What's in a Name? More than You Might Think

Transcript

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Location: Museum of London
In my first lecture last week, I introduced the history of identity and identification in general, and explained the rationale for devoting my remaining lectures to the topics of the personal name, handwriting, and the tattoo as identifiable signs or marks. Today my subject is the history of the personal name. But I won’t be looking at genealogy or etymology or what the specialists call onomastic – the history of how our names came into existence. My subject is the law of personal names, which I hope to make more interesting than it sounds, especially because today you will not get many visual distractions. The question I want you to think about is this: Is your name primarily a private concern for you, your parents and your friends? Or is it a public matter, something in which the law and the state have a legitimate interest? My lecture is about the different ways in which this question has been answered in England, France and Germany. I'll be moving up a scale that will take us from the least interventionist to the most imperious regimes of name law, and I will end by showing you exactly how high the stakes might become.

I. English Name Law - such as it is
If you were at my first lecture, you will remember meeting Mrs Chirk, a character in Nigel Dennis’s 1955 novel Cards of Identity, a fantasy about the unmaking and remaking of identity. Mrs Chirk, the luckless subject of an experimental project in the manufacture of identity, becomes unable to remember her name because she has forgotten who she is. Endowing her with a new name, the experimenters urge her not to lose it again, or at least ‘not to lose the ration book and identity card on which it is written’ – documents which will function not just as a ratification of her forgotten identity but indeed as the source of it.

Dennis’s soldering together of name and identity is absolutely on target. Personal names are the spontaneous and universal accompaniment to living in human society. The connection between a person and his or her name is intimate and intense, even if most of us owe this connection to our parents rather than to our own choice. But even if our name is only established by ancestry, conferral and repetition, it is likely to bond us to our social and existential identity and our life with a power that few other mnemonic forms have. Research in the USA in the 1980s indicated that the most frequent answer to the question ‘Who are you?’ was to give one’s name. Admittedly, the frequency declined from childhood to adulthood as other identities accumulated, but research on traumatic amnesia has nevertheless concluded in the same vein, that ‘The name is ... a kind of monogram for the sum total of a person’s memories ... of affective significance.’

I can vouch for this by personal experience, and I expect many of you have had the same kind of feeling in similar circumstances. When I applied for US citizenship some years ago, I was offered the opportunity to change my name – a choice that of course many immigrants make in order to anglicize foreign names. In my case I was tempted to take the chance to officially abolish the first of my given names, Amanda, which I have never used, and whose existence causes me all kinds of minor irritations. But as my hand hovered over the relevant section of the form, I could not defeat a sense that I would be betraying my parents who had bothered to give me two names at birth, even if they then perversely only ever used one of them. So, succumbing to an access of filial sentimentality that overrode rationality, I left my names as they were.

I say I never use my first given name, but of course I do, because it is on most of the official documents issued to me: birth certificate, passports, National Insurance number, and driving licence. Over the years I have more or less learned to recognize myself as ‘Amanda’ when I’m summoned into the GP’s surgery or am called to exercise my democratic rights as a voter. But my full given names are not on all of the ID documents I use, and when I checked them while I was writing this lecture I could not see much rhyme or reason behind what is and isn’t there.

SLIDE: JC ID DOCUMENTS
My US social security card, for example, knows me more parsimoniously than my US passport does. Both my UK and US driver’s licences know that I am Amanda Jane Caplan, but if I travel by bus using my pensioner’s pass I am plain Jane. Oxford University thinks that I am ‘A Jane Caplan’, which sometimes leads me to suppose that I am just one of many Jane Caplans, but certainly not The Jane Caplan. At one point while I was living in the USA, I had to appear before a notary public to swear an affidavit that Jane Caplan and Amanda Jane Caplan were one and the same person, and that that person was me. Ironically, while I was actually writing this lecture, I had to try to persuade the Marks & Spencer bank that the Jane Caplan who had just applied for a credit card was the same person as the Amanda Jane Caplan recorded at my address on the electoral register.

