THERE IS NO SUCH THING AS A "LEGAL NAME"

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ABSTRACT

The phrase "legal name" appears everywhere. And wherever it appears, it seems to come with an assumption that it picks out one, clear such name for each person. So, do "legal" names as the phrase is commonly understood really exist? As far as federal and most state law is concerned, it turns out the answer is a clear no.

This article seeks to highlight the legal, moral, and philosophical wrongness of the notion that people have one uniquely identifying legal name. To do that, we survey the status of names in various legal domains, highlighting that legal consensus tends to be that there is no one "correct legal name" for individuals (if anything, people often have many "legal" names). We argue this common notion that every person has a single,

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Both authors have been listed alphabetically and both contributed equally.

clearly defined "legal" name is a kind of collective delusion we all seem to share (emerging somewhere in the late twentieth century), but is not grounded in legal or social reality. To address this harmful delusion, we present a series of ready-to-cite conclusions about the current state of the law and introduce a normative framework for how institutions and individuals ought to choose between people's various legal names. Engaging with legal theory, feminist philosophy, and philosophy of language, we discuss the social function of names and argue that names enable people to communicate important social information about themselves—which can include their gender, religion, and familial relations. Thus, we conclude by arguing that individuals and legal institutions have a normative responsibility to respect peoples' preferred legal names, thereby allowing them to authentically represent these facets of their social identities.

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INTRODUCTION

> "[C]ontrary to the apparent thought suggested in argument in this case, there is no such thing as a 'legal name' . . . ."
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> Loser v. Plainfield Sav. Bank,
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> 149 Iowa 672, 677 (1910)

If you have recently interacted in any way with any major institution—a university, a corporation, a law firm, a government office, a hospital, and so on—you have almost certainly filled out a form that demanded your "Legal Name." Remy's alma maters, for example, label names that appear in their systems as either a "Legal/Primary Name" and "Preferred Name" (NYU)[1], or a "Legal First Name" and a "Preferred First Name" (University of Chicago).[2] Some schools attempt to define legal name for their own purposes—theoretically dodging the need for a settled definition from some legal authority. But in many if not all such cases, that definition is ultimately an exercise in tautology—just look at how one school handles the issue:

> Legal Name–"A Legal Name is the name that appears on your passport, driver's license, birth certificate, or U.S. Social Security Card."[3]

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1. *Legal/Primary Name*, N.Y.U., https://www.nyu.edu/students/studentinformation-and-resources/registration-records-and-graduation/forms-policiesproce dures/change-of-student-information-policies.html [https://perma.cc/Y4H5-WCHR].

2. *Preferred First Name*, UNIV. OF CHI., https://web.archive.org/web/20190822012305/https://registrar.uchicago.edu/records/student-profile-information/preferred-name/ [https://perma.cc/NG7X-DU9S] (on file with the *Columbia Human Rights Law Review*).

3. *FAQ for Columbia's Preferred Name Policy*, COLUM. UNIV., https://www.registrar.columbia.edu/content/faq-preferred-name-policy [https://perma.cc/KG8W-M7X3]; *see also, e.g.*, *Preferred Names*, PIERCE COLL., https://www.pierce.ctc.edu/preferred-name [https://perma.cc/P5A3-JUZ6] (same definitions); *Frequently Asked Questions Preferred Name Policy*, E. MICH. UNIV., https://www.emich.edu/preferredname/documents/preferred-name-faq.pdf [https://perma.cc/V5KJ-8BTZ] (same definitions). Similar to Columbia's, the relevant definitions at Connecticut State are:

> A preferred first name or used name is not a legal first name, but is generally used to change the manner in which others refer to the individual . . . .
>
> A legal name is the person's official name in accordance with the law. Legal names can only be changed on official documents when a student acquires a court order. Such a court order may arise in a number of different contexts, including a name change proceeding, an adoption, a divorce decree, individual choice, witness protection program.

Preferred Name–"A Preferred Name is a name a student wishes to be known by in the University community *that is different from a student's Legal Name*."[4]

And to the extent that this definition is not an exercise in tautology, it hinges on a particular subset of potential legal names (assigned at birth, by court order, or upon naturalization). But, as it happens, sometimes the name on a person's driver's license or passport (often itself called a "Legal Name") is none of these three.

Dictionaries fare no better. Merriam-Webster's legal dictionary (un)helpfully offers this gem: a "Legal Name" is "a person's name that is usually the name given at birth and recorded on the birth certificate but that may be a different name that is used by a person consistently and independently or that has been declared the person's name by a court."[5] In other words, according to Merriam-Webster, a legal name is usually one of these three completely different things—including the thing everyone seems to refer to as a "preferred name" and define as *not* a Legal Name.[6]

And, of course, there is a deep irony to this near-universal insistence on using legal names: *legally speaking*, there is no agreement about what a "Legal Name" is.[7] Many people have several legal names—e.g.,

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Use of Preferred First Name & Execution of Change to Legal Name by Students, CONN. STATE COLL. & UNIV., https://www.ct.edu/files/policies/2.4%20Use%20of%20a%20Preferred%20First%20Name%20and%20Execution%20of%20Change%20to%20Legal%20Name.pdf [https://perma.cc/UH5V-9RKV]. And that is when schools bother to define the concept—which many, if not most, do not. *See, e.g.*, *Student Education Records and Directory Information*, UNIV. OF CHI., https://studentmanual.uchicago.edu/administrative-policies/student-education-records-and-directory-information/ [https://perma.cc/FVB9-ULTV] (noting "preferred name" is defined as the name "the student wishes to be commonly known as" while "legal name" is referenced but undefined).

4. *FAQ for Columbia's Preferred Name Policy*, *supra* note 1 (emphasis added).

5. *Legal Name*, MERRIAM-WEBSTER (last visted Aug. 25, 2021), https://www.merriam-webster.com/legal/legal%20name [https://perma.cc/8C5S-76TD].

6. Though, to be fair to Merriam-Webster, as we explore in this paper, this definition is probably about as close to correct as you could be in positively defining "Legal Name."

7. *See, e.g.*, 1 SANDRA SCHNITZER STERN, STRUCTURING & DRAFTING COMMERCIAL LOAN AGREEMENTS § 25.02 (2019) ("[I]t is apparent that there is no 'correct legal name' of an individual."); N.Y.C. BAR, REPORT ON LEGISLATION COMMERCIAL LAW AND UNIFORM STATE LAWS COMMITTEE 2 (2014), https://www2.nycbar.org/pdf/report/uploads/20072753-ModernizingUCCArticles17and9t.pdf [https://perma.cc/B3LA-SV6G] ("Presently, there is no law that establishes the 'legal name' of an individual. Many official documents issued to the same person—birth certificate, passport, and driver's license—frequently appear with different names, or variations of names.").

the name on their birth certificate, the name on their driver's license, the name on their Social Security card, the name on their green card, the name they are referred to by in their community, etc.—depending on the definitions used, all of which might be different.[8] Others may not even have one:[9] e.g., while extraordinary, a child might be born out of status (meaning without conventional immigration status) outside of a hospital and might also lose their parents, ending up with no piece of paper stating their name. Thus, demanding someone's "Legal Name" is about as helpful as demanding their "correct name," their "real name," or their "super-official-we-strenuously-mean-it name."[10]

Yet, as far as we can tell, no one has written anything directly addressing this issue, much less proposing any solutions or useful advice for the trans people (along with anyone else who changes their name) against whom the fiction of a legal name is often used.[11] Because the harms are clear and easy to understand,[12] this Article focuses on how the legal name fiction harms trans people in particular. That said, as we discuss, there are many other contexts in which the fiction causes harm. Thus, this Article has two goals: first, to articulate and describe the current legal landscape for legal names; and second, to map out theoretical and practical solutions for practitioners and individuals who confront naming issues—

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8. Indeed, even mundane disparities—a different spelling on a birth certificate and Social Security card, use of Jr. versus III, a missing middle name—lead to people having more than one legal name.

9. *See* Patrick McKenzie, *Falsehoods Programmers Believe About Names*, KALZUMEUS (June 17, 2010), https://www.kalzumeus.com/2010/06/17/falsehoods-programmers-believe-about-names/ [https://perma.cc/YC9W-QMF3] ("[Falsehood number] 40. People have names.").

10. *Cf.* A FEW GOOD MEN (Castle Rock Entertainment 1992) ("'I strenuously object?' Is that how it works? . . . . 'Objection.' 'Overruled.' 'Oh, no, no, no. I *strenuously* object.' 'Oh. Well, if you strenuously object then I should take some time to reconsider.'").

11. Professor Cori Alonso-Yoder has a forthcoming piece focused on common law name changes that focuses—like this piece—on the importance of names and discusses common law name changes. Cori Alonso-Yoder, *Making a Name for Themselves*, 74 RUTGERS L. REV. (forthcoming Spring 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3823295 [https://perma.cc/Y5VR-NPE7]. But while Professor Alonso-Yoder does important work in problematizing some of the legal name framework—as well as identifying how the concept of a legal name is often weaponized against marginalized groups—her project focuses much more on the question of *what* constitutes (and normatively, what *should* constitute) an effective legal name change.

12. For example, a significant amount of literature discusses the importance of referring to trans people by the right name—and the serious psychic harm that comes with refusing to do so. For a full discussion, see *infra* notes 150, 162, 163 and accompanying text.

specifically, confronting the seemingly omnipresent insistence that the term "Legal Name" has a clear, useful, and unambiguous referent.

We proceed in three parts. Part I identifies and describes the varied and inconsistent legal treatment of names in different areas of law. Part II dives deeper into what we will call the "shared delusion" that such a thing as a legal name exists, and discusses how the legal treatment of names as described in Part I causes individuals and institutions to perpetuate this harmful delusion. Finally, Part III discusses policy, legal, and theoretical solutions designed to help those who are harmed by the legal name myth. Specifically, we propose and defend a (moral and philosophical) "Preference Norm" according to which individuals and institutions ought to be permitted to *select* which of their various legal names should be used to refer to them. Violation of this norm can create three distinct types of harms: dignitary harms, hermeneutical harms, and procedural harms. We provide concrete legal proposals which take potential Preference Norm violations seriously and seek to avoid the concomitant harms.

It is worth noting early on that we are not claiming that there are no contexts in which people have a legal name. There obviously are. For example, when filling their taxes, the relevant legal name will be the one that is attached to a Social Security number. However, we are arguing that there is no *single* and *coherent* concept of a legal name across legal domains. Rather, in different contexts people will have different—equally "legally" valid—legal names. In this sense, for the concept of a legal name to be meaningful, it must be indexed to some particular legal domain, but no unifying concept of a legal name exists across domains. Therefore, this Article might just as easily—though we think it is not quite as punchy—be titled "There are About Seven and a Half Such Things as a Legal Name."[13] The point would remain the same: the insistence that any specific object in the world gets identified by a talismanic utterance of its "legal" name is wrongheaded and ultimately very harmful.[14]

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13. *See* N.Y.C. BAR, *supra* note 7, at 3 ("Many official documents issued to the same person—birth certificate, passport, and driver's license—frequently appear with different names, or variations of names.").

14. *Cf.* Kendra Albert, *Their Law*, HARV. L. REV. BLOG, (June 26, 2019), https://blog.harvardlawreview.org/their-law/ [https://perma.cc/RKT8-ZJ6F] (critiquing an approach to misgendering-as-discrimination in the workplace that focuses on the severity of harm and observing, among other workplace issues, that "dead names (old names that people no longer use) show up without warning.").

I. Law of the Name: "Legal" Treatment of Names Across Practice Areas

> "It is apparent that there is no 'correct legal name' of an individual."
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> 1 Sandra Schnitzer Stern, Structuring & Drafting Commercial Loan Agreements § 25.02 (2019)

There is no coherent "Law of the Name," as much as there is no coherent "Law of the Horse."[15] That is, as Judge Easterbrook mused, if you tried to teach a course on the "Law of the Horse," you could certainly put together a reading list. But there would be no ultimate takeaways, themes, or unifying doctrines. In other words, you could read *horse* cases: contract cases that covered agreements to buy and sell, race, or breed horses; collection cases where gamblers failed to pay their horse track debts; tort cases where people were harmed by ill-trained horses and where contributorily negligent riders fell off well-trained horses; and you could even give an exam about whether there is some protectable "trademark" in jokes about horses, ghosts, and haunted dolls gained by just shouting, "TM!"[16] But all of that would ultimately amount to a poor approach to the *law*: there is no coherent thread that cinches together Horse Law. Put otherwise, there is no "Horse Principle" that can be applied uniformly to horse torts and horse contracts alike—or derived from careful analysis of all the Horse Cases.

Yet, while the "Law of the Horse" is generally regarded as facially absurd,[17] there *is* a shared delusion that there exists a coherent "Law of the

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15. According to Easterbrook:
> [F]ar better for most students—better, even, for those who plan to go into the horse trade—to take courses in property, torts, commercial transactions, and the like, adding to the diet of horse cases a smattering of transactions in cucumbers, cats, coal, and cribs. Only by putting the law of the horse in the context of broader rules about commercial endeavors could one really understand the *law* about horses.

Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. CHI. LEGAL. F. 207, 208 (1996).

16. *See generally My Brother, My Brother, and Me*, MAXIMUM FUN, at 38:04 (June 15, 2020), https://maximumfun.org/transcripts/my-brother-my-brother-andme/transcript-mbmbam-514-kickeo/ [https://perma.cc/8S5A-8VNN] (quoting "TM TM TM" from the podcast).

17. Easterbrook, *supra* note 15, at 208 ("My immediate reaction was, '[i]sn't this just the law of the horse?'").

Name"[18] that is widely applied, used, and that even obligates individuals to identify themselves in ways that cause deep harm.[19] Thus, despite it arguably being "Law of the Horse," this Part will attempt to essentially teach a brief "Law of the Name" course, surveying what the actual legal status of names is in various domains. The purpose here will be to highlight how the "legal" status of names varies wildly and is not quite so coherent as people seem to assume. So, we show that there is no generally applicable "Law of the Name"—and to the (limited) extent there is, that it is very much not what people assume it to be.

So, why do institutions seem to insist that they know exactly what a person's legal name is? Part of the answer, of course, is convenience and technological incompetence. A few years ago, Remy taught a course at NYU. While being brought on board, Remy discovered that because they were previously an undergraduate student (under their deadname) at the university, their Social Security number was apparently irrevocably associated with the legal name they used then—and the university refused to change it without a court order and new ID.[20] After much back and forth (and Remy providing the court order), NYU next asserted that certain data fields simply could not be changed. But later, those data fields *did* end up showing changes (because of unrelated updates in the payroll field, Remy's deadname started appearing with a middle name and in all caps), and then NYU asserted that they planned to engage in a process to address these issues.[21] That process is, as far as we know, still ongoing. But while they

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18. We should also note, of course, that there is a section in *American Jurisprudence* on names. 57 AM. JUR. 2D *Name* §§ 1–8, Westlaw (database updated Aug. 2021).

19. *See* Brittney McNamara, *Why Incorrectly Identifying Transgender People Who Have Died Is a Lack of Respect*, TEEN VOGUE (June 28, 2017), https://www.teenvogue.com/story/why-incorrectly-identifying-transgender-people-who-have-died-is-a-lack-of-respect [https://perma.cc/G62H-5B52] (showing an example of the harm trans people face because of naming policies).

20. *But see* N.Y.C. COMM'N ON HUM. RTS., LEGAL ENFORCEMENT GUIDANCE ON DISCRIMINATION ON THE BASIS OF GENDER IDENTITY OR EXPRESSION: LOCAL LAW NO. 3 (2002); N.Y.C. ADMIN. CODE § 8-102, at 5 (Feb. 15, 2019), https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/2019.2.15%20Gender%20Guidance-February%202019%20FINAL.pdf [https://perma.cc/9K6F-URVE] (interpreting N.Y.C. ADMIN. CODE § 8-102(23), as amended in 2002 Local Law No. 3, and providing as an example of a violation, "[c]onditioning a person's use of their name on obtaining a court-ordered name change or providing identification in that name").

21. A somewhat similar story played out for Florence Ashley at McGill University. For additional examples of ongoing issues regarding deadnames, see Florence Ashley, *Enforcing the Deadname*, MCGILL DAILY (Oct. 17, 2016), http://mcgilldaily.com/2016/10/enforcing-the-deadname/ [https://perma.cc/QWH7-MC3Y].

taught at NYU, Remy was never fully able to address how their name appeared to students, all because NYU had policies that insisted on using a particular legal name for Remy.[22] Many other professors and students still face similar dilemmas at NYU—and any number of other institutions.

So, we are left with this: real people often face this assertion that there *is* a coherent Law of the Name. And (people seem to assert) that this "Law of the Name" produces a coherent concept (Legal Name) with a clear, unambiguous referent. And, as it turns out, the assertion that there is a "Law of the Name" that produces a legal name (that is not, for example, the name a trans person adopts for herself) is not only absurd—it is wrong on the law.

Before we begin, however, a brief historical note. From all appearances, this delusion has not always existed. As Professor Alonso-Yoder explains in tracing the origins of common law name changes, names were much more fluid in the pre-modern era—before the "proliferation of identity documents and legal processes" related to names.[23] So, early in the twentieth century, more than one court was able to simply declare that "there is no such thing as a 'legal name'"—at least "in the sense that he may not lawfully adopt or acquire another" by use—and mean it.[24] It has only been in the identity document-centric era (read, in part: post-September 11[25]) that the "delusion" we discuss really took hold. So, it has only been in this era that "the lay concept of a person's 'real' name"[26] began to be mistaken for something with an unambiguous, single, *legal* referent.

