but “the connotations associated with such names are so strong that they frustrate the ability of the names to server their denotative function” [17, p. 417]. Moreover, courts are reluctant to apply state “imprimatur” on the name change [17, p. 413] if the name is overly bizarre or offensive. For example, an Ohio court denied an application for name change to “Santa Robert Claus” because of the people’s “proprietary right in the identity of Santa Claus” [17, p. 419] [20], while a Pennsylvania court denied “World Savior”, noting that “no one has ever asked us to invoke our legal authority to certify them as a savior of man” [17, p. 419] [19].

3 California

3.1 Introduction

California occupies a grey zone between American bilingualism and American nativism. In 2010, roughly 29% of Californians spoke Spanish and 30% of these speakers reported speaking English “not well” or “not at all” [10]. Meanwhile, the historic significance of Spanish and Mexican culture to the state is inscribed in countless placenames like Los Angeles, San Francisco, and the Sierra Nevadas. Other than Spanish, California is home to speakers of East Asian languages like Tagalog, Chinese, Korean, and Vietnamese [10]. Yet none of these languages receive any recognition or protection at the state level, while English is enshrined in the state constitution as the official language of California [7].

The multilingual context of California makes one of its naming policies, the restriction on diacritic characters by the Office of Vital Records, particularly unpalatable to many citizens. California registrars only accept the twenty-six letters of the English alphabet in names, meaning that no diacritic characters like “á”, “é”, or “ñ” are legally recognised. The ubiquity of Spanish names like José and María containing such characters and the state’s large Hispanophone population makes California home to what is probably the United States’ most extensive regulation of names. The diacritic ban is one in a long legacy of Official English policies in California which extends back to its annexation into the United States.

3.2 History of language attitudes in California

During California’s 1848 annexation from México into the United States, the Treaty of Guadalupe Hidalgo promised equal rights to the approximately ten

thousand Californios (the original Hispanophone community in the territory):

> Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction. [41]

Enjoying "all the rights of citizens of the United States" did not turn out to include protection of Spanish. Although the original state constitution, promulgated with a full Spanish translation, provided for publishing all legislation in both English and Spanish [4], Prieto [38] notes that even in the state's early days there were no Spanish courts, limiting legal representation for non-Anglophones. A contemporary observer noted that "si un Mexicano tiene por desgracia un pleito en las cortes de este Estado está seguro de perderlo" [38, p. 28]. Legislative bilingualism continued only until the 1879 constitutional revision, when even the limited recognition of Spanish was discontinued, as supporters of the change reckoned that "California's Mexicans had had some thirty years to learn English" [4]. The 1879 constitution marked a turning point in California's linguistic history, as Spanish lost any claim to official status within California [4].

3.3 Proposition 63

The 1879 constitutional revision foreshadowed further "Official English" measures in the twentieth century. Official English refers to a political movement, beginning in 1980, which promotes the institution of English as official language, at either the state or national level [28]. Supporters' motives vary widely, including the practical necessity for immigrants to be conversant in English to nationalistic arguments such as that the spirit of American democracy ought be cherished in the original language of the Founders [4, p. 7].

In a 1986 referendum, Proposition 63, voters declared English California's official language and created Article III, Section 6 of the California Constitution, which cements the legal status of English and grants enforcement powers to the state government:

> The Legislature shall enforce this section by appropriate legislation. The Legislature and officials of the State of California shall take all steps necessary to insure that the role of English as the common language of the State of California is preserved and enhanced. The

> Legislature shall make no law which diminishes or ignores the role of English as the common language of the State of California. [7]

3.4 Diacritical marks on birth certificates

With this historical context in mind, we come to our main focus regarding California language policy, the longstanding restriction on any diacritic characters from appearing in names on official documents. Guidelines from the California Office of Vital Records (OVR) instruct local agents that names may contain only the "26 alphabetical characters of the English language with appropriate punctuation if necessary" and that "no pictograms, ideograms, diacritical marks (including 'é', 'ñ', and 'ç') are allowed" [26]. The OVR handbook actually cites Proposition 63's official English provision as its justification for banning diacritics. We should note that other government agencies interpret the law differently. Two California state parks, Año Nuevo State Park and Montaña de Oro State Park, contain the Spanish ñ in their official names, which is reflected on the parks' official webpages [3] [32] [26]. Likewise, the City of San José, California includes the accented é in its official name, and its Style Guide includes instructions on how to produce it digitally: "To create an accented é, hold down the alt key and type '0233', on the numeric key pad." [8]

3.5 Legislative initiatives

Two recent bills in the California Assembly attempted to address the issue. AB-2528 sponsored by AM Nancy Skinner in 2014 "required the State Registrar to ensure that diacritical marks on English letters are properly recorded on birth certificates, certificates of fetal death, and marriage licenses, including, but not limited to, accents, tildes, graves, umlauts, and cedillas" [1]. The bill stalled in the Appropriations Committee due to the high projected cost for IT upgrades. For example, the Department of Motor Vehicles' software reportedly could "not even accept lower-case letters" [1]. The County Recorder's Association of California opposed the bill for the same reason.