SLIDE: AFFIDAVIT
Although my bank account and other credit cards name me as Jane or J Caplan, I had to change one of my accounts a few years ago to show both of my forenames. This was so that I would have at least one card that could meet requirement that an airline ticket must be issued in the same name as the credit card that paid for it, and that both must be identical with the name in the passenger’s passport. I could go on, but you get the
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Without permission of the bishop. I think that the parish register of baptismal names cannot be altered – but this is also basically true of the civil register. There are limited provisions for re-registering the name of a child within 12 months of a registered birth, or upon adoption and in some other circumstances. But otherwise, if you assume a new name as an adult, your birth registration and birth certificate will nevertheless remain in your original and now discarded name.

As far as I know, the only exception here is under the Gender Recognition Act of 2004, which allows officially certified transsexual persons to re-record their newly acquired gender and name, in the newly established Gender Recognition Register (which is not open to public inspection).

But this does not mean that there are no legal instruments to fortify the evidence that you have assumed a new name; useful if, for example, you want to apply for a passport in a new name. There are several of these instruments, including the kind of notarial declaration I did in the USA, royal licence, and Act of Parliament. But the most usual method is the deed poll, a term which simply means a deed made and executed by a single party.

At one time, you could also place an announcement in The Times, as we will shortly see. The deed poll became the method of choice from the mid-nineteenth century, with the other methods usually being confined to cases where wills, property and coats of arms were involved. This followed a celebrated case in the 1860s, which raised doubts about whether the assumption of a new personal name also founded a right to require it to be used and recognized by all third parties. The public debate here was quite entertaining, and in fact humour seems to have been the prime genre in which naming issues were discussed in 19th-century England. Against more solemn pontifications on the subject, one of the contributors to this debate in 1862 raised a populist cry:

'Are labourers not to have the names of distinguished families ... or are country esquires to be forbidden to assume the names of labourers or tradesmen? Are offensive names ... not to be got rid of without great cost or expense? Is Mr Bridecake not to change his name to Brideoake; or is Mr Shufflebottom to be content with the unrelenting ridicule which his name suggests; is Mr Hogflesh not to become Mr Hoflesh; and is Mr Bug or Mr Humbug, with fortune, influence, and talent, to be laughed off the hustings?' (Falconer 1862).

The reference to Mr Bug would have resonated with readers of this article, because shortly before its publication a practical joker had inserted a spoof small-ad into The Times under the name 'Norfolk Howard, late Joshua Bug', declaring that he was renouncing the name Bug and was to be known in future as Norfolk Howard, a rather famous ducal family name.

English/British law remained largely uninterested in our names even in times of national crisis. When the National Register was in force, between 1939 and 1952, a British citizen was still entitled to change his or her name by advance declaration to the General Register Office and publication in one of the official Gazettes, and to receive a new identity card and ration book. The greatest restraint on existing practice was introduced in 1916 (by order in council), when enemy aliens were required to be registered and were forbidden to change their names. In 1919 this was extended to all aliens, who were required to retain the name they had held on 4 August 1914; exemptions were allowed only by permission of the Home Secretary, and these provisions were not repealed until 1971. And in general, aliens have been subjected to more stringent conditions on this score in other countries.

This otherwise rather lax state of affairs did not please everybody. Towards the end of the eighteenth century, that great rationalizer Jeremy Bentham deplored what he called 'the nominal confusion' that prevailed in England.
'It is to be regretted,' he wrote, ‘that the proper names of individuals are on so irregular a footing [that they] only imperfectly accomplish their object in a great nation.’ He therefore suggested the utility of ‘a new nomenclature ... so arranged, that, in a whole nation, every individual should have a proper name which should belong to him alone.’ This rationalized system of legal nomenclature would include family name, a single baptismal or forename, and place and date of birth. Bentham also had some unusual suggestions about recording it which we will meet in my final lecture.

II. Regulating the Name in Law: France and Germany

Bentham dismissed his own idea as a fantasy, and maybe it was something of a tongue-in-cheek proposal in any case. But although his scheme may seem bizarre to us in this country, it might not appear quite so far-fetched in some other national contexts. Historically, more countries have adopted some kind of state regulation of personal names than have left them to run free. The law in the USA is similar to English/British law, but if we turn our sights to continental Europe we will find a rather different nominal landscape.

