

JOSEPHINE BAIRD

Trans/National Queer Parenting

Or, How We Conceived, Birthed, and Parent a Child across Hetero- and Cis-Normative National, Legal, and Social Lines

ABSTRACT

This essay uses my own autobiographical narrative as an example of queer family formation theory in practice to chart the process by which our child was conceived and born in a country where, at the time, such an occurrence was a legal impossibility. The story of our child's birth begins with my own gender transition across national lines from the U.K. to Sweden, and how I managed to use a legal loophole to register as female in Sweden as a trans woman without having to undergo sterilization, which was the law at the time. I discuss queer family and kinship formation, the issues arising from multi-queer parent family dynamics, trans-parenting and transnational legal navigation in conception, adoption policies as they relate to heteronormative biases in child lineage and registration and the impacts of legal divorce and non-monogamy in social and legal definitions in a Swedish and international context.

Keywords: queer kinship, queer family formation, queer family law, trans lesbian parenting, non-monogamy law, trans sterilization law

WHEN OFFICIALLY REGISTERING as parents to our newly born child in 2012 in Stockholm, Sweden, I found myself feeling sorry for the poor person who was trying to figure out which forms to have us fill out. In the end she excused herself and my then wife and I had to wait quite

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some time before she came back with three separate sets of papers and said: “Okay, these are for heterosexual married couples registering their child, these are for unmarried heterosexual couples, and these are for married lesbians.” She went on to suggest: “We will fill in all three, put them in an envelope together, send them in and they will pick whichever one they think fits best.” I describe this process with the kind, but flummoxed registrar as part of the cultural and legal gymnastics we had to do to achieve even the most basic familial legal recognition. It has been my experience that LGBTQ people often have to go to exceptional lengths to achieve what would otherwise seem to be the most rudimentary things, be it going to the toilet, getting a job, keeping and creating a family. Like a parkour runner, we have to jump over, squeeze between, and tumble under every legislative, cultural, and discursive obstacle that is put in our way to achieve that which more culturally normative people seem to do almost without thinking.

I have described the incident above on panels, at lobbying events and even to members of parliament. I tell the story like a joke, to demonstrate the absurdity of it all. A trans woman and her partner that have a child they conceived together have confused the system so thoroughly there was a break down in bureaucracy at every step of the way, including the simple act of confirming that they were in fact the child’s parents. It is not funny, however. It was deadly serious. I was terrified what might happen if my wife at the time were to die in an accident of some kind, prior to the government figuring out whether or not I was the parent to my own child. The legal and cultural limbo we were living in caused profound anxiety. And yet, that very limbo was also the only way we were able to have our child in the first place.

In this essay I offer an account of my personal navigation of legal systems of two separate countries, EU policy regarding freedom of movement and the EU Bill of Human Rights in order to simply live as the woman I am, marry, and have a child. I present it here as something of a case study in queer family creation across ever shifting national, legal, and social boundaries. It is in a way queer theory in practice as I transitioned across gender, nation states, cultural norms, and family configurations.

To begin with I will do something I rarely do, which is to talk about my body. I am not keen or interested to do this in part because trans people are subject to almost constant scrutiny in terms of our physical anatomy but also because I grew up in a quite prudish culture and frankly it makes me blush. I will however eschew my sensibilities to say in brief that I lived for many years as a non-operative trans woman. When I came out in 2001 the process that trans people had to undergo in order to access medical transition services was unacceptable to me. I had no intention of meeting the diagnostic criteria that would have required presenting myself as a heterosexual woman who desperately wanted to be “normal” and hide within society. At the time in London (as it was in Sweden and elsewhere, and continues to be in many places), the criteria for the “diagnosis” of trans people as having “gender dysphoria” and therefore being validated for treatment were based on outdated, heterosexist, and highly problematic standards. There are excellent accounts of this in a number of texts on trans experience and the history of the medicalization of transition by Sandy Stone (1991), Julia Serano (2007), Susan Stryker (2017), and Stuart Lorimer (2018), amongst many others. They describe the ways in which standards of trans medicalization and definition (and pathologization) were effectively established in 1966 by Harry Benjamin in his book, *The Transsexual Phenomenon*. I summarize it myself in a previous article for *lambda nordica* (Krieg 2013b). In short, in her introduction of the reprinting of Christine Jorgensen’s autobiography, first published in 1967, Stryker (2000) convincingly argues that Benjamin created his diagnostic criteria in an academically, socially, and politically hostile environment. In order to justify hormonal and surgical treatments for trans people in this context, he had to present trans people as normative, heterosexual, and traditionally gendered. His approach was successful, but this led to the cementing of these criteria in nearly all subsequent clinical care afforded to trans people. As such, even in 2001, I would have had to go to a clinic and recreate a very specific narrative in which I expressed a longing to be a heterosexual woman, who only wore dresses and stayed at home with the children I could not possibly conceive. I had to say that I hated my body the way it was and