In 2017, AM Jose Medina (his official Assembly website does not include an é in his first name [6]) revived the issue with AB-82, which ultimately passed both houses of the legislature before being vetoed by Governor Jerry Brown, who again cited the high costs of upgrades. A breakdown of those costs was presented in one committee hearing as follows [16]:

- $230,000 for IT upgrades at Department of Public Health
- $2 million per year for Department of Public Health to correct existing records

- Loss of revenue of $450,000 per year to Department of Public Health since they would not be able to electronically transmit names to SSA (at $3 per name) containing diacritics
- Up to $12 million for local governments to upgrade their systems
- $1–3 million in upgrades to Department of Health Care Services
- Unknown administrative costs to Department of Social Services

The cost and compatibility issues with federal systems was the sticking point for Governor Brown. His veto message argues that the costs and risks are too great to justify the bill:

> "Mandating the use of diacritical marks on certain state and local vital records without a corresponding requirement for all state and federal government records is a difficult and expensive proposition. This bill would create inconsistencies in vital records and require significant state funds to replace or modify existing registration systems." [16]

3.6 Remarks

The common-law foundation of American naming law emphasises the near-total right of parents to name their children as they wish [17]. The type of statutory naming codes we will discuss later, in Iceland and Latvia, are unlikely to occur in a common-law context. Instead, any name which is not used for fraudulent or malicious purposes should be accepted [18] [14] [17]. California's diacritic ban, however, should not be viewed as naming law in the traditional common-law conception. It is instead an act of linguistic policy pursuant to Proposition 63. That is, presumably nobody considers the name María to be inherently incompatible with the denotative function required by law for names. It is instead contrary to the government's supposed interest in protecting the use of English in the United States.

Both Larson [26] and Foggan [15, p. 598] find that child-naming must be considered a "constitutionally protected child-rearing decision". This places it in the purview of the Fourteenth Amendment's Due Process clause, which has been interpreted to include a "right to privacy" in parental decisions[2]. Larson [26] notes that it is unclear what standard courts should use in balancing individual rights against legitimate state interests (eg. rational basis vs. strict scrutiny).

Considering the diacritic ban in California under Due Process would entail recognising the inherent capacity of parents to make choices for their children's names and cultural upbringings, keeping in mind the common-law tradition of onomastic freedom. No legitimate state interest could be raised based on the child's

[2] A right to privacy is articulated explicitly in more modern human rights documents, such as Article 17 of the International Covenant on Civil and Political Rights [22].

best interest for prohibiting the use of names like José. If anything, it is in the child's best interest to keep his or her cultural identity intact. Moreover, even the argument of "legibility", or the interest of courts in maintaining the public usability of names, is unsound, since Latin script names written with diacritics are readily comprehensible to Californian Anglophones. There is no legal requirement that *everyone* write the diacritic *every time*. As Larson [26, p. 191] notes, "If Costco decides to record a customer's name as 'Mendez' rather than 'Méndez', it is perfectly free to do so, although it may annoy that customer".

Even assuming that the stated goals of Proposition 63 are legitimate in supporting English as the official language, the measure may not be upheld, since it seems more designed to disenfranchise Spanish than to bolster English: "it is hard to see why permitting the name 'Changsurirothenothenom' while prohibiting 'Lucía' serves any state interest in promoting the English language" [26, p. 189]. Besides, the ability of states to interfere in parents' private language decisions is cast into doubt by the landmark 1923 Supreme Court case *Meyer v. Nebraska*, which recognised the child's right to instruction in a foreign language [26] [4]. The diacritic ban raises similar problems, as giving children a properly spelled surname in the heritage language is an aspect of passing on cultural heritage.

The First Amendment offers another vehicle for legal argumentation, since name-giving is a form of speech. Larson [26] notes that this line of thought offers protection to a wider spectrum of names (eg. pets' names). Note, however, the imprimatur argument of Heymann [17]. For example, one court opinion found that "Petitioner has a right under the common law to assume any name that he wants so long as no fraud or misrepresentation is involved …once Petitioner files an application for a name change …and seeks the approval of the courts for a name, it becomes the responsibility of the courts to ensure that there are no lawful objections to the name change" [21] [17, p. 413].

The remaining argument available to the state is that the computer systems currently in use cannot handle the addition of diacritics and that upgrades would be prohibitively expensive. Although the argument has some force, in that governments may legitimately ensure the ability of names to function properly in the public realm, diacritic marks do not inhibit comprehension of the name and can always be omitted if necessary for a particular application. For important records like birth certificates, however, it seems counterintuitive that the technological advancement in computing technology should turn out to limit individual rights compared to handwritten and typewritten documents [26, p. 191]. Per the decision in [18], which upheld the legality of a woman's name change to the single word "Koriander", "computers and record keepers need not control individual liberties".

