Response to Chapter 2

Legal Parenthood and Birth Registration: Time to Respond to Diversity in Family Formation?

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I. Introduction

Birth registration may seem like a mundane administrative procedure. Routine and, for many, unremarkable. Yet, like childbirth itself, and as the authors of this law reform proposal explain, birth registration is simultaneously vitally personal and deeply political. It is a compulsory state procedure for births in the United Kingdom (UK), with official integration into the country typically necessitating birth-registration documentation from elsewhere. Birth registration is therefore singular in this collection of law-reform proposals for its universal relevance. Birth registration is also the first step in establishing a person's identity for various legal and administrative processes; ones that facilitate access to essential state and societal infrastructure (eg, identity documentation, public healthcare and education, access to social security entitlements, immigration procedures). Given this coercive power, combined with the fact that birth registration records personal details in a publicly accessible register, it is crucial that the birth-registration system is fit for purpose and serves the needs of contemporary society. As scholars of civil registration have observed, registration systems only operate effectively when the populace buys into them due to a mutual exchange with the state, that is formal state recognition in return for legal entitlements and benefits.[1] That the birth-registration system is coming under increasing challenges from the population, including legal challenges, should be concerning to the Government. Birth registration is therefore a highly important issue to have included in this law-reform collection.

[1] K Breckenridge and S Szreter, 'Editors' Introduction: Recognition and Registration: The Infrastructure of Personhood in World History' in K Breckenridge and S Szreter (eds), *Registration and Recognition: Documenting the Person in World History* (Oxford, Oxford University Press, 2012) 1.

There is much to learn from Craig Lind, Philip Bremner and Maria Moscati's proposal. Each time I think about it, another lightbulb flickers. Most of my lightbulbs have been about the supplementary register, but I start my response by discussing the core register dimension of the proposal, then by offering some general observations about conducting a law-reform project on birth registration.

II. The Core Register – Gender, Space and Time

As the authors note, civil birth registration was legally introduced in England and Wales in the early Victorian era, replacing the system of parish registers for the religious rite of baptisms introduced in the Tudor era.[2] A primary driver for both systems was to have a clear record of kinship ties for property rights, inheritance and succession.[3] The authors' proposal does not disrupt this centuries-old function of the birth register and its entanglement with private property rights or hereditary titles. What it does disrupt is the recording of a child's sex/gender,[4] and that of the child's parent(s). When parish registers and civil birth registration were introduced, whether you were someone's son or daughter mattered for these rights, just as it mattered whether someone was a woman or a man for marriage law (more on this below). The state therefore arguably had a legitimate interest in recording this information in a publicly accessible register.

Society has since moved on from a legal preference for male primogeniture for property rights, and even in terms of succession to the British Crown.[5] Male primogeniture endures only for the majority of the 805 hereditary titles and peerages in the UK, including the 92 hereditary peers elected – by their peers – to currently sit in the House of Lords, all of whom are male.[6] Hereditary titles and peerages seem like a minor issue in the grand scheme of things, and most of us may wonder why they are not yet abolished, or at least the sexism of their inheritance rules changed.[7] I am also not suggesting that the state's interest in knowing

[2] R Probert, 'Recording Births: From the Reformation to the Welfare Reform Act' in F Ebtehaj et al (eds), *Birth Rites and Rights* (Oxford, Hart Publishing, 2011) 171.

[3] E Higgs, 'A cuckoo in the nest? The origins of civil registration and state medical statistics in England and Wales' (1996) 11(1) *Continuity and Change* 115.

[4] English law is inconsistent in its use of the terms 'sex' and 'gender'. Furthermore, contestation about the meaning of each term can make their use challenging. I have deliberately used 'sex/gender' because I regard gendered and hierarchical social and institutional processes as interacting with, and giving meaning to, the embodied characteristic traditionally understood as sex. The '/' therefore represents an iterative, rather than a binary, relationship between sex as biology (and fixed) and gender as identity (and flexible).

[5] Succession to the Crown Act 2013.