could not even consider sex in the state I was in pre-operatively. I honestly did not think I was a good enough liar to pull it off. Nor was I interested in going through the invasive (at least) two-year process to prove to an “expert” that I was the person who I knew myself to be. So, I simply chose not to put myself through the process whatever my actual desire to access hormones or surgery might be. I was lucky enough to be able to survive this way in London, and it also meant that my body remained in a state that I could potentially be part of the conception of a child.

I chose to move to Sweden from the U.K. in 2007 to live with my then partner. Leaving London was one of the hardest things I ever had to do. I came out in London, I found a community of like-minded queer people when I needed it most and I formed a kinship of chosen family that helped me survive any number of trials not limited to physical assault, being chased out of potential homes, and trying to find my own path to who I was. Ethnographer of queer kinship Kath Weston (1991) describes the practice of forming a “chosen family” as a way of creating supportive bonds with other LGBTQ people in often otherwise hostile cultural environments, where more traditional conceptions of family may not be available or are unable/unwilling to provide the necessary support. These bonds do not benefit from formal recognition and therefore do not benefit from legal legitimacy, but they do provide the social and cultural support and security that LGBTQ people so often lack in hostile contexts. In the early 2000s, I was lucky enough to meet with others I felt I could form such bonds with. They provided examples of how I could explore and be myself, they provided the support I needed when coming up against the myriad of obstacles put in our paths by our environment, and they provided me with the chance to pass on what I had learned to others. They were my family and we would use whatever title seemed appropriate for the intimacy, care, and support that we felt our family should give each other. We took these connections and titles seriously, because they were, and are, powerful and critical ways in which we survived and thrived. I had queer parental figures and elders; I had queer siblings and queer youngsters in my life. As such I had a very large family. I grew up in many ways with this family. It was these

people that taught me what it could mean to be queer, trans, femme and a lesbian. They helped me practically to survive and to flourish and develop as a person. I tried to provide the very same for others. I believe it was only because I found such a wonderful queer family in London that I was able to find the courage to finally leave the city and try to expand my family in a new way.

At the time I was researching for a postgraduate degree in Gender Studies. I credit the skills I acquired as a scholar for the ability to research and form the subsequent plan that I used for my international move. When looking into the practicalities I learned that had I been living in Sweden at the time, in order to be registered under my name and gender I would have had to undergo an extremely long, arduous and what seemed to be a quite unpleasant process. A process that ultimately would involve my being sterilized before I was afforded any rights as a woman. This I would later learn was a result of a number of problematic socio-legal conditions in Sweden. Sweden was in a way pioneering in that it was the first country in the world that allowed trans people to legally change gender in 1972. This meant however, that the law was formulated very much in the heyday of the normalizing context I describe above. The law required a number of things, not least diagnosis using the criteria pioneered by Benjamin but also that trans people had to be sterilized. Interestingly, the law did not necessarily require that any other specific physical intervention had taken place or be completed, but it did stipulate that the person must be sterilized. This was very much a part of the Swedish history of eugenics, which had been broadly practiced since the 1930s and was designed effectively to wipe out “undesirable” persons from Swedish culture (Björkman and Widmalm 2010). Though the systematic use of eugenics was mostly stopped in the mid-1970s it was not fully recognized or officially acknowledged until the 1990s, nor was the sterilization of trans people repealed until 2013. It was clear that at the time, sterilization of trans people was simply to stop us from reproducing.¹