California is not alone among US states in banning diacritical marks, as at least three others, Kansas, Massachussetts, and New Hampshire have the same policy [26]. Doubtless, additional states omit diacritics as an unofficial administrative practice. California's situation is notable for the huge number of peo-

ple it affects in the name-giving process, given the state's prominent Spanish-speaking population and Mexican legacy. Even if California's Official English provision (Proposition 63) is constitutional, the administrative interference in naming contravenes private naming rights under Due Process. For an international comparison, see below on Latvia, which considers a similar question of private naming rights from the perspective of human rights law.

4 China

4.1 Introduction

Given the People's Republic of China's diverse population and linguistic landscape, language provides the state with an important vehicle for pursuing cultural policies. The PRC has distinguished mainland Chinese from the language of Taiwan via the simplification of Chinese script in the 1950s, which reduced both the number and complexity of characters. Moreover, mainland Chinese is distinctive for the standardised use of Pīnyīn romanisation since 1958, vis-à-vis Taiwan, where competing systems like Wade-Giles continue to to coëxist with Pīnyīn.

The Communist government has sponsored a nationwide Mandarin standard in such bills as *Actively Promote the Beijing-based Putonghua as the Standard Pronunciation* (1955) and *Law of the National Common Language for the People's Republic of China* (2000) [11]. Linguistic intervention in favour of a standard language (Pǔtōnghuà: "common language") puts both provincial Chinese dialects (Cantonese, Shanghainese) and non-Chinese languages (Tibetan, Uyghur) at risk. Pǔtōnghuà is thus "enregistered" as an "accentless" dialect [11], while regional dialects are in danger as upwardly-mobile youth move to cities and adopt the standard variety.

Here we look at two recent naming cases in China, which stem from the digitisation of the central identification system in the early 2000s and evaluate how the policy aligns with the country's language policy in general. This relates to the limitations of representing names in a digital format but also reflects the homogenising effect of state infrastructure. Here we see both the desire to propagate a standardised and progressive Mandarin and to avoid the intrusion of global English.

4.2 Second-generation ID cards

China's Public Security Bureau instituted a digital system around 2004 to issue and track personal identification cards. The new IDs have an embedded microchip with personal and security information and were intended to improve

the Bureau's population statistics and anti-forgery protection [5].

The change did not occur without drawbracks. The digital system caused administrative hassle for many Chinese citizens with uncommon names. Government computers (as of 2009) can only accommodate 32,252 Chinese characters. If someone's name includes a character outside the list, they are asked to change it [25]. A woman named Mǎ Chěng (马騁) was one victim of this policy, as reported by LaFraniere [25] for *The New York Times*. Mǎ's grandfather scoured a classical Chinese dictionary for a distinctive name and chose an obscure character, which complemented the family name, mǎ (马) "horse". The given name he chose was chěng (騁) "gallop" (the traditional form of 马 (馬) written three times). Mǎ's previous ID card included a handwritten 騁, but the digital system would not allow this. Thus the Bureau recommended she change her name for compatibility purposes.

The open-ended nature of Chinese script makes it possible to find legitimate characters that are barely comprehensible to the average reader, due to their being uncommon or archaic. Most characters consist of smaller radicals, which are themselves characters or derivatives thereof. Thus the writing system is composite and open to internal manipulation, unlike alphabetic systems. This fact can be viewed positively or negatively.

As Chinese uses comparatively few surnames, some worry that name trends will carry parents down into the Classical Chinese abyss, away from the realm of mutual comprehension. For example, linguistics professor interviewed for the LaFraniere [25] article notes: "The computer cannot even recognize [some names] and people cannot read them. This has become an obstacle in communication." On the other hand, Mǎ lived satisfactorily with the name for twenty-six years. Whenever necessary, she explained her name to people. Agencies were often willing to accommodate the rare character by handwriting it, writing in pīnyīn, searching the Unicode table, or even building the character themselves with software [29]. In the process, those whom Mǎ encounters learn more about their own writing system and its history. This give-and-take (in any naming society) is lost with the onset of rigid administrative rules.

A similar situation occurred in the case of Zháo C (赵C) due to the English letter that appears in his name. The Bureau ruled that only Chinese characters may appear in names and refused to issue him a second-generation card. Zháo and his father (a lawyer) appealed the decision, arguing that 'C' appears in Pīnyīn romanisations and in the tradenames of Chinese institutions like CCTV, the Chinese national broadcasting service. Apparently the judge was unconvinced, as Zháo volunatarily agreed to change his name, asking the public for their suggestions [30].

4.3 Remarks

The government's treatment of Ma's name suggests an ambiguous relationship with the Classical Chinese legacy. Promoting a nationwide Pǔtōnghuà is presented in terms of the Confucian ideal of hé (和) "harmony", under former President Hú Jǐntāo's Harmonious Society programme [43]. Yet the CPC's ongoing efforts to simplify and control the Chinese script favours progress over stability and apparently shuns the unifying force of the Classical past.

