

Legal Restrictions on Naming: Administrative Convenience and Linguistic Politics

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1 Introduction

The bureaucratic state plays a considerable rôle in citizens’ private affairs, including their names. This paper explores legal restrictions on the naming of children or adoption of new names by adults. Selecting names is universally considered the prerogative of a child’s parents or close relatives [alford88], yet many state laws circumscribe naming possibilities. While some names are prohibited for posing a threat to the child’s welfare (“Adolf Hitler”), this paper focuses on restrictions caused by the name’s linguistic form. We observe that two common rationale for naming laws are to promote administrative convenience and integrity of government information on one hand, and to promote desired social, cultural, or linguistic outcomes on the other.

Historical and ethnographic evidence suggests naming was traditionally a flexible process, in which people used multiple names depending on context or stage of life [alford88] [12]. As Scott, Tehranian, and Mathias [12] notes, bureaucrats' need for "synoptic legibility" has driven the levelling of onomastic form under centralised governments. For instance, the use of patrilineal surnames began in England and Turkey during centralising régimes like Norman England and Atatürk's government, respectively. Today the effect is heightened with computer technology, which allows institutions to efficiently process data, while limiting the possible forms and thus personal expression available through names.

On the other hand, names can be used as a tool to promote a specific language within a country, as part of a comprehensive language policy. A relatively well-known example is Iceland's list of approved names, which must accord with the Icelandic language. Many countries have similar regulations to Iceland's which seek to impose a particular linguistic form to names within the country. In this review, case studies from California, Iceland, Lithuania, and China illustrate how each of these motives interact to produce a government naming policy.

In these cases, we must consider the people whose names either could not be properly represented in a digital format or did not accord with the government's naming policies. How do the persons feel about changing their names for the convenience of administration? How flexible or willing are governments or companies to rectify the situation? These are issues at the crux of the modern discourse on how to balance administrative efficiency with respect for human dignity; in short, how to stave off alienation in a modern world.

First we review the diversity in and social meaning of anthroponyms. Then we examine restrictions on personal naming in California, Iceland, Lithuania, and China. These cases typify either a need for administrative convenience, or an social naming policy. In some cases we find a combination of the two rationales. They also prompt serious questions, like how concentrated power has reshaping personal and cultural identities. We will consider each of the following research questions:

- How do governments or institutions limit the choice of personal names?
- How can governments accommodate a wider range of languages and formats for names?

2 Functions of Names

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 [16])

Nearly all human beings have at least one name: ethnographers consider name-giving a cultural universal, finding no society which does not assign names for referring to individuals [alford88]. Several human rights treaties cite a person’s right to a name, such as Article Seven of the Convention on the Rights of the Child: “The child shall be registered immediately after birth and shall have the right from birth to a name.” [5] The Convention does not comment, however, on the right of parents to a name *of their choice*. This is because of lagging recognition of the value of a name for conveying cultural values. That is, the functions of names go beyond their ability to refer to individuals. Recently some NGOs are taking the stance that the name of people’s choice should be respected, and failure to do so may reflect gender or racial discrimination [14, p. 986].

Although the core function of names is to refer to an individual, this is overlaid with cultural meanings that attend the choice of a particular name or form. The name can convey cultural and genealogical history and/or personal characteristics of the parents [7]. Thus we can divide naming functions into *reference* and *symbolic* functions.

2.0.1 Reference Function

Consider a table containing one row for every person with whom you are acquainted. You store everything you know about the person in their database row: nationality, appearance, favorite foods, pet peeves, etc. But faced with a vast set of data, each person needs to have one relatively unique identifier (key in database terminology) by which we can access their entry and retrieve the other fields. (Using hair color, for example, would be a poor choice. “Brown hair” does not narrow our search to a single individual.) A personal name is such a token by which we single out a specific individual, a making reference to the larger concept of a given human being.