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22. And all of this (as discussed below *infra* Part I.A) took place in a common law name change state. *See* N.Y. CIV. RTS. LAW § 65(4) (Consol. 2020) ("Nothing in this article shall be construed to abrogate or alter the common law right of every person, whether married or single, to retain his or her name or to assume a new one so long as the new name is used consistently and without intent to defraud."). So, Remy's name—which had been "used consistently and without intent to defraud"—*was* their legal name. *Id.*

23. Alonso-Yoder, *supra* note 11 (manuscript at 10). For a history of common law name changes in the United States, see *id.* (manuscript at 9–12).

24. State v. Ford, 89 Or. 121, 125 (1918) (quoting Loser v. Plainfield Sav. Bank, 149 Iowa 672, 677 (1910)).

25. *See* Alonso-Yoder, *supra* note 11 (manuscript at 44–45); State v. Hayes, 119 Ohio Misc. 2d 124, 128 (Warren Mun. Ct. 2002) (noting that a criminal defendant had obtained an ID in the name of "Santa Claus" more than 20 years before, but "[i]n light of the tragedies of September 11," the state's BMV shifted to "requir[ing] stringent forms of identification before it issues any form of its own official identification.").

26. United States v. Dunn, 564 F.2d 348, 354 n.12 (9th Cir. 1977).

A. Common Law

As a starting point, the fiction of a legal name often presumes that names change only when courts say they do. Not so much. It turns out,

> in the absence of a statute to the contrary, a person may ordinarily change [their] name at will, without any legal proceedings, merely by adopting another name . . . . In most jurisdictions, a change of one's name is regulated by statutes which prescribe the proceedings by which such change is to be accomplished. These statutes merely affirm, and are in aid of, the common-law rule. They do not repeal the common law by implication or otherwise, but afford an additional method of effecting a change of name.[27]

This stands in contrast to what code law jurisdictions do. For example, the Civil Code of Quebec simply states, "Every person exercises his civil rights under the name assigned to him and stated in his act of birth."[28] But in common law jurisdictions, like forty-nine of the United States,[29] your legal name changes as soon as you say it changes (at least, if you mean it).

For example, seven years ago, Austin decided to change their name and started referring to themselves personally and professionally as "Austin A. Baker." They publish under this name; they are listed under this name on both the Rutgers philosophy and cognitive science department websites; and they refer to themselves by this name in all personal and professional correspondence. No one in their life knows them by any other name than "Austin A. Baker." But because the process is long and expensive, they never had their name changed on their driver's license, passport, or Social Security card.

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27. Clinton v. Morrow, 220 Ark 377, 381–82 (1952) (quoting 38 AM. JUR. *Names*, § 28). As explained below, *infra* note 30, it appears either four or five of the fifty states have superseded this rule by statute (and, of course, Louisiana never had common law to begin with). *See, e.g.*, *In re* Reben, 342 A.2d 688, 693 (Me. 1975) (noting that a specified statutory name change procedure preempts and replaces common law name changes in Maine). Otherwise, forty-four or forty-five states still recognize common law name changes. *See* Appendix II; *see also* Alonso-Yoder, *supra* note 11 (manuscript at 10–11) (describing the modern common law name change); *USA Common Law Name Change Info*, COMMON L. NAME, https://commonlaw.name [https://perma.cc/N4U8-9E4D] (collecting some state-by-state authority for common law name changes); Julia Shear Kushner, *The Right to Control One's Name*, 57 UCLA L. REV. 313, 326–27 (2009) (discussing the modern state of common law name change law).

28. Civil Code of Québec, S.Q. 1991, c 64, art 5 (Can.).

29. *See supra* text accompanying note 27.

Most states, it turns out, allow common law name changes.[30] And some jurisdictions even (theoretically[31]) impose penalties for institutions that refuse to respect those common law names.[32] So, in most states, the assertion that a form must be filled out using one's "Legal Name" and not "[t]he name a student wishes to be known by in the University community that is different from a student's Legal Name"[33] is a non-statement: the name one uses (even if different from the name on a particular document) *is* one's legal name. Thus, for example, the Southern District of New York has made clear that a case caption can bear a person's "true name," no matter what that name may be.[34] The clear division between "legal" and "preferred" names posited by policies like those at most universities simply does not exist in most states.

Common law name changes "[a]t first blush . . . may appear [to be] vestiges of a bygone era."[35] As Professor Alonso-Yoder explains, "[i]n a time where documentation of one's identity was more limited, it may be tempting to discard the common law as impracticable for modern purposes.

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30. It appears that only four states—Hawaii, Illinois, Maine, and Oklahoma—have abrogated the common law rule (whether in an express statute or otherwise). See Appendix I for a description of these state rules; *see also* Kushner, *supra* note 27, at 328 (asserting that only a few states have abrogated the common law name change right). Additionally, Louisiana—having not inherited the common law as a code-law jurisdiction—does not recognize common law name changes. *See* Appendix I; Kushner, *supra* note 27, at 328 (including Louisiana in the list of states without common law name changes). Additionally, beyond generic statements that the inherited common law remains in force (WYO. STAT. § 8-1-101; VT. STAT. ANN. 1, § 271), we have been unable to confirm whether Wyoming or Vermont allow common law name changes. For the forty-three other states where we have been able to confirm in some way that common law name changes remain effective, see Appendix II.

31. *See* Kushner, *supra* note 27, at 328 ("According to their case law, both New York and California retain the common law name-change right. Yet, it seems unlikely that either state would issue identification materials with a name changed at common law, given their application requirements.") (footnote omitted); *see also* Lark Mulligan, *Dismantling Collateral Consequences: The Case for Abolishing Illinois' Criminal Name-Change Restrictions*, 66 DEPAUL L. REV. 647, 656 (2017) ("Today, every state has adopted statutes governing name changes, and while most have not explicitly abrogated the common law avenue for changing one's name, in practice the only way to change one's name on government documents is to petition the court through the established statutory scheme.") (footnote omitted).

32. *See, e.g.*, N.Y.C. COMM'N ON HUM. RTS., *supra* note 20 (providing civil liability for any institution that refuses to use the name a person self-identifies with).

33. *FAQ for Columbia's Preferred Name Policy*, *supra* note 3 (providing definitions from Columbia University).

34. *See* Rosasa v. Hudson River Club Rest., No. 96 Civ. 0993, 1997 U.S. Dist. LEXIS 8115, at *2 (S.D.N.Y. June 10, 1997).

35. Alonso-Yoder, *supra* note 11 (manuscript at 10).

Today's proliferation of identity documents and legal processes would have made the average inhabitant of the 18th century dizzy."[36]

But—again, as Professor Alonso-Yoder explains—that omits possibly the most common form of common law name change: marriage.[37] In fact, our system allows heterosexual women who adopt their husband's name in marriage to change their name "with little opposition."[38] And this ultimately "suggest[s] a policy preference for certain kinds of name changes over others."[39]

One curiosity of the history of common law name changes is that the cases are overwhelmingly litigated by unusual or quirky litigants on one hand and marginalized litigants on the other.[40] We see more than one Santa Claus,[41] serial name changers,[42] people who want to add punctuation to their names,[43] a notary named "Ssnake" who "signs his name with a series of symbols, including that of a snake,"[44] people who want their names to be

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36. *Id.*

37. *Id.* (manuscript at 11–12).

38. *Id.* (manuscript at 12).

39. *Id.*

40. It is worth asking whether this is because more traditional common law name changes—changes of married last names, for example—simply do not encounter enough resistance to lead to reported litigation. In other words, it may be that on-the-ground use of common law name changes might be far more common than cases suggest.

41. *See In re* Handley, 736 N.E.2d 125, 126 (Ohio Prob. Ct. 2000) (denying petition to change name to "Santa Claus"); *cf. In re* Porter, 31 P.3d 519, 522 (Utah 2001) ("[The] case is remanded for entry of the necessary order changing petitioner's legal name to Santa Claus forthwith."); State v. Hayes, 774 N.E.2d 807, 810 (Warren Mun. Ct., Ohio 2002) (reversing conviction for using false identification where defendant had an ID issued by the BMV stating his name was "Santa Claus" and his birth date was Christmas, 1900).

42. For one particularly name-change-happy litigant, see *In re* Mokiligon, 106 P.3d 584, 585–86 (N.M. Ct. App. 2004) (changing from "'Snaphappy Fishsuit Mokiligon' to 'Variable,'" and also noting that "the State informs us that since September 2003, Petitioner has filed seven petitions requesting a name change"); *In re* Variable v. Nash, 190 P.3d 354, 367 (N.M. Ct. App. 2008) (affirming the denial of Petitioner's request to change his name to "Fuck Censorship!"). And, notably, in one of Fuck Censorship!'s petitions, the New Mexico Court of Appeals cautioned him, "We clarify, however, that Petitioner is restricted to using the word 'variable' as his legal name. The court is not granting him the power to actually vary his legal name at will and he is limited to using 'variable.'" *In re Mokiligon*, 106 P.3d at 587.

43. Bean v. Superior Ct. of San Diego Cnty., No. D048645, 2006 Cal. App. Unpub. LEXIS 10761, at *3 (Cal. Ct. App. Nov. 28, 2006) ("Darren QX Bean!," and discussing other name changes like "Karin Robertson . . . to GoVeg.com"; and other animal rights activists changing to "'Kentucky fried cruelty.com' and 'Ringling beats animals.com'").

44. *See* MICHAEL L. SHEA, NOTARY LAW 6 (n.d.), https://web.archive.org/web/20110628080155/https://www.sos.state.co.us/pubs/notary/files/notary_law_monogra

a number[45] or a letter,[46] and marginalized people like queer families[47] and trans people,[48] as well as women who try to keep their maiden names after marriage[49]—or simply do not want a particular last name.[50] And the nature of those cases ultimately often leads to messy precedent, both because of the silliness and the seriousness of the issues. Which, in turn, is before we even begin to look at the decisions that are "plainly informed by sexism, racism, or other personal biases"—which "run contrary . . . to the underlying spirit of the common law's accessible name change standard, [and] also contravene the efforts of many name change petitioners to exercise some measure of power in their lives over their very identity and existence."[51]

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ph.pdf [https://perma.cc/R5QW-2UR4]. Shea explains the Colorado Secretary of State's understanding of a "Legal Name" requirement thus:

> The name used by a notary applicant is the name that the applicant wants to appear on the seal. The statute requires the "applicant's typed legal name." The Secretary of State doesn't really care what name you use. It must be the same name throughout the application, however. There is one notary in Colorado who goes by the name Ssnake. That's it, just Ssnake.

Id.

45. *In re* Dengler, 246 N.W.2d 758, 762 (N.D. 1976) ("1069").

46. *In re* Change of Name of Mary Ravitch, 754 A.2d 1287, 1288 (Pa. Super. Ct. 2000) (divorced petitioner seeking to make the "'nice and simple' letter 'R' as her surname.").

47. *In re* Bicknell, 2001-Ohio-4200 (Ohio Ct. App. 2001), *rev'd*, 771 N.E.2d 846, 849 (Ohio 2002) (finding it "is not 'reasonable and proper' to change the surnames of cohabiting couples, because to do so would be to give an 'aura of propriety and official sanction' to their cohabitation" for a lesbian couple before the right to marry).

48. *In re* Anonymous, 293 N.Y.S.2d 834, 835 (N.Y. Civ. Ct. 1968) (discussing, with graphic description of the petitioner's genitals, a trans woman's common law name change). *But see In re* Anonymous, 314 N.Y.S.2d 668, 669 (N.Y. Civ. Ct. 1970) (similar); *In re* Dowdrick, 4 Pa. D. & C.3d 681, 684 (Pa. C.P. Ct. Cumberland Cnty. 1978) (declining to "exercise" the Court's authority to change a trans petitioner's name "[u]ntil the sex reassignment surgery is completed"); *see also* Alonso-Yoder, *supra* note 11 (manuscript at 33–34) (discussing both *Anonymous* and *Dowdrick*).

49. *See* Forbush v. Wallace, 405 U.S. 970, 970 (1972); *see also* Omi Morgenstern Leissner, *The Name of the Maiden*, 12 WIS. WOMEN'S L.J. 253, 258–59 (1997) (discussing *Forbush* and its historical significance in the history of equal rights litigation).

50. That is, Ellen Cooperperson sought to change her name from "Cooperman"—and was told by a judge that granting her request would "have serious repercussions perhaps throughout the country." *A Judge Rules '-person' Is Non Grata*, N.Y. TIMES (Oct. 19, 1976), https://www.nytimes.com/1976/10/19/archives/a-judge-rules-person-is-non-grata.html (on file with the *Columbia Human Rights Law Review*); Alonso-Yoder, *supra* note 11 (manuscript at 28) (noting that Ms. Cooperperson eventually prevailed on appeal and runs a successful consulting firm now).

51. Alonso-Yoder, *supra* note 11 (manuscript at 13).

So, at the end of the day, the common law name change is alive and kicking—and might be more common (pun perhaps intended) than one might think. Passport applicants, for example, can fill out a form DS-60 and obtain a passport as long as they provide certain public records establishing that they use their common law name.[52] It is the common law that changes the names of most married women who chose to do so (70% of married, heterosexual women).[53] The Federal Communications Commission will issue licenses in common law names. And, as explained above, virtually every state—at least as a matter of law, if not practice[54]—recognizes common law name changes.

B. Uniform Commercial Code, Article 9

Article 9 of the Uniform Commercial Code ("UCC") governs secured transactions—contracts where a promise to perform is secured by a right against some valuable property usually otherwise unrelated to the contract.[55] In Article 9 cases—unlike, say, the immigration law context discussed below—the normative goal is pure economic efficiency and efficacy in identifying the referent of a name.[56] Article 9 of the UCC is the

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52. *Id.* (manuscript at 12) (citing U.S. DEP'T OF STATE, *DS-60 Form*, *Affidavit Regarding a Change of Name (Oct. 2020)*, https://eforms.state.gov/Forms/ds60.pdf [https://perma.cc/KM6R-JDA4]).

53. Alonso-Yoder, *supra* note 11 (manuscript at 32) (citing Claire Cain Miller & Derek Willis, *Maiden Names, on the Rise Again*, N.Y. TIMES (June 27, 2015), https://www.nytimes.com/2015/06/28/upshot/maiden-names-on-the-riseagain.html (on file with the *Columbia Human Rights Law Review*).

54. Professor Alonso-Yoder's point that judges have "relied on the authority of the common law to justify their misconstruction of the law" otherwise to harm "some of the most vulnerable petitioners" for name changes is worth keeping in mind here. Alonso-Yoder, *supra* note 11 (manuscript at 55).

55. U.C.C. § 9 (AM. L. INST. & UNIF. L. COMM'N 2010).

56. In other words, in this area of law, all interested parties benefit from there being *any* answer, as long as it's predictable and clear. While there are certainly vested interests in any individual case (for example, one bank would obviously be displeased that the application of the rule resulted in their not having the highest priority as to a particular asset), over time, those interests do not consistently appear on a particular side of a controversy. So, in the long run, all parties prefer a clear rule in that it allows them to predict outcomes and allocate resources accordingly.

Our point here is also not to suggest that the law of commercial paper does *not* have consistent, negative effects on marginalized or indigent groups of people—it does. Louie Dickerson, discussed below, obviously did not come away from his scrape with Article 9 in good shape. But the *litigants* are, over time, on both sides of the "v." So—perhaps in the *Alien vs. Predator* sense (a film with the tagline "whoever wins . . . we lose")—the system does not distort to match social inequity and power in quite the same way. ALIEN VS. PREDATOR (20th Century Fox 2004).

model statute governing transactions secured by interests in property, where it is vital for the good economic functioning of the system that people can determine the referent of any name used—and far more vital than there being a *certain* name that gets identified as the "real" one. Put differently, the ultimate goal of the system here is simply the correct and unambiguous matching of a name used and the person or entity it refers to, so that future creditors can figure out what assets are already serving as security for existing contracts. And the system has few, if any, normative ends beyond that.

So, what might the system's interactions with names look like? One (in)famous case concerns Louie Dickerson, a cattle farmer born Brooks L. Dickerson.[57] Dickerson had the name "Brooks L. Dickerson" on his driver's license, but "Dickerson held himself out to the community as Louie Dickerson, and he used this name in bank accounts, bills of sale, and with others with whom he did business."[58] Thus, under the traditional common law rule, Louie Dickerson, legally speaking, was named Louie Dickerson.[59] However, much if not all of his personal "legal" documentation (e.g., his driver's license, Social Security card) called him "Brooks L. Dickerson."

Dickerson took out several loans, secured by an interest in his cattle. Memorializing this arrangement, "Cornerstone [Bank] filed a financing statement with the Mississippi Secretary of State . . . and named 'Louie Dickerson' as the debtor."[60] Several years later, Dickerson "borrowed money from Peoples [Bank] in exchange for a security interest in the cattle he owned or later acquired. Peoples filed one financing statement in November 2002 and two others in September 2003. The financing

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57. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549, 551 (5th Cir. 2007). The facts above are somewhat simplified for the sake of discussion. The court (notably, given the topic of this Article) refers to "Brooks L. Dickerson" as "Dickerson's legal name," apparently cribbing the term from one of the bank's briefings, but the usage actually cuts against the result reached. *Id.* at 552, 558.