Although the letter 'C' is easily represented on Chinese computers, the restriction on English letters in names intends to protect the Chinese linguistic framework from Western encroachment. As such, China's approach is actually typical of small countries protecting their national language, as we see in the case of Iceland and Latvia. As Zháo pointed out, infiltration of English into Chinese society (CCTV, for instance) has occurred, despite the simultaneous spread of Pǔtōnghuà as a hegemonic dialect in China. Of course, one might debate the relative likelihood of Mandarin Chinese's obolescence at the hands of English. Moreover, we note that China's specific ban on foreign influence in names, contrasted with the relative lenience on matters like signs and business names ("CCTV") suggests that names are considered very close to "the language itself".

Thus China's naming policies appear in some senses contradictory, attempting to counteract the looming threat of global English, but simultaneously, as the world's largest country and language, attempting to produce its own hegemonic environment as a unifying language for China's many ethnic identities. Chinese must fight a two-front war against both the past (conservative veneration of Classical Chinese) and the future (global English), seeking a balance between the two approaches.

5 Latvia

5.1 Introduction

After the fall of the USSR, the new republics moved quickly to legitimate their national languages and put them to use in all areas of public life. As young nation-states, it was considered imperative to assert a self-sufficient linguistic identity after years under the influence of Russian. Moveover, the threat of Global English was salient, with the US standing alone as the world's superpower after the Cold War.

Latvia's constitution establishes Latvian as the official language [40]. A 1999 law and associated regulations apply the law to names, requiring that non-Latvian names be transcribed to conform with Latvian spelling and grammar on official documents [35]. This policy was challenged under international human rights law on two occasions: in the European Court of Human Rights in *Mentzen v.*

Latvia [31] and under the International Covenant of Civil and Political Rights in *Raihman v. Latvia* [27]. Although the two tribunals reached different verdicts, the reasoning employed by the contending parties and by the courts reveals insight into the role names play in the language and in linguistic policy. The Latvian cases indicate that the official ideology in Latvia embraces a conservative and literary variety of the language as a national heritage and that the promotion of an official state language is regarded as a legitimate function of the modern state.

5.2 Language law in Latvia

The Latvian Constitution, Chapter I, paragraph 4 states that "the Latvian language is the official language of the Republic of Latvia" [40]. This clause is specifically implemented by the Official Language Law of 1999. The language law contains numerous provisions that outline the use of Latvian in all areas of modern life. With respect to personal names, section 19 says that "names of persons shall be presented in accordance with the traditions of the Latvian language and written in accordance with the existing norms of the literary language" [35]. This means that the authorities will Latvianise foreign names when included on official documentations. Latvianisation includes two processes, the addition of appropriate case endings (which depend on gender) and the phonetic transcription of names into Latvian script.

We should note that the Latvian process of transcribing even names already written in the Latin alphabet differs from the literal reproduction used by most countries in this situation [42]. To this end, regulation 96, 2002 on "the transcription and use of names of foreign origin in the Latvian language" sets out in impressive detail how names should be transcribed, including sections for each common foreign language in Latvia with specific examples [33]. For instance, converting the name "John Wright" into Latvian produces "Džons Raits", which retains the same phonetic value as the English original and adds the obligatory masculine nominative suffix "-s". Because of Latvian declension rules, males and females with the same surname have different endings attached. According to the regulation, President Hoover would be known as "Hūvers", while his First Lady would go by "Hūvere". In the case of transcribed names, an earlier resolution provides that the original form of the name may appear on the passport with a certified stamp, if the person desires. The document states that "the form of the surname written in Latvian shall be legally identical to the original form of the surname, the historical form, or the form transliterated into Latin characters" [34].

5.3 *Mentzen v. Latvia*

Juta Mentzen, a Latvian woman, married her husband in Bonn in 1998 and took his German surname "Mentzen". In 1999, she requested a new passport from the Latvian Interior Ministry, specifically asking that her married name be transcribed literally. The request was ignored, however, and she received a passport with the surname listed as "Mencena", reflecting the Latvian use of 'c' to denote [ts] and the feminine nominative suffix "-a". Pursuant to the regulations, the original form was certified as "Mentzen" on a separate page of the passport. Mentzen found little success appealing within the Latvian court system for relief, although the Constitutional Court ruling against her did specify that the "original form" should be moved from page 14 to page 4 of the passport to be closer to the main page.

Apparently this did not satisfy Mentzen, who filed a complaint with the European Court of Human Rights, claiming that Latvia had violated her right to private and family life guaranteed by Article 8 of the European Convention on Human Rights. This article prohibits interference by authorities with this right except in accordance with the law and as necessary for promoting the legitimate interests of the state [13]. It was admitted by all parties that an Article 8 interference had occurred and that such interference was lawful, since it was set out clearly in legislation and applied to all names equally. The legal substance of the case was to determine whether promotion of the national language by regulating names is a "legitimate" state function.