As I indicated at the beginning of this lecture, personal names are pre-eminently a social institution, often denoting not just individual and family identities but social distinctions, property relations and so on. The history of the personal name in post-Roman Europe therefore begins as social history, not legal history, and broadly it is the history of how the two-part name – forename and surname – became the European standard. This slow social evolution preceded any significant enactments by the state, which only gathered pace in the 19th century. Of course, the social and etymological history of names and naming conventions is much more intricate than this and is utterly fascinating, but as I have already said it’s not our subject here. What does concern me now is the history of the ‘legal seizure’ of the personal name – the processes through which the law and the state arrogated to themselves the right to insist that fixed personal names be registered and used in all transactions between citizens and the public authorities. And when European states did begin to address the issue of personal names, roughly from the 17th century, their policies transformed social stabilization into legal immutability. These processes went hand-in-hand with the accelerating pressures to register and prove identity that I discussed in my first lecture, and also with the transition from an oral to a documentary culture that I will be picking up again in my next lecture.

France was the pioneer here. A slow accretion of procedural and police rulings carried the work of stabilization in early modern France, but the first specific legislation forbidding citizens to bear any names other than those conferred at their birth was enacted in revolutionary France. This legislation was prompted by the attack on aristocratic titles and the chaos of renaming unleashed by the Revolution, in which parents wanted to have their child baptised as Liberté, Brutus or Marat, or a man named Leroy decided that his name was now a political embarrassment. This regime was confirmed by more restrictive legislation in 1803 which remained the basis of French name law until 1993. Among other provisions, these laws forbade the adoption or use of any fore- or surname other than those registered at birth, and required anyone who had changed their name since the revolution to revert to their original name. The stock of permitted forenames was restricted to calendrical and historical names. Finally, to be valid, all legal and public documents must refer to individuals by their full registered name only. At a stroke, therefore, your registered name became your immutable legal or public name. In theory, changes of name could be licensed, but the procedure was arduous, restrictive, lengthy and rare.

Of course this new political regime didn’t overrule people’s real lives. Your civil name might be stabilized for transactions with the state, but your private name continued to obey all manner of local usages and variations which proceeded blithely to identify you in every other circumstance. In France, social custom included the practice of changing forenames at major life stages, or using different names in different social circles. As one man in a village in the Châtillonnais told an anthropologist in the 1970s, ‘I give my children one name at the mayor’s office, then some other ones at the church’. From another informant came the statement that ‘in our family, there was Louis, known as Georges, and then Marguerite whose real name was Jeanne’. In the cemetery, you could find a tombstone that read ‘On 20 November died Emile, Lucien, Albert, Frédéric, known as Jean Camuset’ – thus proving that custom was resistant to politics even unto death.

With Napoleon’s introduction of French law into western regions of Germany after 1806, parts of the Rhineland and some other German regions also began to follow the French lead on the law of names. Hitherto, German practice had on the whole followed the principles of common law. The state was understood to have no interest in a person’s name, but treated it as a natural right that was left to a person’s own discretion to choose and to public consensus to underwrite – much the same as in England, in other words. But in the early 19th century this position was slipping into its opposite, under the influence not only of French law but also of autonomous changes in the character and reach of German states. We could briefly describe this as the 19th-century transformation of enlightened despotism into the modern interventionist state, with its growing number of relationships and transactions in which documented individual identity was a pre-requisite – for example, taxation, education, conscription, voting.

To cut a long story short, unified Germany adopted a nation-wide civil registration law in 1875, which enforced civil registration for the first time, and provided for the establishment of a network of registration districts and offices throughout Germany. Thereafter, each component state issued its own regulations on names. A number of states restricted the choice of forename to those that were ‘customary’: for example ‘Jesus’ was
unacceptable, so also names like Bebeline and Lassalline that echoed the surnames of well-known Social Democrat leaders. Other states tried to ensure that the registered name of a newborn should not be identical to that of any other local inhabitant (shades of Bentham here). States also imposed tougher regulations on the procedure for changes of name. By the end of the 19th century, then, citizens no longer possessed any residual rights to change their name at will. On the contrary, they were placed under a legal obligation, by the terms of the penal code, to use their full and correct name in all transactions with the state. By the early 20th century, a legal authority could summarize this situation like this:

