

## Parentage, Identity and DNA

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Sean Hannon Williams, *DNA Dilemmas*, \_\_ **Yale L. & Pol'y Rev.** \_\_ (forthcoming 2022), available at [SSRN](#).

The expansion of direct-to-consumer DNA tests and databases that retain vast DNA data enables almost unlimited access to genetic information and leads to situations in which people make surprising discoveries about their genetic origins. Sometimes people learn that a person who is identified on their birth certificate as their parent is not their genetic parent. Occasionally, people faced with such findings want the law to take account of this discovery, *inter alia* by amending their birth certificates. In *DNA Dilemmas*, Sean Hannon Williams uses such cases as a basis to kick off a provocative intellectual journey into the meaning of legal parentage and the relationship between self-identity and state recognition, and he offers fresh insights on these issues with broad implications for further research.

Williams first offers a new conceptual framework for post-majority parentage. Existing family law doctrines are largely focused on the parent-child relationship when the child is a minor, and in this context, the meaning of legal parentage is one of the most debated topics in legal scholarship today. Williams exhorts the law to recognize parentage beyond a child's minority as a significant and distinct legal category that is grounded in different normative justifications and thus should be governed by different rules from those that apply during a child's minority. Williams's argument in this regard is powerful, since for all that the law focuses on parentage during the child's minority, the reality is that the parent-child relationship generally lasts much longer after the child reaches adulthood than it does during the child's minority.

During minority, parentage is governed by general rules that are intended to serve children's interests, but that do not give children a voice in deciding who their legal parents are (and rightly so). Williams argues not only that parentage is meaningful after children reach adulthood, but also that each adult child should have a say in who his or her parents are, and the weight, if any, that genetics, functional parenting, or other factors play in this regard. This privatization of parentage post-majority is one of the most provocative arguments that Williams makes. It intends to challenge the state's monopoly on deciding parentage and to "[open] up a space to contest and shape what it means to be a parent." (P. 45.)

In justifying his challenge to the state's monopoly, Williams argues powerfully that any interest the state has in either deciding parentage or controlling the information contained in the birth certificate fades away after the child becomes an adult. The state's compelling interest in identifying who is responsible for a minor child's emotional and financial stability justifies clear rules that define parentage and set limits on the ability to challenge or change it. According to Williams, none of these interests justifies regulating parentage after the child becomes an adult. Williams argues that the only relevant interests after the child reaches the age of majority are those of parties involved: the adult child, the existing legal parent(s), and the potential new parent(s).

Though he challenges the state's monopoly on defining parentage, Williams acknowledges the complex interactions between the state and the individuals involved, as well as the significant role the state plays in the process of constructing self-identity. Legal recognition of self-identity has been the subject

of rich legal scholarship, including with respect to the law's treatment of intimate partnerships (recognition through marriage), its recognition of one's gender, and its regulation of parentage through actions (by parents) to claim or disclaim parental rights vis-à-vis minor children. Williams argues convincingly that because our parents are a meaningful part of our self-identity, the ability to define our parentage should create a basis for legal claims children may bring to authenticate, and thus to vindicate, their self-identities through state recognition.

In the end, Williams translates his rich theoretical analysis into a concrete proposal for reform, targeting amendments to birth certificates. In the U.S. today, birth certificates are the primary official record of one's identity; they list one's name, gender and parentage. Williams sets aside comprehensive reforms, such as those that would create new and separate official parentage documentation or change existing birth certificates to include multiple categories of parentage. Instead, Williams focuses on what he perceives to be a politically feasible targeted reform: "eliminating statutes of limitation for paternity suits brought by the child herself after she becomes an adult" and creating a consent-based regime that would allow changes to parentage registration at least when all parties agree (the adult child, the registered legal parents, and the potential new parents).

Thus, though discoveries about genetic origins are the starting point for William's analysis, his proposal goes beyond merely eliminating statutes of limitations to enable children to amend the identity of their "true" genetic parents. Williams offers an elective parentage regime as a response to concerns about genetic essentialism that may arise if his proposal were confined to instances involving genetic surprises about parentage.

Williams then addresses challenges his proposal might trigger. First, he considers possible unanticipated collateral implications for legal doctrines that use parentage as a foundation for rights or obligations. Williams' motivation for allowing adult children to modify their own parentage is grounded in these individuals' identity interests, rather than in any specific legal consequence. Therefore, he leaves detailed legal solutions to potential "ripple effects" to amendments in legal parentage to be designed over time. He does endorse a contextual view of parentage, however, so a "parent" for one purpose (e.g., birth certificate) might not be a parent for another purpose (e.g., inheritance or immigration). Williams then discusses other dilemmas that may arise when not all parties agree to the change in parentage, or when amendments are sought after the death of an existing parent or a potential new legal parent.

I do not agree with all of the specific resolutions Williams endorses. For example, I would hesitate to allow an adult child to delete a legal parent who actually functioned as such. Though it is laudable to empower children in the parent-child relationship, I find it problematic to allow the will of the adult child to prevail in all cases of disagreement (though I confess it may be the parent in me that resists this suggestion). I am wary of a contextual approach to legal parentage (even post-majority parentage) and its potential to erode legal parentage. I also would not wholeheartedly endorse an atomistic vision of an autonomous-self and would pause before allowing people to be legally parentless, even when they are adults.

But these disagreements only underscore the value and contribution of *DNA Dilemmas* as a bold example of scholarship that goes beyond criticism and lays out a concrete normative proposal for reform. It sheds new and refreshing light on debates in existing scholarship on parentage and on the complex relationship between identity and state recognition, and it forces us to revisit and rethink normative conventions on these issues.

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