[6] House of Lords Act 1999.

[7] As well as the sexism of their inheritance rules, hereditary titles and peerages continue to cut against wider developments in family law, as inheritance is not possible in the context of 'illegitimacy', adoption, assisted reproduction and transgender children. See further G Black and SC Agnew, 'The significance of status and genetics in succession to titles, honours, dignities and coats of arms: Making the case for reform' (2018) 77(2) *Cambridge Law Journal* 321.

the sex/gender of the children of hereditary peers should drive policy considerations for the populace at large when it comes to birth-registration reform. However, I wonder if reform of the birth-registration system will be a bit like reform to hereditary peerages, where even quite sensible suggestions fail to gain political traction or disrupt emotional attachments (with the latter being a publicly acceptable presentation of attachments to privilege and power). The Future of Legal Gender Project (FLaG), cited by the authors, demonstrates the emotionally charged terrain that sex/gender and its official recognition and regulation hold in the current milieu.[8] As with proposed reforms to hereditary peerages, the FLaG Project's prefigurative endeavour of decertifying legal gender foregrounded politically charged questions of power, over which there is significant, and increasingly polarised, public disagreement.[9]

Consequently, while the authors' case for why gendered nomenclature should be removed from the core birth register may seem perfectly sound to many, their argument, or that of any future Law Commission project, may not be 'heard' rationally. Of course, just because a reform task may be difficult does not mean it should not be pursued. However, it does raise strategic issues for approaching a law-reform project on birth registration. Although societal transformations relating to sex/gender, family diversity and reproductive science have prompted the most direct challenges to birth registration, and specifically the information recorded,[10] a wider focus for a law-reform project may be preferable – and indeed desirable. The birth-registration system raises important, if rarely discussed, issues of space and time, and how they relate to the construction of personal and collective identity. For example, Jess Smith's recent study develops movement as a

[8] D Cooper et al, *Abolishing legal sex status: The challenge and consequences of gender related law reform. Future of Legal Gender Project: Final Report* (London, King's College London, 2022); and D Cooper, 'A Very Binary Drama: The Conceptual Struggle for Gender's Future' (2019) 9(1) *Feminists@law*.

[9] E Peel and H Newman, '"I Don't Think That's Something I've Ever Thought About Really Before": A Thematic Discursive Analysis of Lay People's Talk about Legal Gender' (2023) 31(1) *Feminist Legal Studies* 121; E Peel and H Newman, 'Gender's Wider Stakes: Lay Attitudes to Legal Gender Reform' (2020) 10(2*) feminists@law*.

[10] There are too many cases to cite in full, and no academic article that analyses the full breadth of challenges to the birth-registration system. In the interests of space, I provide only a small and illustrative sample of recent cases to support the claim. In relation to transgender parenthood, see, eg, *R (on the application of JK) v Registrar General for England and Wales* [2015] EWHC 990 (Admin); *R (McConnell and YY) v Registrar General and Secretary of State for Health and Social Care and Others* [2019] EWHC 2384 (Fam); and *R (on application of McConnell) v Registrar General* [2020] EWCA Civ 559. In relation to female same-sex parenthood, see recent cases, eg, *Osborne v Arnold* [2022] EWHC 1982; *Ms A v Ms J and others* [2022] NICA 3; *A v Bourn Hall Clinic* [2021] EWHC 1750 (Fam); and *M v W* [2019] EWHC 648 (Fam). In relation to re-registering a birth with the biological father's details or changing an original birth certificate to include the biological father's details, see, eg, *X v Y* [2022] EWFC 77; *Aylward Davies v Chesterman* [2022] EWFC 4; *Re L (Declaration of Parentage)* [2022] EWFC 38. There have also been numerous cases involving surrogacy arrangements, as well as a significant series of cases whereby the correct consent forms had not been completed in fertility clinics, with parents required to apply for Declarations of Parentage to enable proper birth registration.