As an aside, Dickerson does not appear to have any issues with people using his birth name. So, unlike, say, a transgender person and their deadname, it appears to be appropriate to discuss Dickerson actually using both names. *See, e.g.*, *Style Guide*, TRANS JOURNALISTS ASS'N, https://transjournalists.org/style-guide/ [https://perma.cc/7G4W-WJWZ] ("A friend, family member, or the police may misgender or deadname your source. Do not use that quote in your story without a correction. Use brackets to replace the incorrect information with the correct information for text stories.").

58. *Peoples Bank*, 504 F.3d at 559.

59. Of course, modern convention would be to label this Dickerson's "Preferred Name," and as noted in *supra* note 57, the Fifth Circuit refers to "Brooks" as Dickerson's "Legal Name."

60. *Peoples Bank*, 504 F.3d at 551.

statements listed 'Brooks L. Dickerson' . . . as the debtor."[61] Then, Dickerson sold his cattle to Bryan Brothers Cattle Company, who claimed (for reasons irrelevant here) the sale was "free and clear" of the security interests possessed by the two banks.[62] The case was first brought in state court, then removed and ultimately appealed on summary judgment to the Fifth Circuit.

The task for the Fifth Circuit was to sort out three claims of ownership, two of which are interesting for our purposes here because they turn on Dickerson's name—and (happily for our analytic purposes) the court rejected the third (non-name-based) option out of hand:

1. Cornerstone Bank's 1999 loan, secured against "Louie Dickerson['s cattle]";[63]
2. Peoples Bank's 2002 and 2003 loans, secured against all "cattle . . . owned or later acquired" by "Brooks L. Dickerson";[64] and
3. Bryan Brothers' Cattle Company's claim to have bought the cattle "free and clear" (rejected).[65]

In sorting between (1) and (2), Cornerstone's claim would be superior if a search of the filing system[66] under the "debtor's correct name" would produce Cornerstone's registration.[67] On the other hand, Peoples would have a superior interest if Cornerstone "d[id] not have a security interest in the cattle because its financing statement did not use Dickerson's legal name."[68] Ultimately, the Fifth Circuit held that:

> Peoples was put on inquiry notice that a security interest in the property of "Brooks L. Dickerson" could be listed under the name "Louie Dickerson" [because] Dickerson

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61. *Id.* at 552.
62. *Id.* at 553.
63. *Id.* at 551.
64. *Id.* at 552.
65. *Id.* at 553.
66. Article 9 systems, state by state, have a filing system in which a prospective creditor (if they are smart) can look up whether a particular asset, belonging to a prospective debtor, is already serving as security for a *different* loan. Thus, it is key for the good functioning of the system for the name a creditor types in to produce records of all security interests held against a particular debtor.
67. *See* MISS. CODE ANN. § 75-9-506 (2007) ("If a search of the records of the filing office under the debtor's correct name . . . would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 75-9-503(a), the name provided does not make the financing statement seriously misleading."); *see also* MISS. CODE ANN. § 75-9-503 (2007) (indicating circumstances under which a financing statement sufficiently provides the name of the debtor).
68. *Peoples Bank*, 504 F.3d at 558.

> held himself out to the community as Louie Dickerson, and he used this name in bank accounts, bills of sale, and with others with whom he did business.[69]

Thus, the Fifth Circuit adopted the traditional common law approach to legal names for UCC Article 9 purposes. Dickerson's legal name was "Louie" because he used Louie in the community. Period.

In the years that followed, the question of what constitutes a legal name has been one of the "most contentious and perhaps the most difficult issues addressed by the Joint Review Committee" tasked with maintaining and revising Article 9.[70] Scholars discussing this area of law have—even before the Dickerson case—long made observations to the effect that "assuring accuracy in the debtor's name is sometimes more easily said than done, particularly where a debtor has more than one name and even more than one 'legal' name."[71] Thus, one treatise concludes that "Ordinarily, the secured lender is on safer ground when dealing with a registered organization than with an individual because it is relatively easy to determine the exact legal name of the entity," while it is not quite so easy to determine the "Legal Name" of a natural person.[72] As Richard Nowka, a scholar in the area, put it:

> An individual debtor in a security interest transaction could be known by various names: birth certificate name, driver's license name, passport name, or nickname. Revised Article 9 provides no guidance on what name is the correct name of the debtor for entry on the financing statement, and a financing statement that does not provide the correct name of the debtor does not perfect the security interest.[73]

Notice that none of the options considered here are a debtor's legal name, which, if it existed, would obviously provide a clean solution to the question. And of course, another way to frame the problem is that, as a matter of well-settled law, a person's "birth certificate name," "driver's license name," "passport name," and "nickname" are all legal names (and can differ from one another).

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69. *Id.* at 559.

70. Richard H. Nowka, *Twenty Questions About an Individual Debtor's Name Under Amended Article 9 Section 9-503(A)(4) Alternative A*, 3 WM. & MARY BUS. L. REV. 139, 144 (2012).

71. Margit Livingston, *A Rose by Any Other Name Would Smell as Sweet (or Would It?): Filing and Searching in Article 9's Public Records*, 2007 BYU L. REV. 111, 114 (2007).

72. STERN, *supra* note 7, § 25.03.

73. Nowka, *supra* note 70, at 139.

So, after "two years of study," this chiefly efficiency-oriented group of scholars was "unable to agree on a single approach," and instead "recommended two alternatives for amending the requirements for sufficiency of the name of an individual debtor on a financing statement":[74]

> A. Alternative A (the "only if" approach) provides "[a] financing statement sufficiently provides the name of the debtor . . . if the debtor is an individual to whom this State has issued a [driver's license] that has not expired, *only if* the financing statement provides the name of the individual which is indicated on the [driver's license]."[75]
>
> B. Alternative B (the "safe harbor" approach) provides that "[a] financing statement sufficiently provides the name of the debtor . . . if the debtor is an individual only if the financing statement: (A) . . . provides the individual . . . name of the debtor; (B) provides the surname and first personal name of the debtor; or (C) . . . provides the name of the individual which is indicated on a [driver's license] that this State has issued to the individual and which has not expired."[76]

In other words, the Joint Review Committee gave up on figuring out what someone's "correct legal name" is and punted. In the "only if" approach, the proposal basically picks one of several possible legal names (the name on a driver's license, "if . . . this state has issued [one] . . . that has not expired"[77]) and says, "use this one!"[78] And in the "safe harbor" approach, the proposal basically says, "we'll tell you a driver's license that isn't expired is *sufficient*, but we won't set any *necessary* conditions." Neither proposal ultimately tries to settle what is a "correct legal name," because, of course, "[i]t is apparent that there is no 'correct legal name' of an individual."[79]

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74. *Id.* at 143.

75. *Id.* (quoting U.C.C. § 9-503(a)(4) (Alt. A) (Approved Amendments 2010)) (emphasis added).

76. *Id.* (quoting U.C.C. § 9-503(a)(4) (Alt. B)).

77. *Id.*

78. Of course, the shortcomings of this approach should be obvious: not everyone—particularly people who live in cities and do not drive—has a driver's license.

79. STERN, *supra* note 7, §25.02.

C. Immigration Law

Immigration law, we think, is the exception that proves the rule. The immigration system has a long history of being used to serve racist, xenophobic, or just malicious policy ends[80]—and in many ways, its dysfunction is deliberate.[81] It is filled with endless, deliberate traps for the unwary (or perhaps better put, traps for the extraordinarily wary and unwary alike) that have little basis in any legitimate legal or policy rationale.[82]

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80. *See generally* ADAM GOODMAN, THE DEPORTATION MACHINE: AMERICA'S LONG HISTORY OF EXPELLING IMMIGRANTS (2020) (tracing 140 years of history in the immigration system and arguing it reflects systemic efforts to terrorize and expel immigrants); Stephen Lee, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319 (2019) (discussing how the immigration system has largely "encouraged the disruption of family life among communities of color throughout much of country's past"); K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878, 1878 n.3 (2019) (arguing that the immigration system is a collection of "indirect laws"—laws designed "to achieve one effect that in turn produces a second effect, which is the ultimate purpose of the law"—set up to make the system and its processes so unbearable that participants will elect to "self-deport"); Lindsay M. Harris, *The One-Year Bar to Asylum in the Age of the Immigration Court Backlog* 3 (Oct. 4, 2016) (unpublished manuscript), https://ssrn.com/abstract=2833404 [https://perma.cc/8ESA-5EZJ] (discussing the "disastrous interplay" between the time for filing asylum applications and the reality of immigration court backlogs); ANGELA S. GARCÍA, LEGAL PASSING (2019) (discussing the confusing and sometimes contradictory web of state and local immigration laws).

81. *See, generally*, AVIVA CHOMSKY, HOW IMMIGRATION BECAME ILLEGAL (2014) (arguing that the dysfunction of the immigration system actually serves certain ends and constituencies, such as the agriculture industry); *see also* BILL ONG HING, DEPORTING OUR SOULS: VALUES, MORALITY, AND IMMIGRATION POLICY (2006) (arguing that the design of the immigration system is, in essence, anti-immigration).

82. *See*, *e.g.*, Catherine Rampell, *The Trump Administration's No-Blanks Policy Is the Latest Kafkaesque Plan Designed to Curb Immigration*, WASH. POST (Aug. 6, 2020), https://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc_story.html (on file with the *Columbia Human Rights Law Review*) (detailing the shift in policy at USCIS, under the Trump administration, to reject applications that left *any* field unfilled, even obviously inapplicable ones: middle names that do not exist, apartment numbers because someone lived in a house, sibling names because the applicant was an only child, work dates because the applicant was an eight-year-old child, and addresses for now-dead parents). In fact, the digitally programmed fillable pdf affirmatively rejected "N/A" in certain fields. The policy was instituted without even the legally required rulemaking process—and then once applicants began complying, USCIS started applying the same policy to required paperwork from third parties, like local law enforcement. *Id.* This policy is discussed extensively by Lindsay M. Harris in a recently revised piece. *See generally* Lindsay M. Harris, *Asylum Under Attack: Restoring Asylum Protection in the United States*, 67 LOY. L. REV. 1 (2021).

So, fittingly, the immigration code is, by and large,[83] the only place where the fiction of a legal name has any meaningful legal content. Regulations require that "[a]ny USCIS document is to be issued to the individual in his or her full legal name."[84] And United States Citizenship and Immigration Services ("USCIS") forms all demand a person's—and their family members'—"Legal Name[s]."[85] For example, Form N-400 (the application for naturalization) demands a person's "Current Legal Name (*do not* provide a nickname)."[86] The form then requests "Your Name Exactly As It Appears on Your Permanent Resident Card (if applicable)" and "Other Names You Have Used Since Birth."[87]

But nothing in USCIS's own regulations bothers to define "Legal Name."[88] USCIS's Policy Manual declares, "The legal name is one of the following: [1] The requestor's name at birth as it appears on the birth certificate (or other qualifying identity documentation when a birth certificate is unavailable); or [2] The requestor's name following a legal

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83. The REAL ID Act also uses "legal name." Because the administrative powers in the REAL ID Act arguably live in the immigration system (since the Act gives those powers to the Secretary of Homeland Security), many of the same critiques discussed in this section apply to the REAL ID Act. More to the point, because the Act operates in a decentralized way—that is, it essentially defers to an individual state's understanding of legal name—it is not something we discuss here, beyond noting that at this point, all 50 states, the District of Columbia, and four territories have all been certified as REAL ID compliant. *REAL ID*, DEP'T OF HOMELAND SEC., https://www.dhs.gov/real-id [https://perma.cc/QJH3-QXAL].

84. 15 GORDON, MAILMAN, YALE-LOEHR & WADA, IMMIGRATION LAW AND PROCEDURE, ch. 51.4 (2019).

85. *See, e.g.*, U.S. CITIZENSHIP AND IMMIGR. SERVS., FORM N-400 (APPLICATION FOR NATURALIZATION), https://www.uscis.gov/sites/default/files/document/forms/n-400.pdf [https://perma.cc/B4G9-L5Y9] [hereinafter Form N-400] (containing field for "Legal Name[s]"); *see also* United States v. Carriles, 541 F.3d 344, 349 (5th Cir. 2008) ("The Form N-400 . . . is a form of the type familiar to anybody who has ever applied for a government job or sought a government benefit. The form first requires the applicant to provide basic biographical information, e.g., full legal name as well any other names used . . . ."). Also interesting for our purposes, Form N-400—in Part 2, question 4—offers a chance to "legally change your name" as part of naturalization.

86. Form N-400, *supra* note 85, at 1.

87. *Id.* at 1–2.

88. As an aside, if the USCIS regulations *did* define "Legal Name," there would still be a difficult choice of law issue lurking here: whose definition of "legal name" should someone applying to become a citizen use? If the person is from a country that unequivocally recognizes common law name changes, should they fill out Form N-400 using the name they use in the community? What if they are applying in a state that recognizes common law name changes, even if their home country does not? Does that depend on whether they adopted the common law change while in the United States? In short, whose law is a name subject to?

name change."[89] One can imagine[90] that, even if an applicant came from a country that fully recognized common law name changes, USCIS would not accept that explanation or name.[91] And throughout the immigration process—particularly for applicants with Spanish names[92]—a panoply of variations of a person's name often emerge.

A comparison between the approach taken in Article 9 and by the immigration system is telling.[93] Article 9's drafters recognized that errors would produce poor outcomes (for example, a creditor not being secure in their loan) and worked around the issue with clarity. By contrast, the immigration system simply demands a legal name without clarity—where simple, predictable mismatches might cause untold consequences. But, as Adam Goodman, K-Sue Park, and others explained, those consequences are, quite likely, the point.[94]

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89. U.S. CITIZENSHIP AND IMMIGR. SERVS., USCIS POL'Y MANUAL, Ch. 5–Verification of Identifying Information (2021), https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-5 [https://perma.cc/94KD-54B6].

90. *Cf.* Kushner, *supra* note 27, at 328 ("[I]t seems unlikely that either state would issue identification materials with a name changed at common law, given their application requirements.").

91. *But see In re* Lipschutz, 32 N.Y.S.2d 264, 265 (Sup. Ct. Queens Cnty. 1941). The court noted, "While applications of this nature, to wit, to change the name, have heretofore met with occasional judicial refusal where the applicant was not a citizen, on the ground that an alien is not entitled to the benefit of such judicial decree, I find no statutory authority that supports such a view. The applicants or anybody may change their names without asking the approval of the court at any time." *Id.* And, at the risk of stating the obvious, 1941 was a *very* different time in terms of immigration law.

92. Many people with Spanish names have multiple "last" names (one from each parent) and more than one other name. Immigration officials, faced with the need to place these names into a "First," "Middle," and "Last" box do so inconsistently, leading to various documents—I-Cards, green cards, immigration court paperwork—being issued in differing variations of the same name.

93. *Compare* MARC R. ROSENBLUM, MIGRATION POL. INST., E-VERIFY: STRENGTHS, WEAKNESSES, AND PROPOSALS FOR REFORM 6 (2011), https://www.migrationpolicy.org/research/e-verify-strengths-weaknesses-and-proposals-reform [https://perma.cc/W292-9FLJ] (discussing how the immigration system's "E-Verify" system produces "erroneous nonconfirmations," which in turn, "produce discriminatory outcomes" because "errors related to misspelled names and name-order mistakes" are "more common among foreign names," and even then, the numbers "understate the actual degree of discriminatory outcomes . . . because they do not account for prescreening and other biased implementation"), *with* Nowka, *supra* note 70, at 139–40 (describing the Article 9 drafters' choice to avoid erroneous outcomes by avoiding a "Legal Name" approach).

94. *See generally* GOODMAN, *supra* note 80 (following the history of expulsion via the U.S. immigration system and arguing that the U.S. immigration system has functioned as a means of social control); RUTH GOMBERG-MUÑOZ, BECOMING LEGAL: IMMIGRATION LAW AND MIXED-STATUS FAMILIES (2016) (detailing the human experiences created by the

Perhaps most curiously, USCIS is not even consistent on this. Consider the pop star born Björk Guðmundsdóttir.[95] For Björk, her legal name includes many characters not typically available on an English keyboard—and that would likely cause problems on USCIS systems (or that USCIS's computers might simply just not accept—assuming an employee input the form correctly in the first place). So, when Björk is asked for her legal name with legal penalties for using another name, how should she render it? Does it matter that "Bjork Gudmundsdottir" is *not* her legal name in *any* of the senses we have discussed?[96]

That is, it is not the name she uses in the community; it is not the name on her birth certificate; it is not the name on her driver's license; and it is not a name any court has declared. The same issues arise—since USCIS

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dehumanizing and disturbing processes involved in the American immigration system); WILLIAM D. LOPEZ, SEPARATED: FAMILY AND COMMUNITY IN THE AFTERMATH OF AN IMMIGRATION RAID (2019, updated version forthcoming 2021) (on file with the *Columbia Human Rights Law Review*) (collecting the stories of individuals impacted by a U.S. Immigration and Customs Enforcement raid in Washtenaw County, Michigan in November 2013 and arguing that the U.S. immigration system functions as a means to control the families and communities of undocumented immigrants).