The reference function of a name is independent of the name’s content; any unique or nearly unique token allows us to navigate the database. It is not clear that “John” is a more effective identifier than “12345678”; indeed the latter seems more likely to be unambiguous. As Scott, Tehranian, and Mathias [12] notes, “serial numbers” are an administrator’s dream. Of course, they are too obscure for daily use, but institutions have worked nonetheless to make personal names more legible. Scott, Tehranian, and Mathias [12] argue that this need for “legibility” a primary explanation for the standardized use of patrilineal family surnames by modern states. For example, modern surnames were adopted by Norman élites following the conquest in order to emphasize their property holdings. Elsewhere, in Turkey, modern surnames were only adopted in 1934 under the modernising régime of Atatürk [12].

The rise of the permanent patronym is inextricably associated with those aspects of state-making in which it was desirable to distinguish individual (male) subjects: tax collection (including tithes), conscription, land revenue, court judgements, witness records, and police work. ([12])

Thus we can see digital recordkeeping of persons and places as the next step in the streamlining of “social information”. Institutions are able to organise and manipulate data about people with unprecedented efficiency, but this requires standardisation of the data to make it consistent. But the more people’s names are shoehorned into a database-friendly format, there is vast social information and expressive content being lost, especially if someone’s name must be altered simply to be stored in the digital format.

2.0.2 Symbolic Functions

The symbolic function of a name is that in which the name’s content itself conveys a complex of information, be it genealogical, cultural, linguistic, religious, etc. This is the function that digital records threaten to eliminate, as it is fluid and ephemeral, whereas computers require complete unambiguity.

We can subdivide a name’s symbolic functions into two aspects that must be balanced; they sit on a spectrum between what Finch [7] calls individualizing functions and connecting functions.

Individualizing functions are those aspects of a name which make a statement on the individual themselves. The clearest manifestation of this is the choice of a child’s forename; indeed this makes more of a statement on the parent 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.” [7, p. 718] Hence a parent can name their child something “beautiful” like “Isabella” or something “strong” like “Samson”.

“Call him Voldemort, Harry. Always use the proper name for things.
Fear of a name increases fear of the thing itself.” [rowling97]
(Albus Dumbledore)

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.” [7, p. 711] We can find more subtle connecting functions, however. Choosing a first name after an older ancestor connects you to a more specific family relationship. And even the linguistic or religious connotations carried within the

first or last name can connect a person to or set them apart from the dominant society in which they live.

2.1 A Survey of the World's Names

The form and contents of people's names vary immensely around the world. Anglo-American practice entails two given names, the "first" and "middle" names, being appended to a patrilineal surname. In many Hispanophone cultures, a child receives both a patrilineal and a matrilineal surname, and the father's surname taking precedence in terms of identification. An Icelandic surname consists of the father's given name with the attached suffix -son or -dottir, depending on gender. A similar practice occurs in Pakistan, but without any suffixation on the father's given name. In South India many people have three names, a personal name, a family name, and a village name.

The ordering of a name's elements also varies. East Asian and Hungarian names reverse the Western order, putting the given name after the family name. Standard Chinese given names consist of two characters, whose meanings may or may not be interconnected (Emma Woo). Wardhaugh [15] cites data from **evans-pritchard**⁴⁸ regarding Sudan's Nuer people: Nuers receive both a paternal and maternal given name, a ceremonial clan name, and take for themselves an "ox name" from a favorite domestic animal.

Even from a brief overview, it is clear that great diversity exists in names worldwide; but we should not view each one as a static system. Instead, a naming culture constitutes a space of social rules and expectations which allow for cultural expression thru individual acts. On one end, a name can be used to locate the individual within a subgroup of the society, due to the name's linguistic, cultural, or religious connotations. For example, religion has been an important influence on naming; bearing a Christian or Islamic name marks someone as a likely member of that religious group. The linguistic origin of a name may also convey information. People often ask the origin of my last name, DeFreitas, which comes from Portuguese, a language I do not speak or have any ancestral connection to. In other cases, a name's origin may alert you successfully to the bearer's ancestry. In Kenya, we find the Giriama group, whose clan name system identifies not only the bearer's clan, but also provides information about the bearer's generation and birth order within the clan **parkin**⁸⁹.