socio-legal method to illustrate the places and spatial imaginaries of registration.[11] In doing so, she investigates much more than the places that are recorded on a birth certificate – for example, the registration district, the place of the child's birth and that of their parent(s), and the mother's usual address – but also evolving relationships between the religious and secular, and the community dynamics of where birth registration takes place. Registration may seem, essentially, to be a process of making lists. It is perhaps therefore instinctive to focus on the textual and what is recorded in the register and certificates. Yet what would happen if our law-reform gaze was broadened, as encouraged by Smith's methodology? What if we focused not so much on core information gathering – although delineating that would be an important part of a wider process – but on the wider role of registration in generating civil society, community, nation and, ultimately, belonging and inclusion/exclusion?

Concerning time, is the six weeks for registering a birth still the right amount of time? Or, more fundamentally, does a 'fixed' and 'snapshot' record of a person's birth and the legal relationships thereof still serve the needs of the state and its citizenry? Would a continually emerging register be more relevant and useful, and how could developments in digital and other technology help to enact this? How does, could or should the birth-registration system interact with the array of other state databases, importantly NHS records?

Taking this wider focus would take the singular emphasis off sex/gender and help shift the law reform lens from looking primarily *backwards* to challenges that have already happened to thinking also about *future-orientated* goals for a birth-registration system. It encourages us to consider what contemporary needs have surfaced for the birth-registration system, and whether we still need it to help us avoid – in the words of Thomas Cromwell – 'sundry strifes, processes, and contentions' relating to age, lineage and property rights.[12] Can this information be gleaned with relative certainty from elsewhere, so that the priorities and justification for the birth registration are otherwise focused? Approaching a birth-registration law-reform project in this way prioritises and expands on the important argument of the authors' proposal, that there needs to be a first-instance consideration of the legitimate interests that a birth registration serves. Only once those interests are clarified can the information to be collected be determined and justified.

The authors' proposal also made me ponder the relationship between law and registration. Despite an oft-cited comment in the Warnock Report that the birth register has 'always been envisaged as a true genetic record',[13] it is commonly

[11] J Smith, *Law, Registration, and the State: Making Identities through Space, Place, and Movement* (London, Routledge, 2023).

[12] Cited in Higgs (n 3) 121.

[13] Her Majesty's Stationery Office (HMSO), *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (London, Department of Health & Social Security, HMSO, 1984) para 4.25.

accepted that the birth register records a child's legal parents.[14] However, birth registration in and of itself does not confer parental legal status. That is regulated by a mix of common law presumptions and legislative provisions. Rather, birth registration creates an official record of that legal status – an easily identifiable mechanism for avoiding contestations over a child's legal kin – and it is an offence to register someone as the legal parent of a child when that is not the case.[15] As well as removing the gendered nomenclature of parents, the authors argue that the birth-registration rules should be changed to permit the recording of more than two parents. While I do not disagree with this, it is important to acknowledge that it is not just the birth registration rules that need to change but the general law relating to parental legal status.[16] This example highlights the interplay between law and registration, whereby legal change may be needed elsewhere to make legal reform of the birth-registration system meaningful. The interplay is also further complicated by the fact that joint birth registration *does* confer parental responsibility under the Children Act 1989 (CA 1989) for legal parents who are not married or in a civil partnership with the child's legal mother.[17] Taking Smith's research approach, this demonstrates an evolving role for the birth-registration system, whereby it does not just *record* legally relevant information but also *enacts* it. Likewise, on every birth certificate the following warning appears: 'A CERTIFICATE IS NOT EVIDENCE OF IDENTITY'. Yet I am routinely asked for my children's birth certificates to prove their identity for access to various entitlements and social goods.[18] Do we therefore need to carefully evaluate how we understand birth registration and what we do with birth certificates? This seems a necessary step in helping us reconsider what birth registration actually *is*, and its relationship with contemporary law and legal processes more widely.