95. This is also the example used by Richard Ishida. *Personal Names Across the World*, W3C (Aug. 17, 2011), https://www.w3.org/International/questions/qa-personal-names [https://perma.cc/5EDL-7CTK]. Ishida's piece is well-known in the technology community and is likely required reading for any developer attempting to do anything that requires users to input their names.

96. A parallel issue was explored at length in the oral arguments in *Zzyym v. Pompeo*. 958 F.3d 1014, 1024 (10th Cir. 2020). Dana Zzyym was born intersex, and they do not identify as male or female. Their driver's license has an "X" gender marker, but the State Department refused to issue a passport with an "X" marker. At oral argument, Tenth Circuit Judge Seymour noted repeatedly that people like Dana Zzyym would "have to lie" (under penalty of perjury) to obtain a passport at all. Transcript of Oral Argument at 7:30–8:45, Zzyym v. Pompeo, 958 F.3d 1014 (10th Cir. 2020) (No. 18-1453), https://www.courtlistener.com/mp3/2020/01/22/zzyym_v._pompeo_cl.mp3 [https://perma.cc/M6YS-LEQZ]. Judge Bacharach built on the same line of questioning, pressing that "*clearly* Zzyym needs to lie" to fill out the State Department form. *Id.* at 9:30–9:50. And Judge Seymour ultimately suggested it is "no more appropriate to ask [someone like Zzyym] to mark male or female than it is to ask me [to mark] either African-American or Asian. I can't answer the question truthfully. Why isn't that arbitrary and capricious?" *Id.* at 11:00–11:25.

Judge Seymour's suggestion that it would be arbitrary and capricious to require Dana Zzyym to falsely check that they were male or female on a form (by failing to provide an appropriate option) seems to apply here too: if a system does not accept accented characters, but someone has a legal name that, in every possible sense, has accented characters, it would require them to make a false statement to fill out the form at all (or at least, it would be the "best" course of action for the person to make an incorrect statement of their name on the form).

demands a "first" and "last" name on forms—for each of the issues discussed by Richard Ishida in *Personal Names Across the World*.[97]

On this point, USCIS's forms even suggest that they view any non-English name, regardless of where it appears (e.g., even if it is the only name on a birth certificate or passport) or the name's legal status, as not necessarily being a legal name at all.[98] Form I-589 (the asylum application) separately calls for an applicant's "Complete Last Name" and "First Name" or "complete name" on one hand, and "name in your native alphabet" on the other.[99] So, despite the admonishments that appear all over the form that information must all be true (under penalty of perjury) and "[y]ou may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application,"[100] it appears that USCIS often demands something that *no* jurisdiction would recognize as a "Legal Name": a person's name in a language other than the person's native language, rendered without special characters. And insists on calling *that* the person's legal name. With perjury penalties for getting the answer "wrong."

So, to recap, the immigration system does demand a person provide a legal name, using just that terminology.[101] But that demand is at least somewhat incoherent—to the extent it is not downright wrong. And, to that point, it is far from surprising that the immigration system does not necessarily trade in legal reality.

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97. *See* Ishida, *supra* note 95.

98. *Cf.* Paisley Currah & Lisa Jean Moore, *"We Won't Know Who You Are": Contesting Sex Designations in New York City Birth Certificates*, 24 HYPATIA 113, 113–14 (2009) (noting "identification of citizens or subjects is as vital a function of modern statehood as establishing and policing territorial borders" and examining the "recurring tropes of sex/gender [that] get invoked to re-anchor these troublesomely sexed subjects").

99. U.S. CITIZENSHIP AND IMMIGR. SERVS., FORM I-589 (APPLICATION FOR ASYLUM AND WITHHOLDING OF REMOVAL), https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf [https://perma.cc/U89P-FD5K] [hereinafter Form 1-589]. But in fairness, we should note that, unlike the instructions USCIS provides for naturalization forms, the Form I-589 instructions do not specify that an applicant must use a legal name. *See supra* note 85, at 1–2 and accompanying text.

100. Form I-589, *supra* note 99, at 9.

101. As noted above, the Real ID Act uses the phrase, but the use is directed at states, rather than individual people—and it is far from clear that the use of "Legal Name" there does anything but defer to whatever state law allows a person to use as their name.

II. On Shared Delusions, the "Mandela Effect," and Magical Legal Thinking

> "As for individuals, they may legally call themselves anything they wish, despite the lay concept of a person's 'real' name, provided of course the name is not used for an illegal purpose."
>
> *United States v. Dunn*,
>
> 564 F.2d 348, 354 n.12 (9th Cir. 1977)

Human memory is surprisingly malleable. "[A] particular false memory—that South African human rights activist and president Nelson Mandela died in prison during the 1980s (he actually died in 2013)" is apparently one shared by many people.[102] Based on this, "[i]n simplest terms, the Mandela Effect [is used to refer to an] instance of collective misremembering."[103] There are many examples, many that you may even share (we ourselves certainly have our fair share of these): "a painted portrait of Henry VIII holding a turkey leg in one hand,"[104] remembering the children's book series and television show *The Berenstain Bears* being titled "Berenst*ein*";[105] or things like remembering Humphrey Bogart saying, "Play it again, Sam"[106] in *Casablanca*; William Shatner saying, "Beam me up,

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102. *See* David Emery, *The Mandela Effect*, SNOPES (July 24, 2016), https://www.snopes.com/news/2016/07/24/the-mandela-effect/ [https://perma.cc/4DNE-Z94S].

103. *Id.*

104. *Id.* This false memory seems to be shared, at the least, by the creators of Sesame Street. TOM BRANNON, MUSEUM OF MONSTER ART (1990), https://muppet.fandom.com/wiki/Museum_of_Monster_Art [https://perma.cc/RVA9-7YT6] (depicting Cookie Monster in the style of Hans Holbein the Younger, as Henry VIII with a turkey leg in hand).

105. Mack Lamoureux, *The Berenst(E)ain Bears Conspiracy Theory That Has Convinced the Internet There Are Parallel Universes*, VICE (Aug. 10, 2015), https://www.vice.com/en/article/mvx7v8/the-berensteain-bears-conspiracy-theory-that-has-convinced-the-internet-there-are-parallel-universes [https://perma.cc/4QVF-GB4X].

106. Ingrid Bergman comes the closest to saying this line when she says, "Play it once, Sam. For old time's sake." She also says, "Play it, Sam. Play 'As Time Goes By.'" CASABLANCA (Warner Bros. Pictures 1942). Bogart's closest line is "If she can stand it, I can! Play it!" *Id.*

Scotty," on *Star Trek: The Original Series*;[107] or James Earl Jones saying "Luke, I am your father"[108] (none of these lines were ever uttered).

The point, for our purposes, is that it is a common enough human tendency to form collective confidence around mistaken notions. Our confidence in the notion of a legal name constitutes a similar sort of collective delusion. The delusion consists in the widely held belief—seemingly supported by the use of the term "Legal Name" in various legal domains—that each person has one (and only one) legal name that uniquely and officially refers to them. It is also now common to see private institutions (banks, universities, real estate companies, and so forth) asking for peoples' legal names, which further perpetuates this shared delusion. Of course, there is something attractively parsimonious about the legal name delusion. If it were true, there would exist a perfect one-to-one mapping between individuals and legal names, which we might imagine could be useful. But, as we argued in Part I, the legal name delusion is not grounded in the law and, as we will argue in Part III, it is actually very harmful.

A. How Did This Delusion Come to Be?

As we demonstrated in the previous section, there is no shortage of evidence of this collective delusion.[109] For example, the entire immigration system simply asserts legal names exist and that everyone has one and only one. Virtually every major university and college draws distinctions between "preferred" and "Legal" names. And institutions seem to adopt this approach even in common law name change jurisdictions, thus defining

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107. *See Beam Me Up, Scotty*, WIKIPEDIA, https://en.wikipedia.org/wiki/Beam_me_up,_Scotty [https://perma.cc/GT2C-Y4AL] ("Though it has become irrevocably associated with the series and films, the exact phrase was never actually spoken in any *Star Trek* television episode or film.").

108. The actual line is, "No! I am your father." THE EMPIRE STRIKES BACK (Lucasfilm Ltd. 1980).

109. Ezra Young makes a similar point in his piece discussing what the Supreme Court could have heard in (the case decided as) *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) noting that, contrary to what many assert and believe, "There is not now nor has there ever been a state or federal law that defines legal sex exclusively as sex assigned at birth as recorded on one's original birth certificate." Ezra Young, *What the Supreme Court Could Have Heard in* R.G. & G.R. Harris Funeral Homes v. EEOC & Aimee Stephens, 11 CAL. L. REV. 9, 26 (2020). Notice that both of these confidently asserted category mistakes (e.g., something like "you must use your real legal name" or "you must use your original birth certificate sex") ultimately serve to fix an immutable status on trans people that has never existed, by asserting (with no support) that the status has always existed.

"preferred" names with all but the literal (common law) definition of a "Legal Name".[110]

But, of course, we naturally might wonder where the shared delusion originates. Where did we get the idea that everyone has one and only one name which is real, highly official, and uniquely identifying? The widespread acceptance of the legal name delusion is especially peculiar since, as we noted in the previous section, there was a general legal consensus in the early twentieth century that people did in fact have multiple legal names, one of which was their common law name. So, why do we see such a widespread convergence sometime around the mid/late twentieth century on a radically different notion of a legal name that is so legally and conceptually misguided it can be accurately characterized as delusional?

While it is not possible to fully delve into this complicated psychological and historical question here, it is useful to speak a bit about the origin of the delusion. We hypothesize that the delusion is rooted in the (inconsistent) invocation of the "Legal Name" descriptor in these various legal domains. Specifically, legal forms asking for one's legal name naturally causes us—the people filling out those forms—to trust the authority of the institutions doing the asking (e.g., you trust that the Internal Revenue Service ("IRS") must know what they are talking about if they are asking for your legal name) and thus assume that each person indeed has one and only one legal name. Hence, while you might not know which of your names is your one true legal name, if the IRS says you have a legal name, you assume you must have one. And once we accept the legal name delusion, we unknowingly become agents of its spread in the private sphere as we make reference to our and other people's legal names. In this way, our buy-in causes the delusion to gain cultural legitimacy and acceptance outside the strictly legal realm.

And because the concept of a legal name has achieved cultural legitimacy through widespread use, we (legal scholars, philosophers, and members of the public) have all the more reason to assume the delusion must be grounded in some truth.[111] When USCIS *and* your bank *and* your nosy friend all ask for your legal name you have all the more reason to

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110. *FAQ for Columbia's Preferred Name Policy*, *supra* note 3.

111. To that end, see J. Remy Green, *Technically, My Legal Name Is Jeremy Jeremy Maxwell Green: A Personal Micro-Odyssey*, MEDIUM (Sept. 24, 2017), https://medium.com/@j.remy.green/technically-my-legal-name-is-jeremy-jeremy-maxwell-green-a-personal-micro-odyssey-bfff05cc7f45 (on file with the *Columbia Human Rights Law Review*).

assume you indeed have a legal name. Believing that legal names exist then shapes your behavior (e.g., if you believe each person has one uniquely identifying legal name and you start a moving company, perhaps on your client intake form you start asking for their legal name, thus unknowingly proliferating the delusion). We have now reached this point where everyone—legal institutions, private institutions, and individuals—has bought in to the chimera of legal names. So, while the notion of a legal name might have originated from a legal misunderstanding, it has come to exist as a robust cultural artifact, which is sustained both within and outside legal institutions.

We arrive here: the legal name delusion is one many of us on some level unknowingly participate in. But what does it mean then when someone asks for your legal name? How do we very literally understand the content of that utterance? Another way to ask a version of this question is whether we ought to do away with the notion of a legal name altogether or whether we can conceptually engineer a non-delusional and non-harmful definition of a legal name. While we are not convinced it is tenable to dispose of the notion of a legal name altogether, we do think that for the concept to have any meaning it needs to be significantly changed.

There are two different notions of a legal name that we refer to in this paper. The first is the delusional notion that "legal name" singularly and unambiguously picks out one and only one name. This we have rejected. However, the second notion of a legal name is the revisionary picture we herein propose and endorse. According to this definition, people can actually have multiple, equally "legal" legal names. So, while we are not yet convinced that the legal and social concept of a legal name can be done away with altogether (at least not yet), we maintain that the concept ought to be amended to accommodate certain legal (see Part I) and social (see Part III) realities.

What is the difference between using "Legal Name" in the delusional way versus the revisionary way? The most obvious difference is the way the term "Legal Name" is referring (meaning, what the phrase is picking out in the world). We can think of the delusional sense of the term "Legal Name" as involving a sort of reference failure—as we demonstrated in the previous section, people in fact do not have only one legal name so using the "Legal Name" descriptor in this way (as picking out the one name) simply fails to refer to anything at all. Philosopher Bertrand Russell gives the example of "the present King of France" as a name without a referent—we may talk about "the King of France," but the name "the King of France"

does not pick out any entity in the world.[112] Likewise, we may share in the collective delusion and talk about someone's legal name in the delusional sense when filling out immigration forms or applying for loans—but, like "King of France," "Legal Name" does not singularly pick out anything in the world. Thus, commanding someone under threat of perjury to write their legal name—a term without reference if we are thinking about it in the delusional sense—is simply not meaningful.

However, we can meaningfully talk about someone's legal name in the second sense. According to the revisionist definition we endorse, "legal name" can actually refer to multiple names. And indeed, on many philosophical accounts of reference, descriptors can unproblematically refer in this way. Take the example of jade. In 1863, Alexis Damour discovered that the stone known as "jade," which has been used to make objects for over 5,000 years, actually referred to two *different* minerals.[113] Philosopher Hilary Putnam writes: [114]

> [T]he term "jade" refers to two minerals: jadeite and nephrite. Chemically, there is a marked difference. Jadeite is a combination of sodium and aluminum. Nephrite is made of calcium, magnesium, and iron. These two quite different microstructures produce the same unique textural qualities!

This example illustrates how one term can pick out multiple distinct entities in the world.[115] This means that a descriptor like "Legal Name" can, at the same time and without contradiction, refer to one's common law name, *and* the name on one's Social Security card, and the name on one's birth certificate, and so on.

We can also come to learn that descriptors refer in ways we had not appreciated. For example, perhaps you did not know that peanuts are not nuts at all and are actually legumes. Before you learned this, it would have been true to say that you did not know "legume" also referred to peanuts in addition to peas, lentils, and soybeans. However, in coming to learn that peanuts are legumes it seems natural to think that the reference of "legume" has not changed. Rather, you are just coming to learn that the

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112. Bertrand Russell, *On Denoting*, 14 MIND 479, 479 (1905).

113. Alexander Arnold, *Knowledge First and Ockhamism*, *in* JONATHAN L. KVANVIG, 6 OXFORD STUD. PHIL. RELIGION 10 (2015).

114. 2 HILARY PUTNAM, MIND, LANGUAGE AND REALITY: PHILOSOPHICAL PAPERS 241 (1979).

115. This is more difficult to accommodate on certain theories of reference. *But see generally* SAUL KRIPKE, NAMING AND NECESSITY (1980) (arguing that a name always designates the same object or person in every possible world).

term has always referred more widely than you were aware of. We think the same thing can be said about the definition of "Legal Name." Whether or not we knew it, the term has always referred widely (for example, your common law name, driver's license name, married name, etc.). Thus, ridding ourselves of the legal name delusion (which we can now understand is really a delusion about how the term "legal name" refers) requires a shift in our shared conceptual resource in both legal and non-legal domains, acknowledging that "legal name" has never had a singular referent.

B. Why the Delusion Is, Well . . . Delusional[116]

To state what we hope is clear here: the view of concept of legal names as having meaningful, informative content—to say nothing of it having binding legal content—is wrong.

That delusional view has a sort of similarity with the law-as-magic-words thinking that is common to the sovereign citizen movement.[117] The view assumes that reciting the right words in the right, spell-like order will invoke and summon The Law and compel a certain real-world effect.[118] Yet, there is buy-in here: virtually every major institution demands a legal name as if that name were the same kind of totemic invocation sovereign citizens use—with the same kind of sovereign citizen-like fear that failure to recite a person's totemic-name might "immunize th[at person] from entering into a

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116. To be clear, this is not to say we think it is *stupid* to fall for this delusion. As noted above, we have previously bought in to the delusion. *See* Green, *supra* note 111. Nor are we saying that because there are, for example, transphobic patterns to the application of the delusion that anyone who has ever bought in is a transphobe. Rather, we think that highlighting the misguided legal aspect of this thinking will lead to people and institutions feeling freer to reject the delusion, in favor of the dignitary benefits we identify, because they are not legally bound to do the opposite.

117. *See, e.g.*, Allie Conti, *Learn to Spot the Secret Signals of Far-Right 'Sovereign Citizens'*, VICE (May 1, 2018), https://www.vice.com/en/article/8xkp74/learn-to-spot-the-secret-signals-of-far-right-sovereign-citizens [https://perma.cc/W79K-RV3Z] (describing various language tics of sovereign citizens as "sort-of like totems in written form" and a kind of "magical thinking"). For a thorough judicial treatment of these kinds of arguments, see Meads v. Meads, 2012 ABQB 571 (Can.).

118. Given our reliance on common law name changes, one might object here—after all, is not a common law name change effecting legal change by reciting just the right words?