I had been living with my identification documents in my old name, which due to British laws and the privilege of my own personal circum-

stances, I had been able to do for a couple reasons. I was studying at a university department that was accepting of my transition and I was also working at a job that did the same. These were two of the very few places I had to give my legal name and identification. In the U.K. one rarely had to show named identification and there was no obligation to carry any kind of photo ID unless travelling out of the country. However, in Sweden, there seems to be an absolute constant need to identify oneself quite comprehensively. The national identification number is used to access nearly all services of any kind, from healthcare, to work, to renting a movie or even picking up a package at the post office. This national identification number is linked to your name, but it also openly contains information about your date of birth and gender.² I had no intention of starting my life in Sweden having to constantly advertise my gender, age and old name to every single service provider I had to interact with.

After considerable research, I came up with a plan to circumnavigate the Swedish rules on name and gender recognition by changing my official documentation in the U.K. in such a way that it would be accepted when I registered in Sweden. I did this by first taking advantage of changes in the ways in which gender could be changed on U.K. documentation brought about by the Gender Recognition Act (GRA), which had come into law in 2004. The full history of the law is very well covered in the book, *Trans Rights: Our Journey from the Shadows*, edited by Christine Burns (2018). The GRA is a deeply flawed piece of legislation that has a number of very serious problems. Indeed, recently a U.K. government consultation was carried out (autumn 2018) regarding proposals to significantly improve the law.³ The consultation is itself extremely problematic in a way that I cannot go into full detail here⁴ however there seems to be at least some acknowledgement by the government of the problem, even if the cultural backlash is abhorrent and if no change may actually be forthcoming. The GRA as it stands however came into being at a time when the U.K. had no real way for a trans person to have their gender fully registered. It was one of the last countries in Europe that provided no real legal recognition of trans people at the time and it was only enacted because of a challenge brought to the European

Court of Human Rights (2002), which in *Christine Goodwin v. United Kingdom* claimed that the U.K. was in breach of the provision to allow all persons the right to (heterosexual) marriage. Interesting here is that the case was not simply fought for or won on the basis that trans people should simply have their identities recognized, but that we were being denied the chance to form a normative heterosexual marriage. Indeed, a number of the problems with the GRA stem from this and that while the right to heterosexual marriage was enshrined in the U.K., same-sex marriage was not legal. Civil partnership was the unequal option that was provided for same-sex couples at the time. As such in order to be eligible under the GRA, a trans person who was in either a marriage or a civil partnership was forced to divorce. Even after same-sex marriage became legal in the U.K. in 2014, the GRA contained a provision that the married trans person could only be eligible if the spouse agreed to it. This is often referred to as the “spousal veto” and is one of the statutes that trans activists are seeking to change. The GRA was created to allow trans people a route to change their birth certificate in the U.K., which was the impediment to our right to heterosexual marriage, but also other rights related to our gender including retirement rights amongst other things. The full process to this recognition and the achievement of a gender recognition certificate (which meant one could also change birth certificate⁵) is arduous, expensive, and long. However, there were a few provisions in the GRA that made it much easier for someone to at least change official identifying documentation as long as it was to a binary gender (because of course none of this legislation acknowledges the existence of non-binary people). For example, in the GRA there is no requirement to have to undergo any medical intervention to obtain a gender recognition certificate, and therefore by extension, to change identifying documentation. Nor does one have to undergo the entire GRA process to change identifying documentation. As such, I realized that I could simply change my driving license, passport, bank records, etcetera, by obtaining a diagnosis (and no other follow up medical intervention or assessment) and changing my name officially. Changing name officially in the U.K. is exceptionally easy, and one can change

