



Suspect Families: DNA Kinship Testing in German Immigration Policy

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Abstract

Since the 1990s, many countries around the world have begun to use DNA testing to establish biological relatedness in family reunification cases. Family reunification refers to the right of family members living abroad to join relatives who hold long-term residence permits or are citizens of a given country. Using Germany as an exemplary case, the article explores different societal implications and consequences of parental testing for family reunification. Special attention is drawn to the implicit model of family and kinship that informs this immigration regime. We argue that DNA analyses for family reunification establish and strengthen a biological family model which is in contrast to the more pluralistic and social concepts of family in Germany and in many societies in Europe and North America. The argument is based on a document analysis and interviews with representatives of NGOs and immigration authorities, lawyers, geneticists, and applicants for family reunification.

Keywords

DNA profiling, family reunification, geneticisation, Germany, immigration, parental testing

Introduction

Family reunification is currently the most important form of immigration to Europe (European Migration Network, 2008, 2011c; Kreienbrink and Rühl, 2007).¹ The term refers to the right of family members living abroad to join relatives who hold long-term residence permits or are citizens of a given country. Applicants are required to provide

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official documentation such as birth and marriage certificates and passports in order to prove their identities. Providing such pieces of evidence is often difficult, especially in countries that do not use official documents to establish identity or where those documents have been lost or destroyed due to politically unstable situations. But even if applicants possess the required documents, the information is sometimes rejected by immigration authorities as they question the authenticity of the documents.

In the 1990s, some host countries began to use DNA analysis to resolve cases in which they considered the information presented on family relationships to be incomplete or unsatisfactory (Esbenshade, 2010; Taitz et al., 2002a, 2002b). Today, at least 20 countries around the world (including 16 European countries) have incorporated parental testing into decision-making on family reunification in immigration cases: Australia, Austria, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Malta, the Netherlands, New Zealand, Norway, Switzerland, Sweden, the UK, and the USA (European Migration Network, 2008, 2009). Although there is some media coverage of the issue (Funk, 2007, 2008, 2009; Gaserow, 2007; Kieser, 2008; Martin, 2011; Schmidt, 2007; Swarns, 2007), research and scientific publications in this field are rare. So far, the topic has only stirred interest among legal scholars and in the human rights literature (Frenz, 2008; Murdock, 2008; Taitz et al., 2002a, 2002b; Weiss, 2011). While some research has been done on the social implications of paternity testing (Fonseca, 2011; Freeman and Richards, 2006; Richards, 2010; Turney, 2006, 2011), the impact of DNA testing on immigration policies and family concepts remains a scientific non-issue.

This article highlights important social and political implications of DNA analysis for family reunification by using Germany as an exemplary case. The article starts with an overview of the right to family reunification in the European and German legislation and the role of DNA tests in this context. The second section presents evidence that DNA testing for family reunification is increasingly being employed in administrative decision-making in Germany. Furthermore, we show that in the context of family reunification certain rights and legal guarantees are inoperative that protect individuals from the abuse of their genetic information, which results in a criminalisation of, and general suspicion towards, applicants for family reunification. The third section demonstrates that the use of parental testing in decision-making on immigration endorses a biological concept of family and kinship. We argue that DNA kinship testing for family reunification results in a geneticisation of the family. The focus on genetic links tends to devalue social forms of family that are seen as secondary. Moreover, it establishes a 'double standard of family recognition' for native citizens and immigrants (Murdock, 2008), as the requirement of a biological link between family members is diametrically opposed to family recognition policies in most host countries, which emphasise social rather than genetic ties.