We do not think so. Instead, a common law name change does not happen all at once by invocation of the right words. Instead, it is the *continued* use—and perhaps most importantly, use by a person's community—of the name that creates the change. In other words, though it *involves* words, it is an act.

contract," for example.[119] And those same institutions might refuse to refer to someone's common law name as a legal name, just like those involved in law-as-magic thinking might "use ZIP codes but change them in some way, by putting brackets or parentheses around them or using the word 'near' . . . [or] refer to it as a 'postal zone' or a 'postal code' rather than a ZIP Code."[120] Well: Rumplestiltskin!

It turns out that names—like other words—do not function as magical totems in law. As a New York court explained long ago:

> Can one contract with another under a name she represents to be her name, and then avoid liability on the contract when her identity is unquestioned, by claiming that the name she held out to be her own was not the name by which she was best known to the world? . . . There is nothing so sacred in a name that right and justice should be sacrificed to its sanctity.
>
> . . . [A] person can obligate himself under any name he may assume, and the identity of the individual with the contracting name chiefly concerns the court.[121]

In other words, the notion that speaking the wrong incantatory name will somehow create a legal nullity is just wrong. A *person*—unlike djinni or imps—is bound to *any* name they use.[122]

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119. Conti, *supra* note 117 (describing various language tics of sovereign citizens as "sort-of like totems in written form" and a kind of "magical thinking").

120. *Id.*

121. Preiss v. Le Poidevin, 19 Abb. N. Cas. 123, 127–28 (N.Y. City Ct. 1887); *see also* Gotthelf v. Shapiro, 120 N.Y.S. 210, 213 (2nd Dept. 1909) ("Hyman . . . could assume the name of Max J.; and, if he did, he cannot escape his obligation by a later disavowal"); Bessa v. Anflo Indus., Inc., 10 N.Y.S.3d 835, 838 (Queens Cnty. Sup. Ct. 2015) *aff'd,* 51 N.Y.S.3d 102, 106 (App. Div. 2d Dept. 2017) ("'[A] party may contract and sue in a fictitious name, it being the identity of the individual that is regarded.'") (quoting Sheppard v. Ridgewood Grove, Inc., 126 N.Y.S.2d 761, 762 (Sup. Ct. 1953)). Note that in affirming, the Second Department opined that the lower court should have changed the caption, contra *Rosasa v. Hudson River*, discussed in *supra* note 34. And these cases are sometimes cited as developing an "imposter defense," a "'rule applicable to contracts generally' that where a person pretends to be someone else and induces another to make a contract, the resulting contract is with the person actually seen and dealt with." N. Am. Co. for Life & Health Ins. v. Rypins, 29 F. Supp. 2d 619, 621 (N.D. Cal. 1998) (citing Amex Life Assurance Co. v. Superior Court, 14 Cal. 4th 1231, 1239–41 (1997)).

122. *See, e.g.*, Adam Candeub, *Privacy and Common Law Names: Sand in the Gears of Identification*, 68 FLA. L. REV. 467, 484 (2016) (noting that use of a common law name in a contract has always been binding).

Much of that wrong view draws on a sense that, somehow, changing one's name (particularly when a trans person does it) is deceptive.[123] That is, as a New Jersey appellate court put it, "we perceive that [people are ostensibly] concerned about a male assuming a female identity in mannerism and dress."[124] Or, as Professor Alonso-Yoder puts it, historical denials of trans peoples' name change petitions are actually

> inconsistent to the underlying rationale for regulating name changes through a judicial process. Historically, name changes through the court have been justified as a way for the state to simply maintain an administrative record of the change. By denying name changes with which courts disagree while suggesting that petitioners carrying [sic] on using their chosen name under the common law, courts are promoting a result inconsistent to both the common law and statutory schemes.[125]

But, beyond that being "a matter which is of no concern to the judiciary, and which has no bearing upon the outcome of a simple name change application,"[126] it is also simply wrong.

Instead, the real risk of deception here comes from *not* identifying people by the names they use within their communities.[127] The notion that trans people's very existence is somehow deceptive is well-trodden

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123. *See, e.g.*, Matter of Eck, 584 A.2d 859, 860–61 (N.J. Super. Ct. App. Div. 1991). The lower court judge was not at all ambiguous in his "concern" in *Eck*, opining: "it is inherently fraudulent for a person who is physically a male to assume an obviously 'female' name for the sole purpose of representing himself to future employers and society as a female." *Id.* at 860 (noting that misgendering is preserved for clarity in evaluating the lower court's mistake); *see also* Aren Z. Aizura, *Trans Feminine Value, Racialized Others and the Limits of Necropolitics*, *in* QUEER NECROPOLITICS 129, 135 (2014) (discussing how ordinary discourse often "cast[s] trans feminine individuals as not only sexually available, but deceptive and criminal."); Talia Mae Bettcher, *Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion*, 22 HYPATIA 43 (2007) (examining the stereotype that trans people are "deceivers"); Thomas Page McBee, *Amateur: Finding Joy and Power in Being a Trans Person*, THEM. (Oct. 18, 2018), https://www.them.us/story/amateur-finding-trans-joy [https://perma.cc/DK5F-ZFN7] ("We are taking back the narrative that has defined us in the collective imagination for decades now: Sad, tragic, deceptive, and (often in the case of trans men) invisible.").

124. *Eck*, 584 A.2d at 861.

125. Alonso-Yoder, *supra* note 11 (manuscript at 55).

126. *Eck,* 584 A.2d at 861.

127. We want to thank Professor Brian L. Frye for helping us crystalize this point in our discussion on his podcast, *Ipse Dixit*. Brian L. Frye, *Episode 698: J. Remy Green & Austin A. Baker on Names*, ACAST: IPSE DIXIT (Mar. 27, 2021), https://shows.acast.com/ipse-dixit/episodes/j-remy-green-austin-a-baker-on-names [https://perma.cc/HVM2-PTHG] (discussing an early draft of this Article).

turf[128]—and their use of their own names is no exception. But, as the Fifth Circuit recognized in *Peoples Bank*, where a person whose ID said, "Brooks L. Dickerson" "held himself out to the community as Louie Dickerson," using the name "Louie Dickerson" in official documents could not be "seriously misle[ading]."[129] By contrast, using a name that is not in regular use by someone is misleading. For example, when schools have accidentally pushed Remy's previous name to students, Remy has had students legitimately confused about who was teaching their class.

* * *

So, a form demands a legal name. As we have explained, the form's author is laboring under a widely shared delusion: that the phrase "Legal Name" denotes an incorrectly presumed to be uniform subset of what legal names *actually* are. And the assumption that there is some *legal* (read: totemic and magical) reason that an institution needs to have the name on a person's driver's license, for example, in their computers is wrong. But ultimately, few individuals have the power—let alone the means and legal knowledge—to correct this mistaken notion and advocate for themselves according to the revisionary definition of a legal name. So, what is next? How do we wake up from our delusion?

III. How Do We Wake Up from This Delusion?

"There is no such thing as a 'legal name' of an individual."

State v. Ford,

89 Or. 121, 125 (1918).

We hope we have succeeded in showing that the notion that there is a clearly defined, agreed upon definition of a legal name is—put simply—wrong. So, what do we do about it? We think a lot of the solution starts with

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128. Pun (with "TERF") somewhat intended. *See* Bettcher, *supra* note 124 (examining the stereotype that trans people are "deceivers"); Florence Ashley, *Don't Be So Hateful: The Insufficiency of Anti-Discrimination and Hate Crime Laws in Improving Trans Wellbeing*, 68 UNI. TORONTO L.J. 1, 14–18 (2018) (discussing the "putative deceptiveness of trans bodies" and how the perception of trans people as inherently deceptive leads to violence justified on that basis); Florence Ashley, *Genderfucking Non-Disclosure: Sexual Fraud, Transgender Bodies, and Messy Identities*, 41 DALHOUSIE L.J. 339 (2019) (discussing and rejecting the argument that non-disclosure of one's being transgender is a kind of sexual assault by fraud).

129. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549, 559 (5th Cir. 2007) (noting that in analyzing this question, "the focus should be 'on whether potential creditors would have been misled as a result of the name the debtor was listed by' in the financing statement" (quoting *In re* Glasco, Inc., 642 F.2d 793, 795–96 (5th Cir. 1981))).

providing a citable source for the proposition.[130] Thus, we begin by offering a clear, citable set of conclusions:

1. There is no clear, uniform definition of a legal name.[131]
2. The name a person uses in their community, generally speaking and in the absence of a specific statute providing otherwise (which most states do not have), is their legal name.[132]
3. Even where there is a statute providing otherwise, the name a person uses for themself is best described, not as a "preferred name" or a "chosen name," but as their "common law name"—that is, it should be described unambiguously as a kind of "legal name," even if they are in a jurisdiction that does not necessarily give force to that kind of legal name.[133]
4. When anyone—whether they changed their name because they are transgender, through marriage, post marriage, for religious reasons, or anything else—tells you the name they use, that *is* (at least in between 43 and 45 states) their legal name.[134]
5. A contract is enforceable, no matter what name you use, and in most interactions, there is no value or gain in forcing someone to use anything other than the name they use in their community.[135]

With those conclusions in hand, we want to take two approaches: a discussion of why names are important and what they do (Part III.A), and then a set of proscriptive proposals (Part III.B).

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130. *Cf.* Orin S. Kerr, *A Theory of Law*, 16 GREEN BAG 2D 111, 111 (2012) (tongue in cheek, noting "[l]egal scholars need a source they can cite when confronted with" a "demand that authors support every claim with a citation," even when "[s]ome claims are so obvious or obscure that they have not been made before").

131. *See supra* notes 7, 24, 26–79 and accompanying text.

132. *See* Appendix II.

133. This follows from conclusions (1) and (2), since all we are saying is that "common law name" is probably a better way to describe the referent people are pointing to when they say "chosen name" in contrast to the mistaken notion of "legal name." *See supra* note 1 and accompanying text (citing policies perpetuating the concept of a "legal name").

134. *See* Appendix II; *see also supra* notes 35–39 and accompanying text (discussing the modern status of common law name changes).

135. *See supra* note 122 and accompanying text.

A. Introducing the Preference Norm

Up until this point, we have argued that people have multiple legal names, one of which is their common law name. Consider, for example, a law professor who uses her married name when talking to her children's teachers, her maiden name in her legal career, and a pen name for writing fiction and to sign contracts related to her fiction writing. As we argued in the previous section, each of these—used simultaneously—is a kind of legal name.

Put differently, each of these names is, as a question of law, equally valid—and more importantly, equally appropriately called a legal name (except in the very few states that define the phrase). However, in this section we want to propose a norm about how these multiple legal names ought to be applied by individuals or institutions. Call this the "Preference Norm"—and consider it a sixth conclusion to go with those above:

> 6. Institutions and individuals should defer to the legal name a person prefers when addressing that person in personal or professional contexts absent a binding legal requirement.

Note that conclusions (1) through (5) do not necessarily entail the stronger normative claim that we should defer to the legal name a person prefers. For example, it would be consistent for one to acknowledge that people can have multiple legal names yet also dogmatically assert that institutions and individuals should have choice in what legal names they use to address someone. However, if someone prefers to be referred to by their common law name "Hamish Baker," but their driver's license lists them as "Harriet Baker," we contend that institutions and individuals have a normative responsibility to refer to them as "Hamish" rather than "Harriet." Specifically, in this section we will argue that failing to defer to the individual's preferred legal name potentially does them three distinct types of harm: (1) dignitary harm, (2) hermeneutical harm, and (3) procedural harm. We will take each of these harms in turn in a moment.

Why would referring to someone by a different legal name harm them in these ways? Much of the answer has to do with what names are actually doing. While Juliet famously posed the question, "what's in a name?" and answered that names do not matter very much ("a rose by any other name would smell as sweet"),[136] we disagree. Names, especially legal names, actually do a great deal. While Juliet atop a balcony may have thought names did not matter, Sojourner Truth's explanation of her new

136. WILLIAM SHAKESPEARE, ROMEO & JULIET, act 2, sc. 2.

name casts that in stark relief: "My name was Isabella; but when I left the house of bondage, I left everything behind. I wa'n't goin' to keep nothin' of Egypt on me, an' so I went to the Lord an' asked Him to give me a new name."[137]

Much of the philosophical literature of names has centered on reference—how names *refer* to persons and objects in the world. For example, descriptivists like Bertrand Russell and Gottlob Frege claim that names are associated with a list of descriptive sentences in one's head and that those descriptions determine what object in the world is picked out by the name.[138] For example, the name "Joe Biden" is mentally associated with the descriptions "46th president," "husband of Jill Biden," and "Vice President under Barack Obama," which all collectively pick out the person Joseph Robinette Biden Jr. On the other hand, causal theorists like Saul Kripke argue that names refer because the "right" sort of causal relationship exists between the name and the referent, such that some sort of naming event occurred, which all subsequent uses of the name are causally connected to—e.g., the name "Joe Biden" picks out some specific person in the world because there was some "initial baptism" attaching him to that name and all subsequent uses of the name are causally related to his naming.[139]

However, names do not just function to pick our particular referents. Names also communicate and represent important social information about a person, which shapes the way people engage with them in their community. Consider three examples. First, it is very common to choose names that are meaningful to one's ethnic, social, or religious community. This practice is often perceived to be especially important for members of oppressed racial, religious, or ethnic minorities as a way to forge strong identity bonds. For example, historians have been able to trace African American-specific naming practices to before the Civil War.[140] Notably, however, popular Black names of the 1800s do not have African

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137. Harriet Beecher Stowe, *Sojourner Truth, The Libyan Sibyl*, THE ATLANTIC (Apr. 1863), https://www.theatlantic.com/magazine/archive/1863/04/sojourner-truth-the-libyan-sibyl/308775/ [https://perma.cc/35WE-RQDE].

138. Russell, *supra* note 112. *See generally* Gottlob Frege, *Sense and Reference*, 57 PHIL. REV. 209 (1948) (discussing his theory of reference).

139. *See generally* Kripke, *supra* note 115 and accompanying text.

140. *See generally* Lisa D. Cook et al., *The Antebellum Roots of Distinctively Black Names*, *in* HISTORICAL METHODS: A JOURNAL OF QUANTITATIVE & INTERDISC. HISTORY (2021).

origins.[141] This suggests that the practice of choosing Black-specific names developed in the United States during slavery. Beyond that, "many Black Americans adopted new names following landmark struggles for liberation."[142] And throughout American history, Black leaders and thinkers of all kinds have adopted new names for just as varied a collection of reasons: consider Sojourner Truth,[143] Malcolm X,[144] or bell hooks.[145] Then, there is the common practice of people who convert to a new religion adopting a religiously significant name (this is especially common in Islam, Sikhism, and Buddhism). The Pope famously takes a regnal name upon election to the papacy.

However, despite its cultural ubiquity, having culturally, ethnically, and religiously significant names often makes members of oppressed groups the targets of discrimination. For example, it has been demonstrated that people with Black or Latinx sounding names face greater degrees of institutional discrimination—e.g., from potential employers looking at

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141. Jeff Grabmeier, *Distinctively Black Names Found Long Before Civil War*, OHIO STATE NEWS (Mar. 25, 2021), https://news.osu.edu/distinctively-black-names-found-long-before-civil-war/ [https://perma.cc/VU88-MM97].

142. Alonso-Yoder, *supra* note 11 (manuscript at 20) (quoting Jesse Washington, *Washington: The 'Blackest Name' in America*, SEATTLE TIMES (Feb. 20, 2011), https://www.seattletimes.com/nation-world/washington-theblackest-name-in-america [https://perma.cc/VSX6-RFDY]).

143. Stowe, *supra* note 138. Stowe wrote,

> My name was Isabella; but when I left the house of bondage, I left everything behind. I wa'n't goin' to keep nothin' of Egypt on me, an' so I went to the Lord an' asked Him to give me a new name. And the Lord gave me Sojourner, because I was to travel up an' down the land, showin' the people their sins, an' bein' a sign unto them. Afterwards I told the Lord I wanted another name, 'cause everybody else had two names; and the Lord gave me Truth, because I was to declare the truth to the people.

Id.

144. MALCOLM X, AUTOBIOGRAPHY 229 (1965) ("For me, my 'X' replaced the white slavemaster name of 'Little' which some blue-eyed devil named Little had imposed upon my paternal forebears.").

145. Min Jin Lee, *In Praise of bell hooks*, N.Y. TIMES (Feb. 28, 2019), https://www.nytimes.com/2019/02/28/books/
bell-hooks-min-jin-lee-aint-i-a-woman.html (on file with the *Columbia Human Rights Law Review*) ("[hooks] published her first book, 'Ain't I A Woman: Black Women and Feminism,' under her pen name, bell hooks, in honor of her maternal great-grandmother, Bell Blair Hooks. [hooks] wanted her pen name to be spelled in lowercase to shift the attention from her identity to her ideas.")

resumes[146] and lenders assessing loan applications.[147] Relatedly, applicants who expressed a religious affiliation (which can be inferred from the applicant's name) were 26% less likely to receive callbacks for jobs.[148] All the same, we see the practice of selecting culturally significant names persist even in the face of considerable discrimination, suggesting that people place great value on giving their children names that celebrate their ethnic and religious identity.