name to absolutely anything one wants. This is unlike rules in other European countries, including Sweden where there can be a strict prescription of what names are deemed acceptable, and what names are allowed according to assigned gender. In the U.K. however, you can have any name you want and you can change it by literally writing it on any piece of paper and signing it. It is better to get it done at a lawyer's office that can act as witness only to make it seem more legitimate when sending to a government agency. In my case, I walked into a law office with a pre-prepared printed sheet bearing my new name and £5 without an appointment and walked out minutes later with my name changed. Obtaining a diagnosis of "gender dysphoria" is nowhere near as easy. If I had gone through the process that the National Health Service (NHS) offered, I would likely have had to wait months, if not longer, just for an initial appointment with a Gender Identity Clinic. Following that there would have been lengthy assessments with lengthy waiting times, perhaps even years of having to prove the legitimacy of my identity and still no guarantee that I would be diagnosed. However, I had been told by a friend that paying for a private appointment would be much quicker. This is not an inexpensive proposition, and to do so I had to borrow money from the same friend to do it. However, as they suggested, and because I had years of evidence of living as myself (a privilege of having a minor performance career was several articles and listings that I could show as proof) I was able to get the diagnosis I needed without the immense difficulty and stress to mental health of the NHS process.⁶ Due to the European Union right to freedom of movement⁷ I was able to simply move to Sweden and upon arrival register as a resident and request a personal identification number using my passport in my correct name and gender. Something I was able to accomplish without being sterilized. In Sweden it had become legal to marry as lesbians in 2009 and so we did that, reasoning in part that it would make it easier to register the child we were hoping to have (due to some very specific Swedish laws on parental registration that I discuss below). It also technically would have made it easier for us to adopt a child, which we initially considered prior to trying to conceive one ourselves. We were told however, that despite

it being legal since 2003 for same-sex couples to adopt, it was in practice very unlikely. This was not the formal position of the adoption agencies of course, but informal knowledge we received was pretty clear.

We had been trying to have a child by ourselves for some time when we realized that something was not working. After seeing a doctor, it was discovered that my then wife had a very unusual physiological makeup that made it difficult to conceive or even carry a baby to term. It meant that the only way we were likely to be able to have a child that way was if we had IVF treatment. In Sweden, it was legal for same-sex couples to access IVF treatment with donated sperm through the National Health Service since 2005. Sweden also has a law (the Genetic Integrity Act) that means that all sperm donors must be contactable by the children of donated sperm IVF, in essence there can be no anonymous donation. This has meant it is common practice for LGBTQ people to travel abroad for IVF if they are looking to do so with anonymous sperm donation. In our case, we had no problem with that as we knew exactly where the sperm was coming from, me. However, despite the physicians we consulted seeing no impediment to our receiving IVF, the National Board of Health and Welfare had apparently become very confused by our case and as such they deemed it necessary to investigate. Technically I should not have existed in Sweden, a trans woman with a female name and personal identification number who was not sterilized and as such claiming IVF treatment with her wife. They stalled our access to fertility treatment and it took them roughly a year to come to the same conclusion that I argued at the outset, namely that since there was no explicit law against us having IVF (there not being a law against something that should not exist) there was no reason to deny us. We were allowed access to the treatment and after some time and a considerably difficult pregnancy, in 2012 against all the odds at the time, our child was born.

We waited a full twelve days after the birth before we attended Stockholm Pride with our child to give a public talk about our experience together with Ulrika Westerlund, head of the RFSL (Swedish Federation of LGBTQ Rights) at the time (Krieg et al. 2012). We were, as I have

noted, quite the anomaly in Sweden. RFSL was campaigning hard for the removal of enforced sterilization for trans people before they could be afforded any rights and we became something of an example case of how and why it should be possible. For the next year I campaigned with RFSL and lobbied the government for a change in the law on trans sterilization, which was finally achieved in 2013.

This was not the end of issues for trans parents in Sweden however. I told my story just months later again at the Swedish Parliament with RFSL regarding the laws of how parenthood is registered in Sweden (Krieg 2013a). The law as it stands is spectacularly heterosexist and in no way accounts for the possibilities that a trans person may be somehow involved in the process. As I noted at the beginning of my essay, when we tried to register our child, we completely baffled the registrar who simply could not determine how we could be registered. The law as it stands is that any child born into an “opposite-sex” marriage (that is two people, one of whom has the legal gender as male and the other female) is immediately presumed to be the child of both people involved. Any other configuration of a relationship requires at the very least a process of parental confirmation. For example, an unmarried “opposite-sex” couple must attend a social welfare office and sign documentation to that effect. In “same-sex” (two people of the same legal gender) married and unmarried couples (noting here that no other relationship configuration is legislated for) the situation is significantly trickier. At best the situation is that the parent who did not physically carry the child has to go through a similar confirmation process as an unmarried “opposite-sex” couple if they had IVF treatment in Sweden. This is with a named donor as described above who must then renounce parenthood officially for this to occur. Adoption however is required by “same-sex” married/unmarried couples by the parent who did not carry the child if IVF was carried out abroad, which is not so for “opposite-sex” couples who simply have to undergo parental registration. Parental registration is a single form easily filled in versus months of processing and investigation, which is required for adoption. Parental registration is pretty much automatic, whilst adoption is most certainly not assured.

