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## COMMENTARY

# UK birth registration and its present discontents

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**Abstract** Calls for reform of the United Kingdom (UK) birth registration system to allow it to be more flexible regarding subsequent name changes, gender recording and to contain information about 'third parties' involved in procreation are justified and important. However, we need to ask exactly when discussions about the birth registration system in the country became primarily about the welfare of the individual child being registered? This was hardly the case at the system's inception in 1836, or during much of its history. In addition, it is also interesting how far calls for reform show the extent to which those involved have internalized the norms of the bureaucratic state – hence, people seem to feel that they have been 'living a lie' because of the gender on their birth certificate. Also, how do we understand 'privacy' in the context of birth registration when some people are desperate to publically proclaim their new gender status, whilst others are eager to maintain privacy with regard to their genealogy? Overall, the problems of birth registration reflect the broader muddle of identification in the UK.

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Two articles on the deficiencies of the United Kingdom (UK) birth registration system, one by [Crawshaw et al. \(2017\)](#) and the second by [McCandless \(2017\)](#), argue that advances in procreation technologies, and social changes such as the acceptance of civil unions and sex/gender change, require the system to be updated. This is to allow it to be more flexible regarding subsequent name changes, gender recording and to contain information about 'third parties' involved in procreation. McCandless, it should be noted, is more cautious than Crawshaw et al., pointing to the continued power of the nuclear family norm, even amongst same-sex couples. The basic thrust of the articles is, however, that birth registration is for the benefit of the individual child or adult, and should operationalize their right to be able to construct the narrative about themselves that they desire, or to have a full understanding of the events affecting their lives. Thus, someone who has changed

their gender should be able to have their registration details changed to insert a new name and gender, or, for example, to be able to find their biological, as opposed to affective, father. Both articles see registration as, in some sense, constituting citizenship (Crawshaw et al.) or 'recognition' (McCandless) by society and the state. These issues are not confined to the UK but are exercising individuals, legal systems and government institutions around the world.<sup>1</sup>

I would be the first to accept that people ought to be able to do these things, and anything I say below is a comment on the nature of the arguments used in these articles, or the feasibility of reform, not the validity of the ends being sought. After all, for an historian of identification such as

<sup>1</sup> See, for example, <https://southernafricallitigationcentre.org/2017/09/29/press-release-botswana-high-court-rules-in-landmark-gender-identity-case/> (last accessed 18 October 2017); <http://old.seyllii.org/sc/judgment/supreme-court/2015/130> (last accessed 18 October 2017). The author would like to thank Bronwen Manby of the Bhalisa network for these references.

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myself, the complexity of parentage is a given. In the early-modern period, for example, children could have three or four parents – their biological progenitors and their godparents, the latter often being of crucial importance (Coster, 1995). In the case of premodern baptism, however, it was not the body that was being recorded but the entry of the soul into the Christian community. The authors of these articles are fully cognizant of the laws relating to the registration system, and reveal many of the ways in which the system is out of date and fails citizens. In general terms, ways have to be found to enable individuals to exercise their rights in law.

There are certain aspects of the authors' arguments that are interesting to an historian. For example, McCandless (2017) is quite right to ask, 'What is the purpose of a birth certificate?', although it might be better to ask, 'What is the purpose of the registration system – both in terms of the certificate and the data system that lies behind it?'. But we need to ask exactly when discussions about the birth registration system in the UK became primarily about the welfare of the child being registered? This was hardly the case at the system's inception in 1836, or during much of its history. The primary motive for the establishment of registration in the UK (or at least England and Wales, since Scotland only followed suit in 1855) was, I think, to establish property rights by descent more accurately, but this did not necessarily help the newborn – if they were illegitimate, they could not inherit, or the date of their birth might exclude them from inheriting an estate if, for example, it was entailed on the eldest male offspring amongst a group of brothers. The ability of non-conformists to avoid having to be married or baptize their children in the Church of England was a boon to the parents, not to the child. The ability to prove one's age for the purposes of getting a job, or an Old Age Pension from 1911, hardly helped individuals when it prevented them from getting work (and this was resented by many working-class families), or it prevented the poor from getting pensions until they reached 70 years of age (which many, of course, did not). We might see all this as improving welfare, but of society, rather than of individuals in the first respect. Much the same could be said, of course, of the creation of medical and demographic statistics – they helped to improve the lot of society, not that of the individual directly. After all, even a child who died was registered (Higgs, 2004). Indeed, those who ascribe to the ideas of Michel Foucault, the French historian of ideas and philosopher, might see birth registration as being for the purposes of the state in understanding the extent of its 'bio-power' for geopolitical ends (Foucault, 1982, 1991). So, are the authors trying to use a bureaucratic system for ends for which it is radically unprepared? Perhaps so, but that should not stop us from thinking through alternatives.