Second, names can communicate information about gender. For example, parents typically pick a name for their child which communicates the child's presumed gender (typically corresponding to the binary sex the child was assigned at birth). It is also common for transgender people to change their name early on in transition. The selection of a new name (with a different set of gendered associations) communicates the gender they want to be seen. Dr. Arjee Restar and her co-authors found that "legal gender affirmation (i.e., having changed gender marker/name on neither, one, or both a passport and state ID) . . . was significantly associated with lower reports of depression, anxiety, somatization, global psychiatric distress, and upsetting responses to gender-based mistreatment."[149] Their study surveyed trans and gender diverse Massachusetts and Rhode Island residents, states that have recently passed laws that make it easier to change gender and name markers on legal documents.[150] These improved health outcomes for people who have been able to change their legal names to reflect their gender identities underscore the important social dimension of names. Our social identities communicate how we understand ourselves and engage with other people. Thus, when a transgender person changes

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146. Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. R. 991, 991 (2004).

147. *See generally* URB. INST., MORTGAGE LENDING DISCRIMINATION: A REVIEW OF EXISTING EVIDENCE (Margery Austin Turner & Felicity Skidmore eds., 1999).

148. Michael Wallace et al., *Religious Affiliation and Hiring Discrimination in the American South: A Field Experiment*, 1 SOC. CURRENTS 189, 189 (2014).

149. Arjee Restar et al., *Legal Gender Marker and Name Change Is Associated with Lower Negative Emotional Response to Gender-Based Mistreatment and Improve Mental Health Outcomes Among Trans Populations*, 11 SSM-POPULATION HEALTH 1, 1 (2020); *see also* Stephen T. Russel et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. ADOLESCENT HEALTH 503 (2018) (demonstrating the connection between choosing a name consistent with one's gender identity and reduced depression and suicidality); Stephanie Julia Kapusta, *Misgendering and Its Moral Contestability*, 31 HYPATIA 502 (2016) (discussing the normative harms of misgendering).

150. *See generally* Restar, *supra* note 150.

their name, they are changing the way they are conceptualized within their community—saying, "*this* is who I am and how I wanted to be seen."[151]

Finally, and perhaps most obviously, names often communicate family ties: the family you were born into, the family you married into, and so on.[152] Though the practice is less popular than it once was, in 2013, 70% of U.S. women in heterosexual marriages adopted their husband's last name when they got married (compared to 83% in the 1970s).[153] A further 10% of the heterosexual women that did not adopt their husband's last name choose to change their name to signify their marriage in some other way—for example, hyphenating their last name, choosing an entirely new last name with their husband, and the like. Thus, the practice of changing last names to reflect marital status is alive and well and serves to communicate that a couple is now a family and wants to be viewed as such.[154]

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151. *See also* Alonso-Yoder, *supra* note 11 (manuscript at 32–35) (highlighting the challenges transgender people face in court while trying to change their names and their perception in the community).

152. In this regard, Icelandic names are particularly interesting as traditionally, surnames are unique to an individual: they communicate directly a person's parent's identity, with gendered content. Katharina Hauptmann, *The Peculiarities of Icelandic Naming*, WALL ST. INT'L (Feb. 24, 2013), https://wsimag.com/culture/2248-the-peculiarities-of-icelandic-naming [https://perma.cc/B7N4-3R6X]. So, just from popstar Björk Guðmundsdóttir's name (discussed in passing above), you can discern she is a woman (both because of her first name and because of the use of "dóttir"), and is the daughter ("dóttir") of a woman named Guðmundur. And yet, in places abroad—unfamiliar with the custom—there are often issues in immigration and customs for Icelandic families because they do not share a surname. *See id.*; *see also* Maricar Santos, *New Rule Makes Flying Harder for Parents with Different Last Names than Their Kids*, WORKING MOTHER (Aug. 9, 2018), https://www.workingmother.com/new-rule-makes-flying-harder-for-parents-with-different-last-names-than-their-kids [https://perma.cc/5ZW8-4SSW] (discussing a policy that "parents who don't have the same last name as their children may be subjected to additional questioning by Border Force officers, aka the U.K.'s immigration and customs officers").

153. Miller, *supra* note 53.

154. Of course, there is a gendered dimension to traditional "marital naming" practices (i.e., women taking their husbands' last names). For example, Suzanne Kim argues that "[t]he nearly universal practice of women adopting their husbands' names upon marriage attracts little attention as a measure of gender hierarchy within marriage [however, these] traditional naming practices . . . define marriage as gender hierarchical." Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 IND. L.J. 893, 895 (2010). But setting aside the gender equity implications, all marital name changes (e.g., women changing their names, men changing their names, both partners picking a new name, etc.) are still communicating the same thing: that a couple is—and wants to be viewed as—a family unit.

Thus, names are not merely in the business of reference; they are also communicating important social information—including information about one's ethnic heritage, gender, and familial relations. And we posit that it is this social dimension of names that explains why violating the Preference Norm can be so harmful. Since names do not merely function to refer to people and objects but also carry important social information, in refusing to refer to someone by the legal name they prefer (i.e., violating the Preference Norm), one fails to show them what Professor Steven Darwall calls "recognition respect."[155] According to Darwall, recognition respect involves giving "appropriate consideration or recognition to some feature" of an object.[156] Recognition respect can be contrasted with what he calls "appraisal respect," which is the respect we owe in virtue of skillful or virtuous performance (e.g., the respect we might have for a figure skater's well-executed triple axel or a chef's perfectly caramelized crème brûlée).[157] The thought is that certain things are just owed respect in themselves, separate from any sort of appraisal—for instance, Darwall gives the example of the respect we owe to someone's personhood being one of recognition.[158] We therefore might imagine that aspects of peoples' social identities are also going to be deserving of this sort of recognition respect: the respect we owe to basic aspects of people's social identities, like race and gender, does not reflect some sort of appraisal of them.[159] And we show recognition respect to peoples' social identities by allowing people to freely express their identities and engaging with them in accordance with their identities (e.g., allowing a trans person to change their name and treating them in accordance with their post-transition gender identity).

This generates something like a prima facie duty to show appropriate recognition respect for—and not grossly misrepresent—basic

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155. Stephen L. Darwall, *Two Kinds of Respect*, 88 ETHICS 36, 38 (1977).

156. *Id.*

157. *Id.* at 39.

158. *Id.*

159. Of course, perhaps not every aspect of someone's social identity will be deserving of recognition respect. For example, it seems reasonable to think a social identity like someone's race is owed recognition respect but not, say, their near-sightedness. Race constitutes a very important and fundamental aspect of a person's identity, affecting how they perceive themselves and how others behave towards them. However, whether or not they are near or far sighted seems more incidental. And while the question of which social identities are deserving of recognition respect is important and philosophically rich, we will not be offering any account of this here. However, even we take it as plausible (and fairly uncontroversial) that race and gender are especially good candidates for social features which are owed our unconditional recognition respect.

social factors about a person that they want to communicate like their gender, race, and familial background. Here is where violations of the Preference Norm come in. Violating the Preference Norm is problematic precisely because names can carry the type of social information that we have a prima facie duty to show basic (recognition) respect for. As such, when individuals or institutions opt to refer to a person by one of their non-preferred legal names, they are failing to respect the social information that a person's name conveys, preventing them from fully inhabiting and expressing their social identities. And this can cause (we think) at least three different types of harm.

1. Dignitary Harm

First, violating the Preference Norm infringes someone's dignity in a way that causes a dignitary harm. Professor Rosa Ehrenreich defines dignitary harms:

> [A] "dignitary harm" [is] a harm that injures "personality interests" rather than one's physical well being. While the common-law notion of harm to one's dignity or personality interests may not bear intense philosophical scrutiny, its core assumptions are clear enough: all individuals share in "personhood," are autonomous and unique, and are entitled to be treated with respect. Actions that would humiliate, torment, threaten, intimidate, pressure, demean, frighten, outrage, or injure a reasonable person are actions which can be said to injure an individual's dignitary interests and, if sufficiently severe, can give rise to causes of action in tort.[160]

Restricting the way someone expresses their social identities is a very clear infringement on their dignity and personhood. For example, being misgendered by an individual or institution because they refer to you by a non-preferred legal name can be very humiliating and dehumanizing (e.g., an institution having you on record as being named "Anna," not allowing you to change the record, and then using female pronouns to address you because you have a feminine-sounding name).

Further, there is evidence that this type of dignitary harm can cause acute physical and psychological harm.[161] The experience of being

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160. Rosa Ehrenreich Brooks, *Dignity and Discrimination: Toward a Pluralistic Understanding of Workplace Harassment*, 88 GEO. L.J. 1, 22 (1999).

161. *See* Russel et al., *supra* note 150; *see also* Florence Ashley, *Qui est-ille? Le respect langagier des élèves non-binaires, aux limites du droit*, 63 SERVICE SOC. 35, 38–41

constantly misgendered (e.g., referred to by a name that does not cohere with one's gender identity) can be traumatizing, embarrassing, humiliating, and shameful. However, when children and adults who experience gender dysphoria are able to transition and live in accordance with their gender identity, their mental and physical health outcomes are significantly improved.[162] And while adopting a new name is not necessary for transitioning, for many transgender people, changing their name is a significant step in communicating who they are and how they want to be seen by others. Thus, referring to them by another name infringes upon their dignity in that it denies them the agency to authentically represent their social identity to others, which can harm their physical and mental health.

The same is, of course, true of refusals to call someone by their name, whatever that name is. This common-sense intuition is captured well in (of all things) a Saturday Night Live sketch: "What's That Name?"[163] The

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(2018) [hereinafter *Qui est-ille?*] (discussing misgendering as a deliberate form of disrespect); *cf.* Florence Ashley, *'X' Why? Gender Markers and Non-Binary Transgender People*, *in* TRANS RIGHTS AND WRONGS: A COMPARATIVE STUDY OF LEGAL REFORM CONCERNING TRANS PERSONS (Isabel C. Jaramillo Sierra & Laura Carlson eds., forthcoming 2021) (discussing the challenges in adding non-binary people to a binary system in the context of adoption of an "X" gender marker on IDs).

162. WORLD PRO. ASS'N FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSSEXUAL, TRANSGENDER, AND GENDER NONCONFORMING PEOPLE 4–5, 9–10 (7th ed. 2012) (also called the "WPATH Standards") (recognizing that living consistently with one's gender identity significantly improves health outcomes among people who experience gender dysphoria, and noting that anxiety and depression "are socially induced and are not inherent" to transgender status); Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56(2) J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 116, 120 (2017) (finding normal levels of depression in transgender children who had already socially transitioned as compared to a control group of non-transgender children, in contrast to previous studies' findings of "markedly higher rates of anxiety and depression and lower self-worth" among "gender-nonconforming children who had not socially transitioned"); Ashley, *Qui est-ille?*, *supra* note 162, at 37–40 (setting out data on stigmatization, violence, and harm stemming from the basic lack of respect in misgendering). *Accord* Stanley v. City of N.Y., 71 Misc. 3d 171, 184 n.5 (N.Y. Sup. Ct. 2020) (noting "Courts addressing the issue [of deadnaming] have almost uniformly found the practice hostile, objectively offensive, and degrading" and collecting authority).

163. NBC, *Saturday Night Live: What's That Name*, YOUTUBE (Mar. 2, 2019), https://www.youtube.com/watch?
v=rImxuuD_kwM [https://perma.cc/DDW9-NUGD]; NBC, *Saturday Night Live: What's That Name* (May 21, 2011), https://www.nbc.com/saturday-night-live/video/whats-that-name/2751679 [https://perma.cc/7J9T-7T88]; NBC, *Saturday Night Live: What's That Name* (Dec. 11, 2010), https://www.nbc.com/saturday-night-live/video/whats-that-name-norman-the-doorman/2751498 [https://perma.cc/3QUV-7XKA]; *see also* Josh

premise is simple:[164] Bill Hader's host character asks contestants to identify celebrities. They succeed ("Okay, I actually know this. It's Lil Xan."), and win some token amount of money—"five dollars for you!" Then, the stakes escalate enormously: Bill Hader informs the contestant that, "this next question is for $250,000.00" (or a similar, absurd amount) and someone—a best friend's girlfriend of four years, a doorman, etc.—comes on stage and asks, "What's *my* name?"[165] The person adds all kinds of details: how many times they have had dinner together, all the details of the contestant's life they know, and so on. But, of course, the contestant cannot answer the question. "What kind of horrible game show is this?" the contestant asks, and Bill Hader mugs, "iiiiiiiit's *What's That Name?*"[166]

What the sketch captures is important: it is a blow to basic dignity when someone cannot correctly say your name. And this is true whatever the reason. While we focus on trans people in our discussion above, the same is obviously true of people who change their name for religious reasons, or those who maintain a pre-marriage name, or change their name for any other reason. And as "What's That Name" illustrates, it is also harmful when someone refuses to learn a name in the first place. Refusal to use (or learn) someone's name denies them the same agency we discuss above—and the dignity cleverly played on in "What's That Name?" To paraphrase: it's funny because it is true.

2. Hermeneutical Harm

Second, violations of Preference Norm constitute what can be called a hermeneutical harm. "Hermeneutical" here is referring to Miranda Fricker's notion of hermeneutical injustice, which she defines as "having some significant area of one's social experience obscured from collective

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Sorokach, *'Saturday Night Live's' "What's That Name?" Is the Perfect Sketch,* DECIDER (Mar. 5, 2019), https://decider.com/2019/03/05/john-mulaney-saturday-night-live-whats-that-name/ [https://perma.cc/3PA8-6JEG] (showing an example of SNL's view on names).

164. *See, e.g.*, NBC, *Saturday Night Live* (Mar. 2, 2019), *supra* note 164. We, of course, recognize that "comedy gets exponentially less funny the more you try to explain it," but we will try not to spoil the joke in extracting what is doctrinally valuable in it. Florence Ashley, *Humorous Styles of Cause in* In Rem *Actions*, 24 GREEN BAG 2D 15, 21 (2020).

165. NBC, *Saturday Night Live* (Mar. 2, 2019), *supra* note 164.

166. *Id.*

understanding owing to a structural identity prejudice in the collective hermeneutical resource."[167]

To illustrate hermeneutical injustice, Fricker gives the example of Carmita Wood, an office employee in Cornell's nuclear physics department in the 1960s.[168] Ms. Wood repeatedly suffered awkward and unwanted sexual advances by one of the senior professors in the department. She applied to be transferred to another department, but Cornell denied her request. Eventually, the stress of avoiding his advances while maintaining friendly relations with his wife became too much for Ms. Wood, who started experiencing chronic physical pain in response to the psychological distress. She reported the professor's inappropriate behavior to her direct supervisor but was told that "any mature woman should be able to handle it."[169] She ended up quitting her job and applying for unemployment. However, in filling out her unemployment form, she had difficulty expressing why she had left her job—she lacked the conceptual resources necessary to understand her experience and describe it on her unemployment application. Because of this, her claim was denied.

But this story has a happy hermeneutical ending. Ms. Wood went to the office of the Human Affairs program at Cornell and with Lin Farley, Susan Meyer, and Karen Sevigne, coined a term for the pattern of behavior she—and so many women—had experienced: sexual harassment.[170] Together they ended up forming an organization called Working Women United, which educated people about sexual harassment. In an op-ed to the *Ithaca Journal*, Ms. Wood wrote: "[w]omen must be judged on their ability to perform their jobs—not on whether we maintain a sexual rapport with our bosses . . ." repeatedly enduring unwanted sexual advances "constitutes a pattern of sexual harassment that is degrading, demeaning, and causes a steady erosion of our self respect and personal dignity."[171] Hence, in response to a perceived deficit, she crafted a hermeneutical resource (by coining and popularizing the term "sexual harassment") so other women could make sense of, and speak out against, similar kinds of injustice.

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167. MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 155 (2007).

168. *Id.* at 149–51.

169. Jessica Campbell, *The First Brave Woman Who Alleged 'Sexual Harassment'*, LEGACY (Dec. 7, 2017), https://www.legacy.com/news/culture-and-history/the-first-brave-woman-who-alleged-sexual-harassment/ [https://perma.cc/Z6DW-BNKZ].

170. *Id.*; *see also* CATHERINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN 150 n.166 (1979) (introducing this legal theory).

171. Campbell, *supra* note 170.

Ms. Wood experienced two different harms. First, she was being sexually harassed. That is obviously a significant dignitary harm. But she was also being harmed because, at the time, she did not have a concept to attach to her experience of sexual harassment. This meant that she could not make sense of the harm she was experiencing (or even conceptualize her experience as harm rather than merely a collection of uncomfortable experiences). In turn, that prevented her from complaining about her boss' behavior, finding solidarity in the experiences of other women who had been sexually harassed, or articulating why she had been forced to leave her job on her unemployment insurance claim. This second harm is hermeneutical.

We can thus think of hermeneutical harm as occurring when (1) a person is being harmed and (2) there is a deficit in their hermeneutical resources such that they lack a coherent concept or idea to attach to that experience of harm, typically because of an existing structural inequality. We contend that violations of Preference Norm very often involve a hermeneutical harm. Consider the structure of harm involved in Preference Norm violations. First, (in many instances) people experience a dignitary harm in being referred to by a non-preferred legal name. Second, because the legal name delusion is so pervasive, they typically lack the conceptual resources to understand that the dignitary harm being inflicted upon them is a harm.