Apart from being notably heterosexist, this leads to an absurd situation for trans parents. I pointed this out in the Swedish parliament in 2013 with my own case. I noted that despite the fact that the National Board of Health and Welfare and every physician along the way has checked that I am in fact the source of the sperm that was part of the conception of our child, there was still significant questions as to how I should be registered as a parent. Whereas, in a situation for example with a cis-woman married to a trans man where the cis-woman were to carry a baby, both would simply be assumed to be the parents despite it being currently impossible that they had provided all the genetic material to conceive the child. That is to say nothing of the situation where the trans man might carry the baby. My suggestion to the ministers was that the law be simplified and equalized allowing parental registration to be completed simply by those who would legally take responsibility. This would surpass all these issues and also allow for anyone who did not identify in the gender binary to be fully accounted for. As of writing, this has yet to happen.

Also, as I noted, the law does not take into account the possibility that there may be any other kind of relationship formation. At the age of two our child met the woman who would become my present wife, Karin. In fact, not long thereafter our child declared of her own volition one day that my future wife was her parent. We discussed at length amongst the three of us and decided that since our child had decided this and we were all amenable, we would simply form our dynamic that way. For about a year we lived in a polyamorous dynamic, until my former wife and I decided to end our marriage and I married my present wife. During that time and ever since, our child has had three parents. We share responsibilities amongst the three of us, we attend important meetings at school or with doctors, in every respect we are all three our child's parents and she has never consciously known anything else. When our relationship dynamics shifted, we did our best to make sure it did not impact our child and as far as we can tell she did not notice or at least it did not cause her any distress of any kind. Because she has no preconceived notion of what a family dynamic is supposed to look

like and she had been living in both homes since she was two, the shift seemed seamless to her.

And yet, there is no way for us to register legally that she has three parents who are willing and able to fulfil all functions and responsibilities inherent to the role. The laws as they currently stand barely account for the possibility that a child may have two unmarried, divorced or separated heterosexual parents let alone any other possible dynamic. For example, despite the fact that our child lives half of her time in one home and half in another, she can only legally be registered in one. Schools, medical services, and support services are in many respects based on the address one is registered to in Sweden. Given that we could not register in any way that she has more than one address and we might need for her to be able to go to a school somewhere in between we still could not be guaranteed a place for her anywhere but the municipality in which she currently is registered as living. This problem however, is relatively minor compared to the fact that one of her parents has no current legal standing as such. Were something to happen to either/both of her other parents, there is no clear legal procedure for my wife to take responsibility or have any rights as one of our child's parents.

Things have notably changed in the years since I moved to Sweden and had to navigate legal limbo to have a child and form a same-sex marriage and be part of a family unit that defied the norm. As I noted above, trans sterilization ended in 2013 and in 2017 those who had been sterilized under this law received government compensation. As I noted IVF laws have changed including the right to access IVF as a single person from 2015. These all provide opportunities to LGBTQ people in some specific family dynamics to become parents. And yet other laws and culture that are impacted by this are seemingly very slow to change. The ways in which children are registered is still shocking. The Swedish parliamentary ministers that I explained this to looked astounded as I made my recommendation that parental registration could be simplified to be sex/gender neutral and be carried out by whomever was to take parental responsibility for the child in question. This would forego the heterosexist nature of the current legislation, it would allow for non-

binary people to be immediately included (within which they currently are not even acknowledged, here or in any other legislation), and could even allow for more than two parents to be registered. This could allow for, in the case of parenting, at the least the acknowledgment that non-monogamous dynamics may exist and has the added advantage of giving the child protections beyond just two designated parents. Of course, all this should be extended to marriage laws and relationship recognition, which despite being supposedly sex/gender-neutral, clearly contain within them a very problematic distinction which is evidenced by the ways in which children are registered and adopted here. Up until very recently the only people who could access IVF for example were married couples. This of course excluded anyone who did not wish to be married or any non-monogamous relationship dynamic. Accessing IVF as a “single” person does not alleviate that issue, as it still confers no legal rights to any others who may seek to take responsibility as parents.