My closing point about the core register relates to gender. Controversial as the idea might prove, the authors' argument that gendered nomenclature be removed from the core register, on the basis that the state has no legitimate interest in knowing this information, seems stronger for parents than for the child being registered. As Alan Brown has shown, the substance of parental legal status is the same whether someone is a mother, father or parent.[19] How a person acquires legal status might differ, depending on their reproductive capacity, the mode of conception and a

[14] See further J McCandless, 'Reforming birth registration law in England and Wales?' (2017) 4 *Reproductive Biomedicine & Society Online* 52; and E Higgs, 'UK birth registration and its present discontents' (2018) 5 *Reproductive BioMedicine & Society Online* 35.

[15] Perjury Act 1911, s 4.

[16] The authors do seem to recognise this implicitly in their suggested 'Registering Parents' consultation questions in section IV.B of ch 2. However, this recognition seems to have fallen away in the recommendations in section VI of ch 2.

[17] CA 1989, ss 4 and 4ZA.

[18] This has included: confirming my spouses' entitlement to shared parental leave from employment, securing nursery places, accessing government-funded free hours for nursery provision, setting up tax-free childcare accounts, applying for passports and securing school places.

[19] A Brown, 'Trans (legal) parenthood and the gender of legal parenthood' [2023] *Legal Studies (Society of Legal Scholars)* 1.

person's sex/gender;[20] but once they are over the 'status threshold', to be a legal mother, a legal father or a legal parent is, in substantive legal terms, the same thing. The introduction of same-sex marriage and opposite-sex civil partnerships might encourage us, as it has the authors, toward a similar argument in terms of quelling the state's legitimate interest in knowing a child's sex/gender. However, there remain differences relating to, for example, consummation requirements for a valid opposite-sex marriage,[21] as well as exemptions for religious institutions as regards conducting same-sex marriage ceremonies.[22] This means that a person's sex/gender is not entirely irrelevant in this context and that the state's interest in knowing may still be pertinent. I would therefore frame the issue differently and encourage any reform process to establish why it is the publicly available birth register that the state should look to for this information.

III. Framing a Birth-Registration Law-Reform Project

What I wish to say here has, in part, been pre-empted by the preceding section, that is, that in devising a law-reform project, I would prioritise and expand the authors' recommendation for a first-instance consideration of the needs and legitimate interests that the birth-registration system should serve. In this section, I offer some further musings on approaching this task.

As a (self-confessed) birth-registration nerd, it is always tempting for me to agree with asking lots of questions about birth registration. As a researcher, I found myself nodding approvingly at the two lists suggested by the authors as the types of questions a future Law Commission consultation could ask participants. Even so, I then started to feel overwhelmed at the sheer range of responses that such questions might elicit, and wondered how useful the responses would be in determining the priorities for reform of the birth-registration system. It felt a bit like the 'feedback' question on student-teaching evaluation surveys, whereby, even when there is extensive marking guidance and feedback, students still seek more. Yet providing more guidance and feedback elicits precisely the same response the following year (along with the complaint that there is too much guidance and feedback to read). In an epoch of information, our instinct is often that more information = good (open, transparent, empowering); less information = bad (closed, opaque, disempowering).[23] Birth registration, and in particular the information that should be recorded, is an issue about which everyone can have instinctive views.

[20] In the context of assisted reproduction, see esp J McCandless and S Sheldon, 'The Human Fertilisation and Embryology Act (2008) and the Tenacity of the Sexual Family Form' (2010) 73(2) *Modern Law Review* 175.

[21] Matrimonial Causes Act 1973, s 12.

[22] Marriage (Same Sex) Couples Act 2013, s 2.

[23] For critical commentary on this issue see: Z Smith, *Feel Free: Essays* (London, Penguin Books, 2019), esp 'Generation Why?'.

Emotions can also run very high, with people's personal experience, pain and sometimes grief informing their views. Often, personal experience is incredibly important for informing policy and legal change. However, we also need a way to filter this likely vast array of personal views and experiences into useful policy goals for reforming a birth-registration system that needs to serve the mutual interests of the state and the populace.