We can now appreciate how the legal name delusion creates a hermeneutical deficit, causing Preference Norm violations to be experienced as hermeneutical harms. Recall from Part II that the legal name notion that people are familiar with (i.e., the concept we can think of as existing within the shared hermeneutical resource) is the delusional one. Therefore, people who are referred to by non-preferred legal names experience the psychological and physical effects of the dignitary harm (i.e., feeling alienated and humiliated when they are referred to by a name they do not identify with, which erases key aspects of their social identity), but are unable to understand that experience as a kind of injustice because they assume that the delusional notion of a legal name being weaponized against them has legitimacy.[172] Thus, the legal name delusion creates a hermeneutical deficiency, which causes people to wrongfully blame themselves for the dignitary harm they experience when the Preference Norm is violated; they assume that the dignitary harm is their fault (rather

172. *See* Alonso-Yoder, *supra* note 11 (manuscript at 55) (describing how judges have rationalized their denials of name changes by arguing that petitioners can still use their preferred name under common law while keeping their legal name).

than the fault of the individual or institution violating the Preference Norm), and that the onus of responsibility is on them to change their name everywhere it appears (which sometimes is not even possible) before their preferred name can really be considered their legal name. The legal name delusion is thus preventing people—by way of this hermeneutical harm—from situating Preference Norm violations (and the accompanying dignitary harms) as injustices.

3. Procedural Harm

Lastly, violations of the Preference Norm—at least as they exist in the world right now—also cause a type of procedural harm. As procedural justice scholar Tom Tyler puts it:

> People want to have the opportunity to tell their side of the story in their own words before decisions are made about how to handle the dispute or problem. Having an opportunity to voice their perspective has a positive effect upon people's experience with the legal system irrespective of their outcome, as long as they feel that the authority sincerely considered their arguments before making their decisions.[173]

Thus, procedural justice studies consistently show that when people perceive a process is somehow unfair—whether that unfairness is helpful or unhelpful to them—their emotional responses will be meaningfully different.[174] Even positive and desired outcomes, without a

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173. Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 30 (2007).

174. *See, e.g.*, Stanislaw Burdziej et al., *Fairness at Trial: The Impact of Procedural Justice and Other Experiential Factors on Criminal Defendants' Perceptions of Court Legitimacy in Poland*, 44 LAW & SOC. INQ. 359 (2019) (studying how people's perception of the legitimacy of their courts are influenced more by how fair they believe them to be rather than the punishment they receive); Patricia J. Krehbiel & Russell Cropanzano, *Procedural Justice, Outcome Favorability and Emotion*, 13 SOC. JUST. RSCH. 339 (2000) (same). *See generally* M. SOMJEN FRAZER, THE IMPACT OF THE COMMUNITY COURT MODEL ON DEFENDANT PERCEPTIONS OF FAIRNESS: A CASE STUDY AT THE RED HOOK COMMUNITY JUSTICE CENTER (2006), https://www.courtinnovation.org/sites/default/files/Procedural_Fairness.pdf [https://perma.cc/9DGR-XYB6] (showing how perceptions of fairness are important to establishing the legitimacy of courts). *But see* Tom R. Tyler & David B. Rottman, *Thinking About Judges and Judicial Performance: Perspective of the Public and Court User*, 4 OÑATI SOCIO-LEGAL SERIES 1046, 1054 (2014) (showing a much smaller procedural justice effect on perception for civil cases as opposed to criminal and family cases).

chance to be heard, might cause perceptions of an unfair process.[175] The upshot of this is simple: human beings, it turns out, are not as results-oriented as we might think. Instead, procedural justice research shows that the perception of being heard at all is of immense value in any legal system.

But in many organizations that insist there is such a thing as a legal name, there is simply no forum in which a person can object to the classification of their real name—even when it is legally their name in a common law jurisdiction—as somehow not a legal name. Instead, an objection to the legal name classification is often met with a bureaucratic shrug: "I don't make the rules." And the lack of a forum to even hear the objection fails people as a matter of procedural justice.[176] So, even if someone has access to the hermeneutical resource we have discussed (e.g., they know that legal name can mean the name they use in their community), their experience of the system will be even worse; their knowledge will only lead to them knowing there is an unfair system generating an incorrect result.[177]

B. Legal Proposals

We also feel we can do better than just describing a problem so we propose some legislative and doctrinal solutions.

There is an obvious solution we want to take off the table immediately: federal legislation defining a legal name. For much of the same reason that the Article 9 drafters did not take this approach[178]—or even fully commit to a local, statutory definition (e.g., all of Article 9 refers back to a "name on the driver's license")—we also decline to endorse this option. It causes all kinds of problems (to name a few, not everyone has a driver's license and some people just do not update their driver's licenses because it does not actually serve a name-identifying function for real people), and

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175. *Cf., e.g.*, *Prague's Kafka International Named Most Alienating Airport*, ONION NEWS NETWORK (Mar. 23, 2009) https://www.theonion.com/pragues-franz-kafka-international-named-worlds-most-ali-1819594798 [https://perma.cc/7AMM-54T6] ("A security guard asked me for like 80 minutes, 'Are you who you say you are? Are you who you say you are?' And finally, he writes 'LIAR' on the back of my hand and lets me pass.").

176. *See, e.g.*, Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F., 525, 527–28 (2014) (stating that the opportunity to be heard is a key element of procedural fairness).

177. *See, e.g.*, Krehbiel, *supra* note 175, at 348 (finding "significant difference[s]" between anger and frustration measurements for all other experimental subjects and for subjects who faced both an "unfavorably biased" experiment and had an "unfavorable outcome").

178. *See supra* Part I.B.

does not really cash out with a corresponding increase in clarity. While it solves a lot of questions, it just raises more for people without a driver's license.

Beyond the pragmatic concerns, as we discussed above, there are many social functions served by a name. And fixing a person's name by federal fiat would only undermine those functions. In the first instance, suddenly, many (if not most) states would need to revise any number of existing databases and record keeping systems (unless, of course, the law did nothing meaningful at all). And many states have robust name-based law that would be deeply disrupted by the sudden imposition of a federal definition of a legal name. Local, well-settled use of names would suddenly need to grapple with a federal, preempting statute—and inevitably, that would lead to needless litigation. So, this change would cause lots of harm. In short: not a good idea.

By contrast, we think there are a few legislative approaches that work on a more local level. New York City's approach to names—at least in the official guidance the Commission on Human Rights has issued—is a useful model. The Commission on Human Rights Legal Enforcement has issued some of the most robust guidance in the nation on what discrimination on the basis of gender identity can include, particularly for names.[179] That guidance provides that people have a right to be referred to by their name of choice, unless otherwise provided by law:

> All people . . . have the right to use and have others use their name and pronouns regardless of whether they have identification in that name or have obtained a court-ordered name change, except in very limited circumstances where certain federal, state, or local laws require otherwise . . . .[180]

The guidance also clarifies that it violates anti-discrimination law to "[c]ondition[] a person's use of their name on obtaining a court-ordered name change or providing identification," noting as an example that entities "may not refuse to call a transgender man who introduces himself as Manuel by that name because his identification lists his name as Maribel."[181]

Call this the "unless otherwise provided by law" approach. Unless required to use something other than the name a person uses for themself,

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179. N.Y.C. COMM'N ON HUM. RTS., *supra* note 20.
180. *Id.*; *see supra* Part III.1.
181. N.Y.C. COMM'N ON HUM. RTS., *supra* note 20.

entities must use that person's correct, common law name.[182] We think this approach starts from a good place, consistent with the common law understanding of names above.[183] And one important consequence of this approach is that businesses need to take more care with their electronic data systems—at least to avoid liability under laws like the ones we have described.

We also think this approach need not be—and would be weaker for being—tethered to anti-discrimination law. That is, while the model we are using is anti-discrimination law, the "because of _____" approach most anti-discrimination statutes use is unnecessary here. And most importantly, might not capture all the cases beyond the obvious ones where, nonetheless, various harms are occurring. Put differently, while there might be reasons to cabin a broad workplace discrimination statute with "because of ____" causation, those reasons are not as strong here: the common law has always provided that people's legal names include the name they actually use. Letting people choose for themselves which names they should be addressed by has little downside, and lots of benefit.

In short: this approach provides a robust right for people to be referred to by their real names and strong protections against the kinds of harms discussed above. But it also limits any administrative issues by allowing an "otherwise provided by law" escape hatch: if there is a *real* legal reason an organization needs to use a particular name, they may do so.[184] Thus, if a professor identifies with a name other than the name on their Social Security card, a university can use the name on a professor's Social

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182. *Contra* Rutgers University, *Name Change,* https://scarlethub.rutgers.edu/registrar/personal-information-updates/name-change/ [https://perma.cc/8LJJ-PMHA], ("The student's chosen/preferred name will be used in all university communications except where the use of the legal name is required *by university business* or legal need.") (emphasis added).

183. Indeed, another benefit of this approach is that it avoids very thorny choice of law questions that might apply, for example, to a person passing through New York City from a jurisdiction that has an applicable definition of "legal name." *Cf. supra* text accompanying note 88.

184. Florence Ashley also acknowledges this exception, while also emphasizing that such legal justifications are routinely overemphasized or, more often, raised without any basis in law (as we also suggest). *See* Florence Ashley, *Recommendations for Institutional and Governmental Management of Gender Information*, 44 N.Y.U. REV. L. & SOC. CHANGE 489, 491 (2021). While Ashley's focus is largely on gender markers, the same reasoning applies. Thus, Ashley's discussion of what they call "shadow files" and modular data storage applies here too: institutions are perfectly capable of segregating certain information for special uses, while using other information on a day-to-day basis. *Id.* at 516–18.

Security card in issuing tax forms (since law requires that), but cannot push that name to the professor's students (since no law exists requiring a university to publish the professor's Social Security card name to students).

We also think that guidance on—and judicial interpretation of—anti-discrimination law could directly address the delusion we have discussed here.[185] In jurisdictions where there is a common law right to change one's name, an (incorrect) insistence that the "name . . . with which a person self-identifies"[186] is not also their legal name has obvious, disparate effects along sex-based lines (specifically, with regard to trans status[187]), religion-based lines, and race-based lines. Thus, it would be entirely appropriate for agencies tasked with enforcing anti-discrimination laws to provide guidance on whether demanding a legal name, but refusing to accept what is unquestionably a legal name, consists of discrimination—particularly when that insistence causes all the harms we have outlined above.

Thus, we think local law adopting the "unless otherwise provided by law" model can and should be adopted—and will help in dispelling the delusion that there is one, clear object in the world picked out by the phrase "Legal Name." Similarly, while it does not require any legislative change, we think enforcement and administrative agencies could issue guidance clarifying that demanding a legal name when that concept conflicts with the actual state of the law itself amounts to discrimination on the basis of sex (or, for reasons discussed in the immigration section above, race or national origin). And while these changes alone might not wake us from this delusion, combined with an increased awareness that a legal name does mean the name a person uses from day to day, they might move us closer to the end of the dream.

CONCLUSION

So, we have moved from a widespread mistake of law and a broad philosophical assertion to a few wonky little legal proposals. One might accuse us of ending on a rather quiet note, but those proposals are just a starting point. They are not the end of the story here. Similarly, we do not

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185. *See, e.g.*, N.Y.C. COMM'N ON HUM. RTS., *supra* note 20.

186. *Id.*

187. Or, perhaps better put, with regard to gender modality. *See* Florence Ashley, *'Trans' Is My Gender Modality: A Modest Terminological Proposal*, *in* TRANS BODIES, TRANS SELVES (Laura Erickson-Schroth ed., forthcoming 2021). *See generally* Bostock v. Clayton Cnty., 140 S. Ct. 1731 (2020).

think we have solved every issue that the legal name delusion creates. And if you are reading this article cover to cover (and thus reading this modest conclusion), you are very likely already on board with our project. Thus, concluding here, we do not imagine we are telling you anything you do not know.

But, let us say one last time, as we have quoted others at the start of every section saying: there is no (one) such thing as a legal name. And maybe if we keep saying so, more people will awaken from this strange, shared delusion.

APPENDIX I: STATES THAT HAVE SPECIFICALLY ABROGATED COMMON LAW NAME CHANGES

Hawaii: Haw. Rev. Stat. § 574-5(a) ("It shall be unlawful to change any name adopted or conferred under this chapter, *except* . . . .") (emphasis added).

Illinois: 735 ILCS 5/21-105 ("Common law name changes adopted in this State on or after July 1, 2010 are invalid."). For prior rule, see Parmelee v. Raymond, 43 Ill. App. 609, 610 (1892) (finding "that a party is known by one name as well as another is a good replication to a plea of misnomer"); Graham v. Eiszner, 28 Ill. App. 269, 273 (1888) (finding "any person may adopt any name, style or signature over which he may transact business and issue negotiable paper and execute contracts, wholly different from his own name, and may sue and be sued by such name, style or signature"); *see also* Azeez v. Fairman, 795 F.2d 1296, 1301 (7th Cir. 1986) (acknowledging the broader common law right, but granting qualified immunity to prison officials who violated that right, and questioning the availability of that right in prisons).

Louisiana: *See* Names, La. Op. Att'y Gen. 963, 964–65 (1942) (noting that Louisiana law's heritage is from code law, not common law).

Maine: *In re* Reben, 342 A.2d 688, 694–95 (Me. 1975) ("Our own original statute was intended to bring the ancient principles into consonance with modern needs . . . . The common law method which would serve no further purpose was superseded.").

Oklahoma: Okla. Stat. tit. 12, § 1637 (1993) ("[N]o natural person in this state may change his or her name *except as provided* . . . .") (emphasis added).

APPENDIX II: STATES WHERE COMMON LAW NAME CHANGES ARE STILL EFFECTIVE

Alabama: State v. Taylor, 415 So. 2d 1043, 1046 (Ala. 1982) (finding that women's married names legally became their names under the common law rule by use, and requiring the state to register them to vote under those names); *see also* Ala. Clay Prods. Co. v. Mathews, 220 Ala. 549, 552 (1930) ("Where it is not done for a fraudulent purpose and in the absence of statutory restriction, one may lawfully change his name without resort to legal proceedings, and for all purposes [the] name thus assumed will constitute his legal name just as much as if he had borne it from birth"). *But see* Comer v. Jackson, 50 Ala. 384, 387 (1874) ("[A] party may not change his name without a proper proceeding in court") (noting that Kushner categorizes Alabama as not applying a common law rule, while observing that she could not find a case verifying *Comer* was still good law).

Arizona: Malone v. Sullivan, 124 Ariz. 469, 470 (1980) (Arizona's name change "statute is in aid of the common law rule that absent fraud or improper motive, a person may adopt any name he or she wishes."); *see also* Laks v. Laks, 25 Ariz. App. 58, 60 (1975) ("One may lawfully change his name without resort to any legal proceedings"); *In re* Cortez, 247 Ariz. 534, 536 (Ct. App. 2019) (applying *Malone*, and further noting "the statute does not permit the superior court to deny a person's name-change request only because the person wants the new name to reflect a gender transition.")

Arkansas: Clinton v. Morrow, 247 S.W.2d 1015, 1018 (Ark. 1952) ("[The Arkansas name change] statute does not destroy or modify the common law right to change one's name and should be considered as in aid of, and supplementary to, such right."); Walker v. Jackson, 391 F. Supp. 1395, 1402 (E.D. Ark. 1975) ("Arkansas recognizes another common law rule that in the absence of fraud a person can change his name at will."); *cf.* McCullough v. Henderson, 804 S.W.3d 368, 369 (Ark. 1991) (holding that the last name of a child's father must be entered on the birth certificate but that the chancellor had common law discretion to determine the child's surname).

California: Cal. Code Civ. P. § 1279.5 ("[T]his title does not abrogate the common law right of a person to change his or her name"); *In re* Ross, 67 P.2d 94, 95 (Cal. 1937) ("The common law recognizes the right to change one's personal name without the necessity of legal proceedings, and the purpose of the statutory procedure is simply to have, wherever possible, a record of the change."); *see also In re* Forchion, 130 Cal. Rptr. 3d 690, 706 (Cal. Ct. App. 2011) (same); *In re* Arnett, 56 Cal. Rptr. 3d 1, 3 n.3 (Cal. Ct. App. 2007) (same).

Colorado: *In re* Marriage of Nguyen, 684 P.2d 258, 260 (Colo. App. 1983) ("The procedure for change of name set forth under §§ 13-15-101, et seq., C.R.S. 1973, is in addition to, not in exclusion of, the common law method for change of name."); *see also* Hamman v. Cnty. Ct. in & for Cnty. of Jefferson, 753 P.2d 743, 746 (Colo. 1988) (citing Nguyen with approval).

Connecticut: Custer v. Bonadies, 318 A.2d 639, 640 (Conn. Super. Ct. 1974) ("Connecticut has adopted [the common law] rule, which operates independently of any court order and even though there is a statutory procedure for effecting a change of name.") (citing Don v. Don, 142 Conn. 309, 312, 114 A.2d 203, 204 (Conn. 1955) ("[I]ndependently of any court order, a person is free to adopt and use any name he sees fit")); *see also* Pease v. Pease, 35 Conn. 131, 155 (1868) (holding that a Shaker community had entered into a contract using the name of one of its trustees).