The Latvian government's defence of the law rested on the need to preserve the structural integrity of Latvian and the desirability of protecting the language after years of Soviet rule. They state in their submission "that Latvian had only been able to survive as a result of the Latvian people's determination to carry on using and, to the extent possible, to promote the use of their language" [31]. But official Latvian ideology does not simply call for the use of Latvian in any form. It specifically promotes the conservative literary form, noting that the language laws "aimed at protecting the right of others to hear and use *correct*[3] Latvian on Latvian territory". Even the practice of transcribing foreign names, Latvia claims, is an ancient Latvian tradition, dating back to the first text published in Latvian, *Parvus catechismus catholicorum* by Saint Cainisius in 1585. They also claim that allowing literal transcription would threaten the case system's integrity and threaten to degrade the language's intelligibility: "Systematically permitting names to be entered in passports without endings would encourage people to use the same form in conversation. Once such usage had become commonplace, it would open the door to the deformation of the language and its deterioration on a vast scale."

Mentzen countered on a number of linguistic grounds. As a living language, "Latvian could not be isolated from its environment" and "was inevitably influenced by other languages". Her reply notes that foreign persons living in Latvia,

[3] my emphasis

such as her husband, tended not to have their names transcribed. Moreover, she notes that foreign words and institutional names commonly appear in Latvian media, while trademarks including foreign words or names are permitted in non-Latvianised form, even if they are sometimes placed in italics. As Latvian already has indeclinable nouns, the concern raised by the government regarding a communication breakdown is apparently unfounded, since speakers can negotiate semantic roles based on context. She claims that she had personally experienced difficulties from having a different surname from her husband, complicating private transactions and travel abroad and undermining her choice to be permanently identified with her husband's family.

The Court decided in favour of the government, ruling that promoting correct Latvian usage was a legitimate state function. They set out their view of an official language as follows: "A language is not in any sense an abstract value. It cannot be divorced from the way it is actually used by its speakers. Consequently, by making a language its official language, the State undertakes in principle to guarantee its citizens the right to use that language both to impart and to receive information ...implicit in the notion of an official language is the existence of certain subjective rights for the speakers of that language."

Although the Court acknowledged interference with Mentzen's privacy, they determined that the measure was necessary, legitimate, and adequately tempered by Latvia's willingness to place the original form of the name on the passport nearby the Latvianised form. Thus the ruling claims that names can legitimately be used to promote linguistic behaviours in public life.

5.4 *Raihman v. Latvia*

The United Nations Human Rights Committee considered essentially the same question as the European court, this time under the International Covenant on Civil and Political Rights. The case was brought by Leonid Raihman, a Latvian national and member of the Russian-Jewish minority. Raihman used his name in the original form from the time of his birth in the USSR until 1998, when Latvian officials granted him a new passport with his name Latvianised as "Leonīds Raihmans", adding the masculine nominative suffix *-s*. He achieved even less success in Latvian courts than Mentzen, as he filed the complaint after her case had already established precedent in the Constitutional Court. Taking his complaint to the international level, he claimed that the Latvian policy interfered with his rights under Article 17 of the Covenant, which states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" [22]. Latvia reiterated its defence from Mentzen that the policy was lawful and appropriate to the goal of protecting Latvian usage.

The UN's decision differed with the ECHR's in finding that the policy arbitrarily interfered with Raihman's privacy under Article 17, stating that "the Committee considers that the forceful addition of a declinable ending to a surname, which

has been used in its original form for decades, and which modifies its phonic pronunciation, is an intrusive measure, which is not proportionate to the aim of protecting the official State language" [27, p. 8.3].

5.5 Remarks

We should note that the two courts agree on most points of these very similar cases. They concur that states may legitimately promote an official language and that the interference in privacy presented by the Latvian policy was lawful, stemming from legislation that sets out general principles leaving little room for individual discretion on the part of administrators. Moreover, both the ECHR and UNHRC admit that Latvia's history of struggle under the Soviet régime and its strict case system are particularities that must be taken into account for ensuring the survival of Latvian.

However, ECHR determined that individuals' names were an appropriate forum for pursuing public linguistic policy, while UNHRC felt that the measure was unjustified. The UNHRC's favourable ruling for the petitioner may be influenced by the Committee's prior establishment of a "right to choose and change one's own name" under Article 17 of the Covenant, which they easily extended to protect names from undergoing "passive" changes by the State as well. Ultimately, these two cases reveal that the line between acceptable and unacceptable regulations on naming is constantly shifting and not yet clearly defined, even by human rights scholars.

6 Iceland

Iceland's naming system is distinctive for retaining its patronymic (non-fixed) surnames and the government's maintenance of a Personal Names Register for child-naming. Both policies reflect an insular nationalism and Icelander's pride for their conservative North Germanic language. Like Latvia, the Icelandic state actively promotes its language occurs in a postcolonial context, asserting its unique heritage out from the linguistic shadow of Danish rule. Controlling the spread of modern-type fixed surnames, which threatened to displace the indigenous patronymic system, was seen as a way of maintaining Icelandic identity [46]. The more recent institution of the Personal Names Register also represents an effort to maintain the cultural and grammatical structure of Icelandic. However, the appropriateness of Icelandic regulations should be considered from the human rights perspective as well, especially in the wake of the UN decision in Latvia discussed above.