The authors' proposal certainly recognises this and makes clear that, just because people are curious about information, this does not mean there is a legitimate interest in the state's access to and storage of that information, whether for public or private purposes (ie, the core and supplementary registers). Yet, at the same time, they suggest asking questions about whether information that has never been recorded on UK birth certificates should be (eg, 'race',[24] disabilities, weight, length or eye colour). They also suggest a series of questions about what parental and procreation information, other than parental legal status, should be recorded. The tendency to 'cover all bases' in these questions distracts from what I took to be the more probing impetus behind the questions, such as teasing out *who* respondents thought the legal parents were in particular circumstances or *why* some information was more suited to the birth register rather than a child's medical record. Either way, it seems preferable that, if a law-reform consultation was going to involve a series of questions to which respondents submit written answers, these questions should be focused on the first-instance exercise of ascertaining the collective needs and legitimate interests that a contemporary birth system should serve, rather than on the nitty-gritty of the information recorded. Focusing on the latter before the former has been established seems to be putting the proverbial cart before the horse.

The authors' proposal also assumes, not unreasonably, that a future Law Commission project would take the form of an open, written consultation, whereby the Law Commission would ask questions, participants would respond, and the Law Commission would analyse responses, integrate this analysis with their wider research, then make recommendations.[25] However, is this the best way to proceed for such a singularly universal issue like birth registration? Lengthy, paper-based consultations can be stifling. The last Law Commission consultation that I engaged with – on surrogacy law[26] – asked over 100 questions and proposed a Draft Bill with a similar number of provisions; yet no commentator seems particularly happy with the result, despite widespread support for surrogacy law reform. I give this example not just to grumble about having too many

[24] 'Race' and other markers of difference have of course been recorded in birth and civil registers elsewhere, including in British-administered colonial registries. The inclusion of 'race' and other markers of difference were typically for exclusionary purposes. See, eg, SJ Pearson, 'Birth Registration and the Administration of White Supremacy' (2022) 5(2) *Modern American History* 117.

[25] C Jones, 'Exploring the Routes from Consultation to (In)forming Public Policy' in M Freeman (ed), *Law and Bioethics: Current Legal Issues* (Oxford, Oxford University Press, 2008) 257.

[26] Law Commission, 'Surrogacy: Current project status' (2023) at www.lawcom.gov.uk/project/surrogacy/.

consultation questions to answer and new legislative provisions to read, but to raise the more serious point about how law-reform projects are conducted by the Law Commission. Question-focused, online consultations can certainly be useful, as can private- and public-focused meetings and discussions. However, are detailed questions the best way to test people's intuitions or knowledge about what the birth-registration system does, or should do, in society? Might other methods encourage participants to work through the reasoning and logic of their intuitions, and to perhaps reflect on those initial responses, or why they think X or Y? What about wider academic analyses of registration, as well as comparative experiences? Do we need to understand the life course or biography of a birth certificate to fully appreciate how birth records are being used in contemporary society? Do we know who – other than family historians – accesses the public register and why? Importantly, given the role of birth registration in constructing wider identities and facilitating access to legal and administrative entitlements, who is excluded from birth registration and why? Foregrounding these types of questions may ultimately be more useful and revealing than asking about the specifics of what should be recorded, whether in the proposed core register or the supplementary register. Ultimately, might we need to imagine what things would be like *without* a birth-registration system, to fully figure out what is important about it?[27]

IV. The Supplementary Register – Recording Information and the Legal Imaginary

In this section, I return to my point about the relationship between law and registration. The authors' recommendation for a core register and a supplementary register is interesting. While the former register would be publicly available, the latter would be held by the state in a stewardship role, and accessible only by those with a legal interest in the information, namely the person whose birth is registered. The keeping and accessing of the supplementary register are meant to protect the legal interests of individual citizens – rights relating to privacy and legal rights to know information about their birth. During the parliamentary passage of what would become the Human Fertilisation and Embryology Act 2008, the issue of the annotation of birth certificates to record donor conception was heavily debated.[28] A few years prior to these debates, regulations had created a registry of gamete donors, administered by the Human Fertilisation and Embryology Authority.[29]

[27] On such a prefigurative law reform methodology, see esp D Cooper, 'Crafting Prefigurative Law in Turbulent Times: Decertification, DIY Law Reform, and the Dilemmas of Feminist Prototyping' (2023) 31(1) *Feminist Legal Studies* 17.