- ‘The great interest that the public administration has in the reliable designation of every individual and in his differentiation from others ... entails that the regulation of name matters will proceed according to public-law principles and by means of fixed rules. The right to choose or change one's family name is therefore no longer a matter of individual discretion, and while the forename may be freely chosen, the individual is not empowered to change it at will.’ (Adler 1921)

So there you have it: the opposite of the legal situation we live under in this country. What has protected us in Britain from this outcome? The short answer is that it resulted from the different trajectories of the three political cultures I have been discussing – English (later British), French and German – which produced three different versions of the liberal state in the 19th century. At the risk of selectivity and simplification, let me pick out three elements of this. First, the foundations of a centralized, bureaucratic and interventionist state were laid in France by its absolutist monarchs from the 16th century, and in Germany by Prussian and some other princes in the 18th century – and neither of these developments was balanced by the countervailing parliamentarism found in England, with its defence (at least to some extent) of popular liberties against the monarch and then the state. Second, the significance of the French Revolution in promoting new concepts of law and citizenship, which balanced and codified obligations and duties, cannot be over-estimated; and while 19th-century German states did not exactly share the same principles, the effect of unification was comparable in prompting the codification of German law, new constructs of civil identity and new understandings of the relationship between individual and community. Finally, in both the French and German processes of codification, jurists and constitutionalists continued to draw more directly from the formal principles of Roman Law than the historical traditions of common law, again by contrast with the development of English law. Continental Europe's restrictive law of personal names was, in a manner of speaking, collateral damage in these large-scale movements of political and legal change.

III. Nominal Persecution

In the case of Germany, however, there was a further impulse at work which was also present in France but not, I think, quite as prominently. Let me explain. I think it is safe to say that the majority of French and Germans have not in fact had their lives irredeemably blighted by being forced to live under these restrictive systems of name law for the past 200 years. But at the same time, significant minorities in both countries – as well as in many others – have indeed suffered indignity and discrimination as a result of the state's power to regulate their names. Two of the arenas in which this has typically taken place are the imposition of fixed surnames on groups that do not traditionally use them; and forcible changes of name imposed on ethnically or linguistically distinctive populations acquired by conquest or colonization. Among numerous examples we could cite the French government’s requirement in 1882 that Algerian heads of households must adopt patronymic names, or have names forced upon them – which, not incidentally, was accompanied by the issue of compulsory identity cards. Similarly, in the interwar period, the Italian fascist government insisted on the forcible Italicization of German and Slav names in South Tirol and Trieste (Hametz), while in the 1980s Bulgarians with Turkish names were forced to apply to 'Bulgarize' their names. This list could easily be expanded.

Now, one of the most widespread and long-lasting projects for the imposition of names on the ostensibly nameless in modern Europe was the requirement that Jews must adopt fixed surnames, in place of their non-heritable patronymics. This was typically pursued in the name of emancipation, and the first such decree was issued by the enlightened Habsburg ruler Joseph II in 1787. In France, Jews had been granted citizenship in 1791, and in 1808 they were required to register fixed surnames as well as forenames, under rules intended to assimilate them to the general population – thus, names drawn from the Old Testament or from their places of residence were in principle barred (Lapierre). In Germany, Prussia was the first state to issue similar regulations, in 1812. Thereafter, the history of the legal regulation of personal names in Prussia, in other German states and then the German Reich was entangled in the complexities of Jewish emancipation and anti-Semitism.

It is no exaggeration to say that one of the principal drivers of name law in 19th-century Germany was the desire on the part of government officials, as well as non-Jewish Germans, to ensure that their Jewish fellow-citizens remained identifiable as Jews as they entered civil society on equal terms (Bering). Between the 1840s and the end of the century, the restrictions on changes of name in Germany became tighter and more rigid, largely to control the ability of Jews to adopt ‘non-Jewish’ names. The story is full of grim ironies, whose sources lay in the fundamental dilemmas of emancipation and assimilation for both Jews and anti-Semites. A Jew with a ‘Jewish-sounding’ name was immediately identifiable as such and vulnerable to anti-Semitism; but Jews who wanted to change this kind of name were told, speciously, that there was nothing dishonourable about being identifiable as a Jew. If a Jew did assume a not obviously Jewish name, he could be accused of being ashamed of his ‘real’ identity or of trying to conceal it, perhaps for nefarious purposes. He might even be taken to law by some
outraged Christian for usurping and besmirching his own family name. Of course, in principle the restrictive laws applied to non-Jewish Germans too, but in practice their application was much tougher for Jews than non-Jews. Thus, non-Jewish Germans who applied to change their own ‘Jewish-sounding’ names to something less stigmatizing were more likely to get the necessary permissions.