Asking the *cómo-se-llama* in Western context presupposes a fixed answer. Imagine the IRS' dismay if Walter demanded that he should be addressed as Jean-Pierre for the entirety of 2020. (It is, after all, a leap year.) The IRS would cease to function if it had to honor such naming practices for 320 million citizens. Administrative convenience, as Scott, Tehranian, and Mathias [12] finds, has been the primary factor promoting the spread of fixed legal names and hereditary surnames. For example, in England, surnames were first adopted by the landed Norman elite. As the bureaucracy strengthened and middling types aspired to

emulate their status. The practice spread down the social ladder and by the end of the 18th century had reached all parts of Great Britain. An accelerated programme as such occurred in Turkey starting in 1934 under the Westernising régime of Atatürk.

3 California

California occupies a grey zone between American bilingualism and American nativism. As of 2010, roughly 29% of California’s population spoke Spanish, and 30% of these speakers report speaking English “not well” or “not at all” [6]. The Hispanic legacy is inscribed statewide in Spanish placenames like Los Angeles, San Francisco, and Sierra Nevada. Besides Spanish, California is also home to many speakers of East Asian languages like Tagalog, Chinese, Korean, and Vietnamese. Yet Spanish has no official recognition in state law, while English is enshrined as official language of California in the constitution [3]. With no diacritics accepted on birth certificates, the names of Californian citizens containing characters like “á”, “é”, and “ñ” are misspelled by force of law. The diacritic ban and large Hispanophone population makes California the site of America’s most extensive name regulation. As we will see, the justification offered by state agencies for the diacritic ban relates to statewide Official-English policies on the one hand (political) and the high cost of updating government databases on the other (administrative).

3.1 Annexation

Due to its proximity to México and historical origin as Mexican territory, the state has long housed many Hispanophones. At California’s 1848 annexation to the United States, the Treaty of Guadalupe Hidalgo promised equal rights for Californios, the Mexican residents of the newly US 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.
[13] (Treaty of Guadalupe Hidalgo, Article IX)

Yet enjoying “all the rights of citizens of the United States” did not protect their native tongue. Although the original state constitution (promulgated with full Spanish translation) provided for publishing legislation in both English and

Spanish, Prieto [11] notes that the early state had no Spanish courts, limiting legal access for non-Anglos. A contemporary observer wrote: “Si un Mexicano tiene por desgracia un pleito en las cortes de este Estado está seguro de perderlo” [11, p. 28]. Legislative bilingualism continued only until the 1879 constitutional revision, when the remaining protection of Spanish was removed, as Anglo supporters of the change reckoned that “California’s Mexicans had had some thirty years to learn English” [2]. The new constitution marked a turning point in California’s linguistic history, as Spanish lost any claim to official status within the territory [2].

3.2 Proposition 63

The early constitutional revision foreshadowed further “Official English” measures in the twentieth century. Official English refers to the a political movement beginning in 1980 promoting the imposition of English as official language at either the state or national level [9]. Supporters’ motives range from the practical (economic necessity for immigrants to be conversant in English) to nationalistic (the spirit of American democracy ought be cherished in the original language of the Founders) to the racist [2, p. 7].

In 1986 referendum, Proposition 63, voters declared English California’s official language, creating Article III, Section 6 of the California Constitution and cementing the legal status of English and granting 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. [3]
(California Constitution, Article III, Sec. 6(c))

The use of the initiative process accords with the findings of Liu et al. [9] that direct democracy increases the chance of official-English policies in states with high immigrant populations.

3.3 Proposition 227

In 1998, California voters approved Proposition 227, effectively ending bilingual education programs in the state. Classes taught in a bilingual setting would be replaced with nearly monolingual English classes designed for English learners.