[28] See further C Jones et al, 'The Role of Birth Certificates in Relation to Access to Biographical and Genetic History in Donor Conception' (2009) 17(2) *The International Journal of Children's Rights* 207.

[29] Disclosure of Donor Information Regulations 2004 (SI 2004/1511).

For donor-conceived births from April 2005 onwards, once a donor-conceived person reached the age of 18, they could now request identifying information about their gamete donor(s). The problem, as some saw it, was that this legal right of the donor-conceived person was contingent on the knowledge of the person that they were donor-conceived, which, in heterosexual families, was not always the case.[30] Annotating birth certificates was effectively discussed as a way of mandating disclosure of donor conception. While, ultimately, the consensus reached amongst parliamentarians was that annotating birth certificates would be too great an interference with privacy rights, academics have continued to argue for some form of annotation.[31]

The authors' recommendation may seem to emerge from these debates, but their proffered rationale is different. They point to the legal right to know information about your genetic progenitors, as well as a likely legal right to identifying information about the person who gave birth to you.[32] They then argue that the birth-registration system, rather than separate registries maintained by specialised regulatory bodies, is the most administratively efficient and easily accessible place for this information to be stored by the state, on behalf of citizens. On the surface this seems very persuasive, but I would like to respond with three provocations.

First, there is the question of whether state registries are the best place for this information. The growth of direct-to-consumer genetic testing, combined with informal and peer-instigated donor registries, has led to transformations in the ability of those involved in donor conception to make connections.[33] There is also emerging evidence that donor-conceived persons – or, indeed, their parents when they are still young children – are as interested in, for example, connecting with donor siblings as they are with gamete donors themselves.[34] These developments raise questions about the extent of information that is recorded in a state registry and how quickly that would be deemed either irrelevant or inadequate. These complaints could also be levied at current official registers, but they can perhaps be changed with greater ease than state-administered civil registration procedures.

Second, and I have written about this previously, when we record information in the birth-registration system, it can give that information an official, or potentially legal, gravitas that may not have been intended.[35] For example, recording

[30] P Nordqvist and C Smart, *Relative Strangers: Family Life, Genes and Donor Conception* (Basingstoke, Palgrave Macmillan, 2014).

[31] See the proposals in Jones et al (n 28). See also: M Crawshaw et al, 'Can the UK's birth registration system better serve the interests of those born following collaborative assisted reproduction?' (2017) 4 *Reproductive Biomedicine & Society Online* 1.

[32] Referring to *R (McConnell and YY) v Registrar General and Secretary Of State For Health And Social Care And Others* [2019] EWHC 2384 (Fam); *R (on application of McConnell) v Registrar General* [2020] EWCA Civ 559 and adoption law. See ch 2, n 52.

[33] L Gilman et al, 'Direct-to-consumer genetic testing and the changing landscape of gamete donor conception: key issues for practitioners and stakeholders' (2024) 48(1) *Reproductive BioMedicine Online*.

[34] ibid.

[35] See McCandless (n 14).

whether a child was a 'boy' or a 'girl' has now come to be understood as meaning that people have a legal gender. This 'legalising' process is likely because the very origin of the birth-registration system was as a record of information and relations for legal purposes. It would be culturally quite a shift to record information about people intimately involved in a child's conception and birth, and for that not to eventuate as part of the legal imaginary. The authors have been careful to draw distinctions between their two registers. However, I think it is a suggestion that we would need to carefully prototype.[36] This would be to see how the wider populace understands the distinctions between the two registers and the potential coalescing of legal status with registration, even if that is restricted to the supplementary register. I also wonder if the recording of other suggested information, such as the parent's gender, or the child's sex/gender at birth, will simply serve to enact a legal right to this information. This would then re-entrench the coercive insistence on registering sex/gender in the current birth register, against which the authors have argued.