The liberal governments of the Weimar Republic after 1919 brought some amelioration to this official regime. But they failed to resist the pressures of anti-Semitism with sufficient energy to change the underlying discourse, which was that Jews were disguising their identity as part of their plot to subvert the German people from within. And lodged within the ministries were officials who continued to see it as their mission to strengthen the boundary between Germans and non-Germans in civil society. When the radically anti-Semitic National Socialist regime seized power in 1933, it was committed not only to clarifying and policing this boundary, but to making it the very principle of its vision of a new people’s community, a Volksgemeinschaft, for Aryans alone. It was obviously integral to this project to identify who was Jewish so that they could be labelled and restricted, pending whatever was to be the ‘final solution’ to the Jewish question.

The 1935 Nuremberg laws that framed racial classifications and banned ‘intermarriage’ are certainly the most notorious of the Nazi state’s new systems of discriminatory classification, but the personal name also played a perhaps less widely recognized role in defining and publicizing who was and was not Jewish. It is the history of name law that I have just been describing that allows us to understand that the Nazi government was not doing something unprecedented, but was drawing on an older and quite deep-seated current of juridical and political activity – bringing them, if you like, to a conclusion of terrible logic.

Having defined who was Jewish by law, the Nazi government in August 1938 intensified this regime of identification by promulgating new regulations that restricted Jews to a list of so-called ‘Jewish’ forenames. This was part of a general tightening-up of name law, and also preparatory to issuing compulsory ID cards to Jews. Any Jew who did not already bear one of these was compelled to insert the boilerplate Jewish name ‘Sara’ or ‘Israel’ into their registered name.

**SLIDE: JEWISH NAMES**

The list of officially acceptable ‘Jewish’ names was deliberately taken from Polish-Yiddish name stock (although it also included some Old Testament names in wider use, as we shall see), and these were utterly alien to the largely assimilated German-Jewish population. Most German Jews therefore had to adopt the additional compulsory names (Zwangsnamen), and these were written into the civil status registers to produce a correct record of the individual’s full legal name. All official documents were now issued in these newly ‘judaized’ names, notably the new identity document (Kennkarte) which Jews were now required to apply for. In a further provision, new surnames approved before 1933 could also be withdrawn if ‘the name change is not seen as desirable’ (§7), and this power that was adopted solely in order to force Jews to abrogate recently adopted surnames which appeared to disguise their Jewish identity.

We shouldn’t judge the effects of these new regulations merely by the fact that we know that far worse was to come for most of the Jews involved. Each application for a name correction, or for a rectification of the records required for a marriage licence, represented a felt injury by the person concerned, as well as opening them to the unwelcome further effects of administrative attention. The personal correspondence that one can find in the archives is replete with the bewilderment and distress experienced by the individuals concerned, whose lives and ordinary assumptions were being thrown out of kilter by these invasions of identity.

I’d like to end by offering you three brief examples of what I mean.

First, Dora Lux: *It’s hard to know many Jews refused to comply with the 1938 law, but probably not many. One was Dora Lux, a feisty Berlin schoolteacher of secular Jewish background who simply declined to turn up at the register office in 1938. Her daughter later reported her mother as saying, ‘I’m not going to put the noose round my neck just because they’ve told me to. I am not Jewish, and my name isn’t Sara. Let them come and get me’.* (Schramm) In due course, this simple initial act to refuse a rewriting of her identity through her name was the essential step that protected Dora Lux from the ultimately disastrous consequences of registration as a Jew.

She never applied for a Jewish ID card and thus slipped under the official radar. By a combination of ingenuity and pluck she survived the war without ever going into hiding. Her initial act of refusing her new name thus protected her from the accelerating processes that were capturing and recording the identity and location of Germany’s Jews, and that within a few years had marked them for certain destruction.