6.1 Icelandic nationalism and purism

Nationalist and Romantic tendencies gained strength in Iceland in the late nineteenth century in the context of Iceland's struggle for independence from Denmark. Icelanders claimed their unique linguistic heritage as one justification for political independence. The ideology of linguistic purism went virtually unchallenged within the general populace. Kristinsson [23] notes that there was harmony between "practices, beliefs, and management decisions" in language policy during Iceland's period of peak nationalism between 1860 and 1960.

Icelandic linguistic policy shifted focus in the 1960s, when the state created the Icelandic Language Council. The postwar presence of US forces at a permanent military installation marked the symbolic beginning of Anglophone cultural imperialism. Kristinsson [23] interprets the creation of the Council as a reaction to the more fragile position of Icelandic and waning linguistic nationalism, as linguistic policymakers sought to stem the tide of global cultural influence on Icelandic.

6.2 Surnames debate

Although Icelandic faced an unprecedented global threat in the aftermath of World War II, we should note that this phenomenon was foreshadowed around the turn of the century in the debate over whether Iceland should adopt modern fixed surnames, as most of Europe had already done. Even during this time, linguistic purism was not maintained without any legal intervention. One of Icelandic's salient characteristics is the patronymic system of surnames. The majority of Icelanders take as a surname their father's or mother's given name, in the genitive case and with the appropriate "-son" or "-dóttir" suffix attached, depending on gender.

[46] notes that the preservation of this unique system was not inevitable, and policymakers and linguists at the turn of the century debated whether Iceland should adopt fixed surnames. Despite the linguistic purism of much of Iceland's population, this debate was responding to a real surge of Continental-style surnames in the nineteenth century, as persons from the upwardly mobile class pursued studies in Denmark or elsewhere in Europe and brought the practice home to Iceland. Ultimately the spread of surnames was only prevented via legal action.

The first attempt to limit surname adoption was an 1881 bill introduced in the Alþingi (Icelandic legislature) instituting a tax on the adoption of such names. The proposal would have required royal permission to adopt a surname, and, if approved, would require the payment of five hundred krónur; hereafter the nameholder would also be subject to an annual title tax ("nafnbótarskattur") of ten krónur per syllable in the name [46, p. 137]. This proposal was not approved, however, and the debate raged on about what should be done.

To briefly summarise the debate presented in-depth by Willson [46], we note that the two camps roughly represented the modernist and conservative perspectives. Writer Guðmundur Kamban presents an internationalist defence of surnames (he himself used a fixed surname), claiming that female Icelanders abroad will inevitably be referred to by their husband's patronymic, creating a gender mismatch. Moreover he praises the extreme morphological simplification of English as a sign of linguistic development. Countering Guðmundur's forward-thinking approach, the conservative line was carried by linguist Jóhannes Jóhannsson, who touted the linguistic heritage of Icelandic and suggested that, should surnames prove inevitable, they should be made more harmonious with the language by incorporating authentic Icelandic elements.

A law on the topic finally passed the Alþingi in 1913, levying a moderate charge for surname adoption without any annual tax. A government report in 1915, *Íslenzk mannanöfn* (Icelandic Personal Names), carried on the work of Jóhannes in trying to develop an Icelandic adaptation of modern surnames and went to great lengths to justify their recommendations with sound philological argumentation. Still, the report emphasised the need for modernisation, as the writers chose not to include any surnames including the letter Þ, due to its likelihood for corruption in foreign contexts.

Apparently this report stretched the linguistic purism of Iceland's population to the breaking point. The report's suggestions were ridiculed by writers as an indication that surnames were inherently incompatible with Icelandic. The counterreaction was consummate in 1925, when the adoption of new surnames was firmly forbidden by the Alþingi. Although ultimately the patronymic system remained intact, the Icelandic surname debate casts doubt on the inevitability of maintaining Icelandic's purity. Legal intervention was necessary to control the public's naming practices and prevent a structural change of the national language.

6.3 Personal Names Committee

A better-known aspect of Iceland's naming policy is the Personal Names Committee (Mannanafnanefnd). The committee of three people maintains a registry of permissible forenames that are "capable of having Icelandic genitive endings", "written in accordance with the ordinary rules of Icelandic orthography", and gender-conforming: "girls shall be given women's names and boys shall be given men's names" [37]. If a parent wishes to use a name absent from the list, they must petition the Committee for approval. Along with their ruling (which is explicity non-appealable under the Personal Names Act), the Committee publishes an explanation of their decision. As a typical example of their reasoning, "Huxland" was rejected in 2014 because there was no precedent for geographical suffixes in given names (only in middle names!) and because the suffix "-land" implies a neuter noun [24].

