Legal Restrictions on Naming: Administrative Convenience and Linguistic Politics

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Contents

1 Introduction

This paper examines naming practices in several countries from a sociolinguistic perspective. Although naming is universally held to be the prerogative of a child's parents [1], most states abridge this right to some extent. In the case of "bizarre" names like "Adolf Hitler" and "Ghoul Nipple" [12], overruling parental choice is a clear-cut measure to protect child welfare. However, many policies are instituted for more subtle aims, including bureaucratic efficiency and linguistic policy. We will compare naming laws in four jurisdictions, namely California, Lithuania, Iceland, and the People's Republic of China. We observe that the rationale and methods for restricting names are influenced by the country's official language policies and status of the languages themselves.

Historical and ethnographic evidence suggests naming was traditionally a flexible process, in which people used multiple names depending on context or stage of life [1] [16]. Bureaucrats' need for "synoptic legibility" drove the levelling of onomastic form under centralised governments [16]. Today computer technology allows institutions to efficiently process data, while limiting the possible forms and thus personal expression available through names. The capabilities of computer systems are crucial to the naming laws discussed in China and California. 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 (Lithuania) have similar regulations to Iceland's which seek to impose a particular linguistic form to names within the country. We will find a distinction between the policies of large languages (English and Chinese), which are able to set the administrative agenda without considering the effect on minority languages, and small national languages (Icelandic and Lithuanian), which adopt language and naming policies in reaction to the looming threat of global English.

Even through the legal and linguistic details, however, we should keep our interest focused on the individual human rights issues involved. How do citizens 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 amidst the bureaucracy.

First we frame the discussion by considering the multifaceted forms and social rôles played by personal names worldwide, as well as efforts by centralised states to streamline names since the Early Modern period. Then we examine the specific name policy of each case study, drawing appropriate comparisons where necessary. Finally, we call for governments to adopt updated Unicode standards to accept as wide a range of name formats as feasible. The importance of recognising and valuing diverse name practices will only grow in the global society.

1.1 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

The canonical function of a name is as a referent: a linguistic token selecting an individual for reference or address. This aspect differs from the other rôle of a personal name, the conveyance of genealogical and linguistic information. In some cases, the two functions are opposed to one another, and a balance must be struck between legibility and personal expression.

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 [1]. 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." [7] 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 [18, 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 [10]. Thus we can divide naming functions into *reference* and *symbolic* functions.

2.0.1 Reference Function

Without delving into fine philosophical points about linguistic reference, we should establish that a personal name acts as a standard reference for some individual. Some terms of address rely on relative or contextual information, such as "the guy over there", "Regional Director", or "hey you". A personal name, in contrast, should be relatively stable and unique, especially in a legal context. The reference function of a name is independent of the name's content; any unique or nearly unique token allows us to navigate our database of personal information.

It is critically important to realise that the canonicalisatoin of nameforms, much like the fixing of a national grammar, is not an absolute fact of human existence. Ethnographic evidenc from from historical and modern non-industrial societies indicates that naming is often considered fluid and context-dependent Alford [1]. Wardhaugh [20] cites data from **evans-pritchard48** 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.

Standardised legla names are a late innovation and an artifact of the centralised state. As Scott, Tehranian, and Mathias [16] notes, "serial numbers" are an administrator's dream. Of course, they are too obscure for daily use, but institutions have worked to make personal names more legible. Scott, Tehranian, and Mathias [16] 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 [16].

> 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. ([16])

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

> 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 [21])

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 [10] 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 statment 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." [10, 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." [10, 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 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). 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' generation and birth order within the clan **parkin89**.

Asking the cómo-se-llama in Western context presupposes a fixed answer. Imagine the IRS' dismay if Walter demanded that he should 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 [16] 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 élite. 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

3.1   Introduction

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" [8]. 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 [8]. Yet Spanish has no official recognition in state law, while English is enshrined as official language of California in the state constitution [5].

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).

3.2 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.
> [17]   (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 [15] 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" [15, 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" [3]. The new constitution marked a turning point in California's linguistic history, as Spanish lost any claim to official status within the territory [3].

3.3 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 langauge at either the state or national level [13]. 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 [3, 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. [5]
> (California Constitution, Article III, Sec. 6(c))

3.4 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.