**Goetze/Schmul**

My second example concerns the members of the Goetze family, who in 1938 were ordered to revert to their allegedly original surname Schmul. The change of name had taken place in Bromberg in 1893, when the surname Goetze was officially registered by a family consisting of two parents and their ten children. By 1938/9, when the authorities initiated proceedings requiring the family to revert to the name of Schmul, several of the surviving family members and/or their spouses were in their eighties and had lived under the name of Goetze for decades.

One of these 80-year-olds, Johanna Sara Goetze (and note that compulsory Sara already imposed on her given
names), declared to the authorities in March 1939 that, ‘I will not take the family name ‘Schmuhl’ because the forebears of my husband were not called Schmuhl but Goetze. My husband’s grandfather was named Samuel aka Schmul Goetze and his children were known as ‘Schmul’s children’. (I should explain here that ‘Schmul’ is the usual nickname for Samuel, and in the designation ‘Schmul’s children’ we see a residue of the tradition of Jewish patronymic naming.) Johanna went on to explain that the name ‘Schmul’ had been recorded in error as a surname when a family member registered for military service, and when it was corrected the rest of the family took this as the occasion to have their name properly registered as Goetze. The recording of Schmul as the family’s surname was therefore a mistake, and the registered change of her husband’s name in 1893 ‘only corrected his name. I reject the name of Schmul… I have no need to bear a name that is not my own.’

Another relative, Samuel Goetze, protested that he was authorized to use his surname and had done so for 46 years. Now in his 76th year, he pointed out that he had no children, was the last of this family line, and living in an old people’s home where ‘as a result of my failing eyesight I can neither read nor write, so that I cannot sign my name.’ [BAL R1501/127444]. This letter was actually handwritten and signed, somewhat in contradiction to Samuel Goetze’s claims. But I when I came across it in the Berlin archives, I almost wept to find such a poignant testimony to the resistance of these elderly people to the Nazi state’s incursions into what was left of their nominative identity.

Esther: My final example takes up the question of identity from the perspective of a non-Jewish German who fought back against the arrogations of the state, whose story has been made the subject of a wonderful book by the German lawyer Winfried Seibert. This was a Westphalian pastor, Friedrich Luncke, who fought a determined though unsuccessful court battle to entitle him to register his daughter, born in August 1938, with the name Esther. The registrar of births had declined to register this name on the grounds that it was ‘a typically Jewish name’, but the pastor refused to accept this lying down. Even though ‘Esther’ was not among the Jewish names listed in the legislation of 1938, the final court of appeal declared that the name violated the simultaneous provision that German citizens should in principle bear only German names (even though no official list of these was ever issued). Although the new legislation allowed for exceptions where names had become effectively Germanized through long use, the court decided that Esther could no longer be allowed through this loophole.

The court’s ruling in invoked an extraordinary discussion of the Old Testament story of Esther, designed to show that the name was indissolubly entangled with Esther’s status as a ‘criminal prostitute of Jewish race’ whose historical role had enlisted ‘cunning, deception and the misuse of her physical charms’ [Seibert]. The court found that, had Germans understood who the historical Esther really was, her name would never have come into general use, since she was ‘a model neither for Christians nor even less for Germans’. Here they contrasted Esther with the biblical Ruth, not forgetting to mention that she was originally a Moabite: Germans had correctly recognized Ruth for ‘her great loyalty and selfless love’, and unlike Esther her name was therefore worthy of German girls. With this and other arguments, the case was dismissed.

But let me add the postscript to this story: In 1938, ‘Esther’ was registered, against her parents’ will, as Elisabeth. Tragically, the child died in 1941, but her father did not allow this to be the end of the story. In July 1946, under post war regulations rescinding the anti-Semitic legislation of 1938, he appealed against the court’s original ruling and was given permission to retrospectively give his deceased daughter the name he wanted: Esther.

SLIDE: BERICHTIGUNG
I don’t think I need to add anything more about the power of names and identity, and the intimate catastrophes that result when racist despotism is let loose on them. But perhaps the moral of this history is that a certain degree of confusion and instability is good for our liberty. In my next lecture, I will be looking at a different but in its own way intimate expression of our identity that is also entangled with some intricate legal and social history: Handwriting. And with that, I sign off.

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