The most famous case from the Naming Committee is that of Blær Bjarkardóttir Rúnarsdottir, whose first name was rejected by the Committee, since they classified it as a male name. However, the family refused to back down and choose a new name. Thus the state applied the generic forename Stúlka ("girl") to all of Blær's official documents, including her passport. Iceland takes enforcement of naming policies seriously. Only after arguing that the name Blær was used for a female character in a popular Icelandic novel did Reykjavík District Court allow the name to be used.

6.4 Human rights implications

Iceland's practice of labelling children as "Stúlka" (girl) or "Drengur" (boy) if their parents do not comply with the Personal Names Act raises concerns under human rights, as this could be considered demeaning and disproportionate to the goal of supporting an official language. A generic placeholder name is arguably no name at all, and this would constitute a violation of Article 7 of the Convention on the Rights of the Child, which states that all to children have the right to a name and to which Iceland is a signatory [9]. This being the most bare-bones conception possible of naming rights, Iceland's violation should be addressed by the international community.

In the light of the United Nations Human Rights Committee's decision in [27], it is difficult to see how Iceland's policy, if challenged in this forum, would not be struck down likewise. Like the case in Latvia, Iceland's Personal Names Act circumscribes individuals' choice of names in order to support the official language. Recalling that Article 17 of the International Covenant on Civil and Political Rights encompasses the "right to choose and change one's own name", Iceland's policy contravenes the state's obligations under this provision. Despite Iceland's legitimate interest in protecting their national language, it is imperative that linguistic management does not interfere with individual freedoms.

7 Conclusion

This paper presents four case studies on naming restrictions which highlight the extent to which naming law aligns with official language policy and how names are considered a venue for enacting linguistic change. Although naming restrictions are common in today's bureaucratic age, we consider the historical context of naming to underscore the importance of protecting individual autonomy in naming. Although no name should be an island—inaccessible for public use—it remains ultimately the domain of the individual, as an expression of personal identity.

The case studies chosen herein suggest two varieties of naming restrictions with respect to language policy. The cases from the United States and China are pas-

sive restrictions, deriving primarily from the digital infrastructure chosen by the government. Although these systems ultimately support the language policy (Proposition 63 for California and Pǔtōnghuà for China), this primarily reflects the state infrastructure that has been built to homogenise the linguistic landscape, rather than a premeditated curating of names for linguistic value. Neither Chinese nor English are in serious danger by the presence of nonstandard names.

For the small nations in our sample, Iceland and Latvia, we do see a self-conscious articulation of linguistic policy and a perception of the threat to their national languages. Both governments see the form of names as part of the language and necessary to maintain in their traditional form. Small languages face a real threat of obsolescence and marginalisation as "heritage" languages, having their active role in public life circumscribed by a larger, especially colonial, language. Both countries claim a need for linguistic purism, protecting the traditional structure of the language. This serves as their rationale for preventing onomastic innovation.

Despite the legitimate need to protect small national languages from the onslaught of globalisation, this paper notes many legal considerations of naming interference under both human rights and American law. Both traditions prioritise the individual's right to choose names for themselves and their children. Any proposed abridgement of this right should be carefully reviewed to ensure that the measure is necessary and effective for the aim sought. I hope that this paper establishes the inherent connection between naming law and language policy, although further work is needed to fully illuminate the relationship, apply it to a wider range of jurisdictions, and classify the world's many naming laws according to their relationship with language policy.

References

[1] *AB 2528 (Skinner)*. Assembly Committee on Appropriations, 2014. URL: `https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB2528#`.

[2] Alford, Richard. *Naming and identity: A cross-cultural study of personal naming practices*. New Haven: HRAF Press, 1988.

[3] *Año Nuevo State Park*. California Department of Parks and Recreation. URL: `http://www.parks.ca.gov/?page_id=523`.

[4] Baron, Dennis. *The English-only question: official language for Americans?* Yale University Press, 1992.

[5] "Beijing launches second-generation ID cards". In: *China Internet Information Center News* (2004).

[6] *Biography*. Assemblymember Jose Medina, District 61. 2019. URL: `https://a61.asmdc.org/biography`.

[7] *California constitution*. California Legislative Information. URL: https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml.

[8] *City of San José style guide*. City of San José, California.

[9] *Convention on the Rights of the Child*. 1989. URL: https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf.

[10] *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for States: 2009-2013*. United States Census Bureau. 2015. URL: http://www2.census.gov/library/data/tables/2008/demo/language-use/2009-2013-acs-lang-tables-state.xls?#.

[11] Dong, Jie. "The enregisterment of Putonghua in practice". In: *Language and Communication* 30.4 (2010).

[12] *Eisenberg v. Strasser, 768 N.Y.S.2d 773*. New York Superior Court, 2003.

[13] *European Convention on Human Rights*. Strasbourg, 1950. URL: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

[14] Finch, Janet. "Naming names: kinship, individuality and personal names". In: *Sociology* 42.2 (2008).

[15] Foggan, Laura Anne. "Parents' selection of children's surnames". In: *George Washington Law Review* (51 1983), pp. 583–599.

[16] *Governor's veto: AB 82 (Medina)*. California State Assembly, 2017. URL: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB82#.