3.4 Birth Certificates

A modern battlefield for official Spanish recognition in California is on the birth certificate. Californian birth certificates allow only the 26 characters of English. While American law (and common law tradition generally) holds the naming of children to be the right and responsibility of parents, disregarding edge cases, like “Ghoul Nipple”, “Legend Belch”, “Brfxccxxmnpccclllmmnprxvclmncckssqlbb11116”, and “” [8]. However, diacritical marks for Spanish names like José are hardly an edge case. Larson [8, p. 5] investigates this in his study of American naming law, finding California, Massachusetts, New Hampshire, and Kansas to be among the states with such rules. We will focus here on California, because of the sparsity of documentation in the other states and because California’s large Hispanophone population makes the situation there particularly glaring.

Guidelines from the California Office of Vital Records (OVR) instruct county agents that names may contain only “the 26 alphabetical characters of the English language with appropriate punctuation if necessary” and that “no pictographs, ideograms, diacritical marks (including ‘é,’ ‘ñ,’ and ‘ç’) are allowed” [8].

The OVR handbook cites Proposition 63 as justification for banning diacritics. California’s Department of Public Health interprets the constitution’s language as prohibiting “non-English” characters in Californian names. 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 [1] [10]. 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.” *City of San José style guide* [4]

A 2014 bill in the California State Assembly sponsored by AM Nancy Skinner (AB-2528) sought to rectify the state’s processing of birth certificates and driver’s licenses by allowing diacritical marks in names. The bill “required the State Registrar to ensure that diacritical marks on English letters are properly recorded on birth certificates, death certificates, certificates of fetal death, and marriage licenses, including, but not limited to, accents, tildes, graves, umlauts, and cedillas”. [ab-2528]

AB-2528 stalled in the Appropriations Committee once state agencies assigned multi-million dollar price tags relating to IT upgrades, noting that the DMV’s software could not “even accept lower-case letters”. For this same reason the bill was opposed by the County Recorder’s Association of California.

In 2017, California AM Jose Medina revived the issue with AB-82, which ultimately passed both houses of the legislature before being vetoed by Governor Jerry Brown. Unlike the 2014 bill, this edition did not affect the issuance of driver’s licenses, only birth certificates. Passing through many more stages

of the legislative process, the committee hearings gathered more detailed estimates for the cost of IT upgrades than they had in 2014:

- \$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 sticking point for Governor Brown was compatibility with federal databases, which do not accept diacritics. In his veto message, he argued that the risks to vital records outweighed the benefits of cultural openness:

“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.”

The committee findings make clear that the state would incur nontrivial costs to update the name registration systems.

References

- [1] *Año Nuevo State Park*. California Department of Parks and Recreation. URL: http://www.parks.ca.gov/?page_id=523.
- [2] Baron, Dennis. *The English-only question: official language for Americans?* Yale University Press, 1992.
- [3] *California constitution*. California Legislative Information. URL: <https://leginfo.ca.gov/faces/codesTOCSelected.xhtml>.
- [4] *City of San José style guide*. City of San José, California.
- [5] *Convention on the Rights of the Child*. New York: United Nations General Assembly, 1989.
- [6] *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?#>.

- [7] Finch, Janet. "Naming names: kinship, individuality and personal names". In: *Sociology* 42.2 (2008).
- [8] Larson, Carlton. "Naming baby: the constitutional dimensions of parental naming rights". In: *The George Washington Law Review* 80.159 (2011).
- [9] 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).
- [10] *Montaña de Oro State Park*. California Department of Parks and Recreation. URL: http://www.parks.ca.gov/?page_id=592.
- [11] Prieto, Covadonga Lamar. "The silencing of the Californios: tracing the beginnings of linguistic repression in 19th century California". In: *Voices* 2.1 (2014).
- [12] 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).
- [13] *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.
- [14] Varennes, Fernand de and Kuzborska, Elżbieta. "Human rights and a person's name: legal trends and challenges". In: *Human Rights Quarterly* 37 (2015).
- [15] Wardhaugh, Ronald. *Introduction to Sociolinguistics*. Oxford: Blackwell, 1992.
- [16] *What's in a name?* Lee Valley Tools Ltd. URL: <http://www.leevalley.com/us/shopping/TechInfo.aspx?type=1&p=41459>.