Delaware: Degerberg v. McCormick, 184 A.2d 468, 469 (Del. Ct. 1962) ("[S]tatutes [that authorize judicial proceedings to change a name] are universally held not to affect the common law right."); Masjid Muhammad-D.C.C. v. Keve, 479 F. Supp. 1311, 1322 n.13 (D. Del. 1979) ("The Delaware courts have held that even without pursuing the statutory procedure for a change of name, there exists a common law right to change one's name without court process."); *see also In re* Marley, 1996 Del. Super. LEXIS 192, at *6 (Del. Super. Ct. May 16, 1996) ("The Court has found that the Delaware statute merely provides a means for memorializing a common law right.").

Florida: Jordan v. Robinson, 39 So. 3d 416, 418 (Fla. Dist. Ct. App. 2010) (noting name change statute is a "codification of this common law right intended primarily to aid the individual's right to a name change at will, giving the advantage of a public record to document the change") (quoting Isom v. Cir. Ct. of the Tenth Jud. Cir., 437 So. 2d 732, 733 (Fla. Dist. Ct. App. 1983)) (alterations adopted); *see also* Reddick v. State, 5 So. 704, 706 (Fla. 1889) (allowing the jury in a murder trial to resolve the question of the victim's name).

Georgia: *In re* Feldhaus, 796 S.E.2d 316, 318 (Ga. Ct. App. 2017) ("The Supreme Court of Georgia . . . held . . . that 'in the absence of a statute or judicial adjudication to the contrary . . . nothing in the law prohibit[s] a person from taking or assuming another name, so long as he does not assume a name for the purpose of defrauding other persons through a mistake of identity.'") (quoting Fulghum v. Paul, 192 S.E.2d 376, 377 (Ga. 1972)); *see also* 1975 Ga. AG LEXIS 50, at *1 (1975) ("[I]t is [the Georgia Attorney General's] official opinion that a married woman's surname is that of her husband but that she may change her name for all legal

purposes . . . by judicial decree or by consistent usage of another name without resort to judicial proceedings.").

Idaho: Idaho Code § 73-116 ("The common law of England, so far as it is not repugnant to, or inconsistent with, the constitution or laws of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state"); Idaho Code § 7-802 (specifying the procedure for changing names, but only applying to "applications for change of names").

Indiana: Leone v. Comm'r, Ind. Bureau of Motor Vehicles, 933 N.E.2d 1244, 1253 (Ind. 2010) ("All states have enacted similar statutes [providing a name change procedure], and all but two have concluded that they do not abrogate but instead supplement the common law."); *see also In re* Name Change of Jane Doe, 148 N.E.3d 1147, 1151 (Ind. Ct. App. 2020) ("At common law, a natural person has long been permitted to change his or her name without resort to any legal proceedings, as long as the name change does not interfere with the rights of others and is not done for a fraudulent purpose."); *In re* Name Change of Resnover, 979 N.E.2d 668, 672 (Ind. Ct. App. 2012) ("[T]he very nature of the name change means that it can be effected without court approval").

Iowa: Loser v. Plainfield Sav. Bank, 149 Iowa 672, 677 (1910) ("[T]here is no such thing as a 'legal name' . . . in the sense that he may not lawfully adopt or acquire another, and lawfully do business under the substituted appellation. In the absence of any restrictive statute, it is the common law right of a person to change his name, or he may by general usage or habit acquire a name . . . ."); *see also In re* Staros, 280 N.W.2d 409, 411 (Iowa 1979) (making an exception for minors).

Kansas: *In re* Clark, 450 P.3d 830, 834 (Kan. Ct. App. 2019) ("The statutory name change provisions are intended as aids and affirmations of the common law rule and not as an abrogation or substitution for the informal procedure.") (quotation marks omitted); *In re* Morehead, 706 P.2d 480, 482 (Kan. Ct. App. 1985) ("A minor may file a petition, through a next friend, to obtain a name change and there is no legal impediment to a grant of the requested change."); *see also* Clark v. Clark, 19 Kan. 522, 524–25 (1878) (affirming that a married woman referred to by her community under her assumed name could bring an action under said assumed name).

Kentucky: Leadingham v. Smith, 56 S.W.3d 420, 425 (Ky. Ct. App. 2001) ("The flexibility in naming practices . . . goes a long way in explaining why this jurisdiction recognizes the common law right of any person to informally change their name by public declaration. Kentucky Revised Statutes Chapter 401 is not intended to abrogate the common law, but merely to insure [*sic*] that a permanent record is made . . . .") (alteration

adopted); *see also* Burke v. Hammonds, 586 S.W.2d 307, 308–09 (Ky. Ct. App. 1979) (allowing a court to enjoin a divorced mother from changing the names of her children if "the court finds that it is in the 'best interest' of the child").

Maryland: Schroeder v. Broadfoot, 790 A.2d 773, 778 (Md. Ct. Spec. App. 2002) ("Maryland follows the common law of names, that in the absence of a statute to the contrary, a person may take and use any name he wants."); Stuart v. Bd. of Supervisors, 295 A.2d 223, 226–27 (Md. 1972) (reiterating the same principle).

Massachusetts: Commonwealth v. Clark, 846 N.E.2d 765, 620, 626 (Mass. 2006) ("At common law a person may change his name at will, without resort to legal proceedings, by merely adopting another name, provided that this is done for an honest purpose.") (alteration adopted) (quoting *In re* Merolevitz, 70 N.E.2d 249, 250 (Mass. 1946)); *see also* Mass. Gen. Laws ch. 151B, § 4(15) (2018) (making it unlawful for an employer to require an employee to use any surname other than the one by which the employee is generally known).

Michigan: *In re* Warshefski, 951 N.W.2d 90, 94 (Mich. Ct. App. 2020) ("Under the common law, an individual may adopt any name he or she wishes, without resort to any court or legal proceeding, provided it is not done for fraudulent purposes."); *see also* Hommel v. Devinney, 39 Mich. 522, 524 (1878) (accepted the use of a nickname for the purposes of the transfer of land); Piotrowski v. Piotrowski, 247 N.W.2d 354, 355 (Mich. Ct. App. 1976) (supporting a divorced individual's ability to revert to their unmarried surname without interference from the court).

Minnesota: *In re* Dengler, 287 N.W.2d 637, 639 n.1 (Minn. 1979) ("It is well settled that at common law a person may change his name at will . . . by merely adopting another name . . . . In jurisdictions where this subject has been regulated by statute it has generally been held that such legislation is merely in aid of the common law and does not abrogate it.") (alterations adopted) (quoting *In re* Merolevitz, 70 N.E.2d 249, 250 (Mass. 1946)).

Mississippi: Coplin v. Woodmen of the World, 62 So. 7, 9 (Miss. 1913) ("At common law a man could change his name, in good faith, and for an honest purpose, and adopt a new one, by which he could be generally recognized."); *see also* Marshall v. Marshall, 93 So. 2d 822, 827 (Miss. 1957) ("We fully realize . . . that at common law any person of mature years can voluntarily change his name without the necessity of a statute such as we have in Mississippi, provided the change is not for a fraudulent purpose and does not interfere with the rights of others.").

Missouri: Hosmer v. Hosmer, 611 S.W.2d 32, 37–38 (Mo. Ct. App. 1980) ("[Section] 527.270, dealing with the procedure for change of name, does not abrogate and merely supplements the common law method of change of name . . . . The proudest patronymic in the land is available to the lowliest individual, and this without anyone's permission. A person may adopt what name he pleases.") (citations omitted).

Montana: Workman v. Olszewski (*In re* J.C.O.), 993 P.2d. 667, 668 (Mont. 1999) ("[A]t common law, a person could adopt any surname he might choose so long as the change was not made for fraudulent purposes.") (quoting Firman v. Firman, 610 P.2d 178, 181 (Mont. 1980)); s*ee also* MONT. CODE ANN. § 1-1-109 (adopting the common law of England).

Nebraska: Simmons v. O'Brien, 272 N.W.2d 273, 274 (Neb. 1978) ("Change of name statutes do not abrogate or supersede the common law but affirm the common law right and afford an additional method by which name change may be effected as a matter of public record."); NEB. REV. STAT. ANN. § 60a-4, 120(2) (LexisNexis 2021) (anticipating explicitly that a person might change their name with a "common law name change").

Nevada: United States v. McKay, 2 F.2d 257, 259 (D. Nev. 1924) ("Under the common law a man can change his name at will . . . he may sue and be sued by such adopted name, and will be bound by any contract into which he enters in his adopted name. This is true in the absence of a restrictive statute . . . . "). Note that a 2011 federal appellate decision did not fully reach the question but did identify a limit on the common law right in Nevada. Fayer v. Vaughn, 649 F.3d 1061, 1064 n.3 (9th Cir. 2011).

New Hampshire: Moskowitz v. Moskowitz, 385 A.2d 120, 122 (N.H. 1978) ("In the absence of statutory restrictions, one may lawfully change his name at will without resort to any legal proceedings if the change is not made for a fraudulent, criminal, or wrongful purpose.").

New Jersey: Matter of Eck, 584 A.2d 859, 860 (N.J. Super. Ct. App. Div. 1991) ("At common law, any adult or emancipated person is free to adopt any name, except for a fraudulent, criminal or other illegitimate purpose. [The name change statute] is remedial legislation establishing a method of judicial recordation of name changes. It is to be construed consistently with and not in derogation of the common law.") (cleaned up); *see also In re* Zhan, 424 N.J. Super. 231, 235 (App. Div. 2012) (same).

New Mexico: *In re* Mokiligon, 106 P.3d 584, 587 (N.M. Ct. App. 2004) (allowing a name change to "Variable"); Variable for Change of Name v. Nash, 190 P.3d 354, 356 (N.M. Ct. App. 2008) (denying another name change for the same person from the previous case who sought to change name to "Fuck Censorship!" and acknowledging that "Petitioner has a right

under the common law to assume any name that he wants so long as no fraud or misrepresentation is involved").

New York: Smith v. U.S. Cas. Co., 90 N.E. 947, 948 (N.Y. 1910) ("At common law a man can change his name in good faith and for an honest purpose, by adopting a new one and for many years transacting his business and holding himself out to his friends and acquaintances thereunder, with their acquiescence and recognition"); *see also* Matter of Jones, 49 N.Y.S.3d 300, 300–01 (N.Y. App. Div. 2017) (stating that under the common law, an individual may change their name, although the common law "assumes a freedom of action not necessarily available to a prison inmate"); Matter of Golden, 867 N.Y.S.2d 767, 768 (N.Y. App. Div. 2008) ("Both the common law and statutory procedures exist side by side supplementing each other") (cleaned up); *In re* Halligan, 361 N.Y.S.2d 458, 459 (N.Y. App. Div. 1974) ("Under the common law a person may change his or her name at will so long as there is no fraud, misrepresentation or interference with the rights of others.").

North Carolina: Hunt v. Collinsworth, 2019 N.C. App. LEXIS 110, at *2, *n.1 (N.C. Ct. App. 2019) (finding that the trial court's application of *res judicata* to a prior denial of a name change petition "would obstruct a minor child's and parents' common law rights to file a subsequent unanimous application to change the name of a minor child" and noting that "[a]t common law, a person could change one's name at will without court documents"); *see also* Santronics, Inc. v. Core Indus., 1:93CV00237, 1995 U.S. Dist. LEXIS 4137, at *34 (M.D.N.C. Feb. 24, 1995) ("[I]n North Carolina, a name can be changed through a statutory procedure or according to the common law.").

North Dakota: *In re* Mees, 465 N.W.2d 172, 174 (N.D. 1991) (Levine, J., concurring) ("Our name-change statute is not exclusive but instead supplements the common law. At common law, one has a general right to change one's name, absent a fraudulent purpose . . . .") (citations omitted); *see also In re* Dengler, 246 N.W.2d 758, 763 (N.D. 1976) (same).

Ohio: Bobo v. Jewell, 528 N.E.2d 180, 184 (Ohio 1988) ("In Ohio, names may be changed either by resorting to a judicial proceeding or by the common law method of simply adopting a new name, so long as the change is not made for fraudulent purposes."); Pierce v. Brushart, 92 N.E.2d 4, 8 (Ohio 1950) ("It is universally recognized that a person may adopt any name he may choose so long as such change is not made for fraudulent purposes."); *see also In re* H.C.W., 123 N.E.3d 1048, 1051 (Ohio Ct. App. 2019) (citing *Bobo* and *Pierce* for the propositions above, and reversing denial of a trans child's name change petition).

Oregon: Aylsworth v. Adams, 736 P.2d 225, 226 n.2 (Or. Ct. App. 1987); *see also* State v. Ford, 172 P. 802, 803 (Or. 1918) ("There is no such thing as a 'legal name' of an individual . . . . In the absence of any restrictive statute, it is the common law right of a person to change his name, or he may by general usage or habit acquire a name notwithstanding it differs from the one given him in infancy. A man's name for all practical and legal purposes is the name by which he is known and called in the community where he lives and is best known."); 37 Op. Att'y Gen. Ore. 1049, 1052 (1976) (citing *Ford* as the "general rule"); *cf.* Ouellette v. Ouellette, 420 P.2d 631, 633 (Or. 1966) (agreeing that according to common law, one may change their name at will, but stipulates that this does not necessarily apply for children).

Pennsylvania: *In re* Harris, 707 A.2d 225, 229 (Pa. Super. Ct. 1997) (Popovich, J., concurring) (joining majority decision to reverse lower court's denial of a trans woman's name change petition, observing that "[a] change of name statute is to be construed consistently with and not in derogation of the common law").

Rhode Island: Traugott v. Petit, 404 A.2d 77, 80 (R.I. 1979) ("We therefore hold that § 8-9-9 is an optional method that may be employed to change one's name" in addition to the common law method).

South Carolina: Stevenson v. Ellisor, 243 S.E.2d 445, 446 (S.C. 1978) ("Generally, a person's name is the designation by which he is known and called in the community in which he lives and is best known.") (citation omitted); Miller v. George, 9 S.E. 659, 661 (S.C. 1889) (discussing the proper name under which to sue a defendant).

South Dakota: Ogle v. Circuit Court, 227 N.W.2d 621, 624 (S.D. 1975) ("The great weight of authority recognizes that at common law one was free to change his name without legal proceedings and that statutory name change procedures do not supplant this right but aid it by the official recordation of those changes. This right is generally conditioned only on the absence of fraudulent purpose."); *see also In re* Larson, 295 N.W.2d 733, 735 (S.D. 1980) (denying an ex-husband's objection to his ex-wife's name change following the couple's divorce).

Tennessee: Dunn v. Palermo, 522 S.W.2d 679, 686–89 (Tenn. 1975) (recognizing the "common law right of any person, absent a statute to the contrary, to adopt any name by which he may become known, and by which he may transact business and execute contracts and sue or be sued") (quoting Stuart v. Bd. of Supervisors of Elections, 295 A.2d 223, 226 (Md. 1972); *see also In re* Joseph, 87 S.W.3d 513, 515 (Tenn. Ct. App. 2002) ("With two exceptions, [Tennessee's name change] statutes are not

intended to diminish an individual's right to change his or her name but rather to provide an expeditious procedure for doing so.").

Texas: Appeal of Evetts, 392 S.W.2d 781, 783 (Tex. Civ. App. 1965) ("[I]t is generally held that these statutes do not abrogate the common law rule which allows a person to change his name without resort to legal procedure. They merely provide a method for recording the change.").

Utah: *In re* Porter, 31 P.3d 519, 521 (Utah 2001) (observing that statutes like Utah's name change statute "merely provide a codified process to aid an individual's common law right to adopt another name at will," and remanding a denial of a name change petition); *In re* Cruchelow, 926 P.2d 833, 834 (Utah 1996) (allowing common law name change to "Santa Claus").

Virginia: *In re* Miller, 243 S.E.2d 464, 467 (Va. 1978) ("Under the common law, a person may adopt any name he or she wishes, provided it is not done for a fraudulent purpose or does not infringe upon the rights of others."); *see also In re* Elliott, 100 Va. Cir. 288, 291 (Va. Cir. Ct. 2018) (reasoning that a name change was granted because it was not sought for a fraudulent purpose and would not infringe upon the rights of others).

Washington: State v. Lutes, 230 P.2d 786, 789 (Wash. 1951) ("[A] person can change his name or adopt any name he may desire, provided the same is done for an honest purpose."); *see also* WASH. REV. CODE § 4.04.010 (mandating that the common law was controlling in all circumstances except where it conflicted with the laws of the United States or of the state of Washington).

West Virginia: *In re* Harris, 236 S.E.2d 426, 430 (W. Va. 1977) (Harshbarger, J., concurring).

Wisconsin: State v. Hansford, 580 N.W.2d 171, 173 (Wis. 1998) ("[F]or purposes of clarifying Wisconsin's common law, we further conclude that Wisconsin does recognize a common law right to change one's name through consistent and continuous use, as long as the change is not effected for a fraudulent purpose."); Kruzel v. Podell, 226 N.W.2d 458, 464 (Wis. 1975); *see also* State v. Smith, 770 N.W.2d 779, 782 (Wis. Ct. App. 2009) (recognizing the common law right to change one's name through consistent and continuous use); Frank v. Walker, 196 F. Supp. 3d 893, 908 (E.D. Wis. 2016) ("Under Wisconsin common law, if the person has consistently and continuously used the name, then the name is considered to have been legally changed even though no formal procedure was used."), *rev'd on other grounds,* 768 F.3d 744 (7th Cir. 2014).