[17] Heymann, Laura A. "Naming, identity, and trademark law". In: *Indiana Law Journal* (86 2011), pp. 381–445. URL: https://scholarship.law.wm.edu/facpubs/1122.

[18] *In Re Application of Ferner, 685 A.2d 78, 295 N.J. Super. 409*. Superior Court of New Jersey, Law Division Somerset County, 1996.

[19] *In re Bethea, 598 A.2d 1336*. Pennsylvania Superior Court, 1991.

[20] *In re Handley, 736 N.E.2d 125*. Ohio Probate Court, 2000.

[21] *In the matter of petition of Variable, 2008-NMCA-105, 144 N.M. 633, 190 P.3d 354*. Court of Appeals of New Mexico, 2008.

[22] *International Covenant on Civil and Political Rights*. 1966. URL: https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf.

[23] Kristinsson, Ari Páll. "Language management agencies counteracting perceived threats to tradition". In: *Language Policy* (2012). DOI: 10.1007/s10993-012-9253-8.

[24] Kyzer, Larissa. *What's in a name?* 2015. URL: http://theislandreview.com/larissa-kyzer-whats-in-a-name/.

[25] LaFraniere, Sharon. "Name not on our list? change it, China says". In: *The New York Times* (2009). URL: https://nyti.ms/2AnzZE4.

[26] Larson, Carlton. “Naming baby: the constitutional dimensions of parental naming rights”. In: *The George Washington Law Review* 80.159 (2011).

[27] *Leonid Raihman v. Latvia, CCPR/C/100/D/1621/2007*. United Nations Human Rights Committee, 2010. URL: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F100%2FD%2F1621%2F2007&Lang=en.

[28] Liu, Amy et al. “Immigrant threat and national salience: understanding the “English official” movement in the United States”. In: *Research and Politics* 1.1 (2014).

[29] Martinsen, Joel. *Living with an obscure name*. Danwei. Dec. 27, 2008. URL: http://www.danwei.org/video/crazy_horse_name.php.

[30] Martinsen, Joel. *Zhao ’left crescent’ needs a new name*. Danwei. URL: http://www.danwei.org/language/zhao_left_crescent_needs_a_new.php.

[31] *Mentzen v. Latvia, 71074/01*. European Court of Human Rights, 2004. URL: http://hudoc.echr.coe.int/fre?i=001-70407.

[32] *Montaña de Oro State Park*. California Department of Parks and Recreation. URL: http://www.parks.ca.gov/?page_id=592.

[33] *Noteikumi par citvalodu personvārdu rakstību un lietošanu latviešu valodā*. Ministru kabineta, 2002. URL: https://likumi.lv/ta/id/59675.

[34] *Noteikumi par vārdu un uzvārdu rakstību un identifikāciju*. Ministru kabineta, 2000. URL: https://likumi.lv/doc.php?id=10131.

[35] *Official Language Law*. Tulkošanas un terminoloģijas centrs, 1999. URL: http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018409.pdf.

[36] Parkin, David. “The politics of naming among the Giriama”. In: *The Sociological Review* 36 (1 1988). DOI: 10.1111/j.1467-954X.1988.tb03326.x.

[37] *Personal Names Act, No. 45 of 17th May 1996*. Ministry of Justice, 1996. URL: https://www.government.is/publications/legislation/lex/?newsid=a925b138-f47b-11e7-9423-005056bc530c.

[38] Prieto, Covadonga Lamar. “The silencing of the Californios: tracing the beginnings of linguistic repression in 19th century California”. In: *Voices* 2.1 (2014).

[39] Scott, James C., Tehranian, John, and Mathias, Jeremy. “The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname”. In: *Comparative Studies in Society and History* 44.1 (2002).

[40] *The Constitution of the Republic of Latvia*. Constitutional Assembly, 1922. URL: https://likumi.lv/ta/en/en/id/57980.

[41] *United States Statutes at Large/Volume 9/Treaties/Treaty of Guadalupe Hidalgo*. 2018. URL: https://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_9/Treaties/Treaty_of_Guadalupe_Hidalgo&oldid=8969847.

[42] Varennes, Fernand de and Kuzborska, Elżbieta. "Human rights and a person's name: legal trends and challenges". In: *Human Rights Quarterly* 37 (2015).

[43] Wang, Xuan, Juffermans, Kasper, and Du, Caixia. "Harmony as language policy in China: an Internet perspective". In: *Language Policy* 15.3 (2016).

[44] Wardhaugh, Ronald. *Introduction to Sociolinguistics*. Oxford: Blackwell, 1992.

[45] *What's in a name?* Lee Valley Tools Ltd. URL: http://www.leevalley.com/us/shopping/TechInfo.aspx?type=l&p=41459.

[46] Willson, Kendra. "Political infections: Grammar and the Icelandic surname debate". In: *Standardization: Studies from the Germanic languages*. Ed. by Andrew R Linn and Nicola McLelland. Amsterdam: John Benjamins Publishing Company, 2002, pp. 135–152.