3.5 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, disregardin edge cases, like "Ghoul Nipple", "Legend Belch", "Brfxxccxxmnpcccclllmmnprxvclmnckssqlbb11116", and "" [12]. However, diacritical marks for Spanish names like José are hardly an edge case. Larson [12, 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" [12].

The OVR handbook cites Proposition 63 as justification for banning diacritics. California's Department of Public Health interprets the consitution'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 [2] [14]. 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* [6]

3.6   Legislative Initiatives

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.

3.7 Analysis

The use of the initiative process accords with the findings of Liu et al. [13] that direct democracy increases the chance of official-English policies in states with high immigrant populations.

4 China

4.1 Introduction

Given the People's Republic of China's (PRC) diverse population and linguistic landscape, language has served as an important vehicle of control for the Communist government. The PRC has distinguished mainland Chinese from the language of Taiwan via the simplification of Chinese script in the 1950s, reducing both the number and complexity of characters. Moreover, PRC Chinese is distinctive by its standardised use of Hànyǔ Pīnyīn since 1958, vis-à-vis Taiwan, where competing systems like Wade-Giles continue to to coëxist with Pīnyīn. Government intervention favouring a nationwide Mandarin standard (Pǔtōnghuà: "common language") puts Chinese provincial languages at a disadvantage, including Yuè and Wú. Pǔtōnghuà is "enregistered" as the accentless variety [9], while regional dialects are endangered as upwardly-mobile youth move to cities and adopt the standard variety. In 2003, Xing found that there were 22 minority languages with fewer than 10,000 speakers.

4.2 Second-Generation ID Cards

China's Public Security Bureau (PSB) instituted an updated system around 2004 to issue and track personal identification cards. The new IDs contain embedded microchips with personal and security information and were intended to improve the Bureau's population statistics and offer more robust anti-forgery protection [4]. The digital management of the ID system has caused administrative hassle for Chinese citizens with uncommon names, however, as government computers (as of 2009) can only accommodate 32,252 Chinese characters [11]. Now if someone's name includes a character outside the list, they are told

to change it. Since the old ID cards were handwritten, such a problem could not arise.

4.3 Ma Ch'êng

Ma Ch'êng (马骉) was one such victim of the policy, as reported in a *New York Times* article by LaFraniere [11]. Her grandfather scoured a classical Chinese dictionary for a distinctive name. He settled on an obscure character which complemented the family name ma (马) "horse": chěng (骉) "galloping steeds", or the character 马马马 written three times. Her previous PSB ID included a handwritten 骉, but the new computerised system would not allow this, and the Bureau recommended she change her name to become compatible with the database.

The Chinese government's treatment toward Mǎ's name reveals its ambiguous relationship with the Classical legacy. On one hand, their promotion of Pǔtōnghuà is presented in terms of the Confucian ideal of hé (和), especially under former President Hú Jǐntāo's Harmonious Society programme [19]. Yet the Communist Party's ongoing support for simplified script and control of the official "character list" favours progress over the veneration of history.

4.4 Zhao C

The same ID cards caused an administrative hassle for Zháo C (赵C). The PSB ruled that only Chinese characters may appear in names on the second-generation cards. As Zháo's father is a lawyer, they appealed the decision, arguing that 'C' appears in Pīnyīn romanisations, and in the tradenames of large Chinese institutions such as CCTV, the Chinese national broadcasting service. Apparently the judge was unconvinced, as Zháo volunatarily agreed to change his name, asking the public for suggestions.

Unlike in Mǎ Chěng's situation, the letter 'C' is easily representable on Chinese computers; instead of an administrative contingency, the restriction on English letters intendes to protect the Chinese linguistic framework from Western influence. In this way, China's government is taking an approach more typical of small countries protecting their national language, as we see in the case of Iceland and Lithuania. Indeed, 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. China's (and Lithuania's) specific ban on foreign influence in names, contrasted with the relative lenience on matters like signs and business names ("taxi", "TV") suggests that names are considered very close to "the language itself". In other words, speakers think of names as exemplifying the social content and meaning of a language, and thus in need of protection from foreign influence. Yet in China, perhaps uniquely, the

name régime acts against threats from both the past (the conservative veneration of Classical Chinese) and the future (the globalisation of English), seeking a balance between the two approaches.

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