Also, at that meeting in parliament I noted that another way to simplify things would be to change the ways in which personal identification number generation was done. Currently it takes bureaucracy, time, and money for someone to change their personal number in Sweden simply because it contains visible personal information. Incidentally, this also allows for the possibility of quite efficient and covert sex and age discrimination in any circumstance that someone might need to give their personal number, which as I noted, is required constantly. Simply randomizing the number would solve this. Or replacing it with anything else. I suggested instead of a personal number, perhaps a personal theme tune would be just as arbitrary. I imagined passports could be opened and like novelty birthday and Christmas cards a personal tune could play. As absurd (and amazing) as this idea is, the notion I was trying to forward was that the current system is absurd. The culture we live in prescribes borders that perpetuate a status quo and does not account for the very simple and real truth that people form their families in diverse and complex ways.

These are the legal changes I suggest. Also, do not do Brexit. It is a really stupid idea. And will cause no end of problems. I managed to become a Swedish citizen because of the length of time I had resided here. I did

this in no small part because no one could guarantee (even now years after the initial vote and the fact that at the time of writing nothing has been agreed between the U.K. and EU) that I would not simply be kicked out of the country after April 2019 when Brexit was due to go into effect. I would be married yes, I would have a child yes, but the massive legal limbo that could be created could very easily tear families like mine apart. So, thank goodness I was lucky and privileged enough to apply for and receive citizenship in Sweden. But the fact that such privilege and luck was required is deeply problematic, not least to those who do not have it. I am glad to be living in a country where the law seems to be changing, even if slowly, for the better and that it has a national health service, which provides medical treatments for trans people and has diagnostic criteria that are slowly becoming less antiquated. The fact remains however, that we are still in many ways having to live in a way that navigates the rules creatively simply to exist as the family that we are.

JOSEPHINE BAIRD (formerly Josephine Krieg) is an independent scholar and activist who regularly presents and teaches at universities, lobby groups, and conferences internationally and is a published author primarily on the subjects of sex, gender, and sexualities. She is also an artist with a long career in stage and film performance, as well as production, and screen writing and is a visual artist.

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NOTES

1. This is being examined in the work that is currently being done by Daniela Alaatinoglu (2018), and in the work by Julian Honkasalo (2018), who is researching compulsory sterilization of trans people in a Finnish context.
2. The number is most often generated in the following format, YYMMDD-XXXX, where the first six digits are the person's date of birth and the four last numbers are randomized except the third digit, which is an even number if the person has a female legal gender and odd number if the person has male legal gender.

3. A summary of the problems with the GRA as it currently stands and the aims of the consultation are summarized by Stonewall Lobby Group (2018).
4. Suffice to say that I am baffled that there is a public consultation on something that really should simply be conducted by the government consulting proper qualified opinion on the topic. However, it has also fermented an exceptional public backlash characterized almost daily by transphobic media reports and online hate campaigns mischaracterizing the function of the GRA itself and demonizing trans people in the process. I presented my analysis of this at the British Psychological Society, and specifically the role that certain anti-trans radical feminists and their rhetoric plays in this (Baird 2018). The paper is currently in review for publication by the British Psychological Society, *Psychology of Sexualities* journal at the time of writing.
5. Incidentally, this is a path that would not be open to me as my birth certificate is Spanish, which makes this process even more unnecessarily complicated.
6. This entire process and problem would be resolved simply by allowing people to self-determine their gender without need for medical diagnosis or official review. This is part of the proposal that is currently under consideration in the U.K. open consultation I reference above, and is a model that has worked in Argentina since 2012 and in the Ireland since 2015.
7. Article 45 of the Treaty on the Functioning of the European Union allows any EU citizen to freely move to, reside in and work without any other permit in any other European Union country at will (<http://ec.europa.eu/social/main.jsp?catId=457&clangId=en>).