Third – and this is perhaps the most crucial provocation – the authors refer to the 'rights of citizens'. Not everybody whose birth is registered in the UK will be a British citizen. Similarly, not all of those who access donor conception through licensed fertility clinics in the UK will be British citizens, meaning that the state birth register is not necessarily the most obvious or administratively efficient place to store that information. Like the idea about imagining society without birth registration to figure out why we need it, looking at who is excluded and why could help us figure out the reach of legal rights and the entitlements that it can protect.

V. Conclusion

It is easy to see the birth-registration system as static and undynamic.[37] Records today do not look that different from the civil registration records introduced by the Births, Deaths and Marriage Act 1836. Some might say that means the system has simply stood the test of time and that vital events are not that different today from those of hundreds, or indeed thousands, of years ago. Yet the system is coming under increasing pressure, with individuals prepared to take legal challenges against what they regard as unfair rules. This is a problem, as the success of civil birth registration rests on the voluntary uptake and support of the population.

[36] See Cooper (n 27).

[37] I am guilty of this view, see J McCandless, 'The Changing Form of Birth Registration' in Ebtehaj et al (eds) (n 2) 187. I am grateful to Jess Smith and her generative work on registration, which has helped me rethink things. See Smith (n 11) and the collection of articles co-edited with Sara Keenan: J Smith and S Keenan, 'Registering the Everyday: Documents, Bureaucracy, and the Socio-Legal' (2023) 32(5) *Social & Legal Studies* 659. Sara Keenan's work on land registration and belonging has also been highly generative: S Keenan, 'From historical chains to derivative futures: Title registries as Time Machines' (2018) 20(3) *Social & Cultural Geography* 283.

In other words, a mutuality of recognition between the state and the population. The authors' proposal responds directly to the family-diversity and identity-based concerns and conflicts that have underpinned these legal challenges.[38] In my response, I hope that I have built on their adept reasoning and carefully constructed suggestions, in part by enlarging their first-instance consideration about why we have the birth-registration system and offering some wider questions to ask. I have also cautioned against the split between the core and supplementary registers, by arguing that the public/private delineation between the two registers may be difficult to maintain.

This argument is not completely without foundation, given that short birth certificates, introduced in 1947 to help ensure privacy for the increasing number of illegitimate births after the Second World War, have been rendered moot since shortly after my birth in the early 1980s.[39] A long birth certificate is typically now required for official administrative purposes, forcing people to share the full information on their birth certificate. Maybe it is the case that legal and bureaucratic processes other than birth registration are what need to be reformed.[40] Conversely, despite the abolition of the concept of illegitimacy in English law,[41] we still have the socially obsolete legal possibility to re-register a birth – as legitimate! – when parents get married after the birth of their child.[42] That this legal possibility has still not been revoked indicates that reform of birth-registration law is long overdue. However, what these examples tell us is that the problem was as much with the law – that is the concept of legitimacy – as with the birth-registration system. Reforming the birth-registration system will also necessitate a wider review of stigmatising, unequal and exclusionary law not just in the context of family law, but also in the contexts of social security, property and immigration. Moreover, that is before we get to hereditary titles, their strange inheritance rules and their power to evoke exemptions to progressive legal changes.[43] Reforming the birth-registration system will not be an easy task, but it is certainly a task worth thinking about in as imaginative a way as possible.

[38] See case references in n 10.

[39] See further McCandless (n 37).

[40] See also L Davis, 'The Evolution of Birth Registration in England and Wales and its Place in Contemporary Law & Society (2023) 87(2) *Modern Law Review* 245.

[41] Legitimacy Act 1976; Law Commission, *Family Law, Review of Child Law, Guardianship and Custody* (Law Com No 172, 1988); CA 1989.

[42] Births and Deaths Registration Act 1953, s 14.

[43] Black and Agnew (n 7).