There is also the implication in these articles that birth registration is, in some sense, about citizenship or official 'recognition'. A birth certificate is certainly one of the 'feeder documents' that underpin this in many countries, especially in those influenced by the French civil code. But how far is it the case in the UK? The current British identity regime seems to be stressing the need for networks of supporting documents/contacts, as in the Verify system, for British citizens, or biometric permits for those without

British nationality.<sup>2</sup> This is a very old pattern in the case of England that goes back, in one form or other, for centuries (Higgs, 2011). Moreover, the UK birth certificate expressly says that it is not a means of identification, and I have heard a senior official from the Passport Office claim that this is also the case for the UK passport. The fact that they are used as such all the time just shows how confused the situation is in the UK. This reflects, in part, the absence of either a UK population register as exists in many European countries, or an identity card system after the repeal of the 2006 Identification Card Act. The problems of birth registration are thus only part of a much broader issue of identification in a somewhat ramshackle common law system.

It is also interesting how far the authors and those they champion have internalized the norms of the bureaucratic state – hence, people seem to feel that they have been 'living a lie' because of the gender on their birth certificate. But why should a bureaucratic act, and a piece of paper, prevent people from creating their own narratives about themselves? Much the same could be said, of course, of the call for same-sex marriage. McCandless (2017) argues that such conventional norms create problems for registration reform. We could, of course, argue that being 'norm-al', or ordinary, is exactly what the lesbian, gay, bisexual and transgender community wants, but do we always need to see ourselves through an official lens in this manner? This takes us into the whole sociological theory of the internalization of norms upon which society depends, the construction of gender and the ethical anarchism of the likes of James C Scott (2011), and can hardly be covered properly here.

It might be a relief to move away from such rarefied issues to look at some of the detailed arguments raised in these articles, especially that by Crawshaw et al. (2017). They suggest that changes in the nature of registration must preserve the privacy of the individual involved. This seems possible in terms of information related to 'non-traditional' forms of procreation, but would seem to negate the purpose of a person being able to change the record of their gender and name in the registration system. Of course, there would be no privacy from the state that holds this information, which some would regard as no privacy at all. So, what is 'privacy'? As David Vincent has recently argued so cogently, for much of history, privacy was bound up with the notion of 'An Englishman's home is his castle', which meant the seclusion of the family space. This meant, of course, the maintenance of patriarchy. This legal concept is even appealed to by Warren and Brandeis at the end of their classic text of 1890 on which the modern concept of individual privacy rights are based (Vincent, 2016; Warren and Brandeis, 1890). Are we really talking, therefore, about the autonomy of an individual to choose their own narrative, and to decide how far their 'family space' should extend?

Crawshaw et al. (2017) argue that any additional expense involved in changes to the registration system should be 'proportionate', but do not define what that means in practice. Their argument is somewhat circular in that 'the

<sup>2</sup> Guidance GOV.UK Verify: <https://www.gov.uk/government/publications/introducing-govuk-verify/introducing-govuk-verify> (last accessed 19 October 2017); biometric residence permits: <https://www.gov.uk/government/publications/introducing-govuk-verify/introducing-govuk-verify> (last accessed 19 October 2017).

limited number of individuals involved [in their proposals] indicates that any such resource requirements are proportionate'. However, the cost involved would not be driven so much by the number of cases involved, but the need to revise the basic structure of the underlying database and registration system. Also, the changed history of the registration would need to be preserved in order to allow the person to prove that 'Alan' before date X was 'Alice' after that date for official purposes, which increases complexity within the system. Registration documents would presumably be required for proving rights to employment under the 2006 Immigration, Asylum and Nationality Act, including any changes of name.

The fact that the articles by [Crawshaw et al. \(2017\)](#) and [McCandless \(2017\)](#) raise so many issues shows their importance, although from an historian's perspective, they perhaps raise more questions than answers. But, what is wrong with that?

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