The findings presented in this article are based on a qualitative study involving 'multisite research' (Clarke, 2005: 146) within a grounded theory framework, using document analysis and interviews. We reviewed and analysed relevant documents that deal with parental testing in immigration contexts such as laws, guidelines, directives, minutes of parliamentary debates, government and expert committee reports, NGO materials and media reports. Additionally, we conducted semi-structured in-depth interviews with actors in the field (Bogner et al., 2009): five experts working for German and

international NGOs, five officers in German aliens departments and immigration authorities, four lawyers specialising in family and immigration law, and five geneticists or forensic doctors in genetic and forensic laboratories. We also interviewed seven applicants for family reunification who underwent a DNA test during the application procedure. Anonymity was guaranteed to all our interviewees, in accordance with the code of ethics of the German Sociological Association and the statement of ethical practice of the British Sociological Association. The interviews were only conducted after the interviewees gave their informed consent to participate and agreed to be recorded. On average, they were 90 minutes long. For the analysis, the interviews were transcribed, anonymised, and then interpreted using a qualitative content analysis approach (Flick, 2007, 2009; Mayring, 2004).

The Right to Family Reunification in Germany: Legal Framework and Historical Determinants

The right to family reunification is derived from the protection of the family as laid down in the *Universal Declaration of Human Rights* (Jastram and Newland, 2001). The most important European legal document with regard to family reunification is the Council Directive 2003/86/EC (Council of the European Union, 2003). This directive was ratified in 2003 with the aim of aligning the regulations on family reunification as stated in the *Charter of Fundamental Rights of the European Union*. It not only contains legal information on the rights of the applicant and the family, but also provides a framework for administrative practice, e.g. how to prove the family relationship of an unmarried couple.² However, this framework leaves considerable room for interpretation regarding the underlying concept of family, the right of minors to apply for family reunification, the age limit for minors and also spouses, the coverage of travel costs by state funds, and the status of marriage as a prerequisite for the application (European Commission, 2011).³

In Germany, the Residence Act (Aufenthaltsgesetz, AufenthG) as part of the Immigration Act (Zuwanderungsgesetz, ZuwandG) incorporated most of the regulations of Council Directive 2003/86/EC and adapted them to national law.⁴ Part 6, containing sections 27–36, is specifically concerned with family reunification. The Residence Act explicitly states that the right to family reunification is meant to protect the family in accordance with the Basic Law (Grundgesetz, GG). Generally speaking, every spouse, either a German or a foreigner who is in possession of a temporary or unrestricted residence permit, can be the sponsor of an application for family reunification. The sponsor and his/her partner need to be married, and he/she also is expected to provide an adequate income and enough living space for the prospective united family.⁵ Children holding a temporary or unrestricted residence permit may serve as sponsors and apply to be reunited with their parents as well, but generally the provisions assume that the sponsor is an adult.

The Residence Act establishes a nuclear family model, as the right to family reunification is legally recognised only for spouses over 18 years old and their underage children (European Migration Network, 2011a, 2011b; Huber, 2010). Under exceptional circumstances, so-called extraordinary hardship, the right of residence can also be

granted to more distant relatives such as grandparents, children who have reached adulthood and siblings of any age (Walter, 2009). However, in 2010 only 306 residence permits for family reunification were issued to more distant family members, which was only 0.6 per cent of all residence permits granted for family reunification (Federal Office for Migration and Refugees, 2011: 92).

These fairly strict regulations have to be interpreted in the German historical context by taking into account the immigration wave in the 1960s and 1970s, which occurred as a result of the German 'economic miracle' (*Wirtschaftswunder*). During that time, Germany actively recruited foreign workers as so-called *Gastarbeiter* from the Mediterranean countries. Between 1961 and 1971 the number of foreigners living in the country went up from 700,000 to almost 3.5 million, most of them being *Gastarbeiter*. This was the most significant immigration wave Germany had seen in its history (Bade and Anderson, 1994: 90). Following the economic slowdown in the 1970s, the recruitment of foreign labour came to a halt. After the German government introduced the 'Anwerbestopp' in 1973, family reunification was the most important form of immigration because a significant number of *Gastarbeiter* wanted to stay and be reunited with their families in Germany. In the 1980s there was a huge public and political debate about how to cope with this family-related influx of migrants. As an outcome of these discussions, Germany introduced a strict policy on family reunification in its amendment of the Aliens Act in 1990. The amendment codified the nuclear family as a model for family reunification and set narrow guidelines for the maximum age of children to be reunited with their parents. It was also around this time that DNA analyses were first used in family reunification cases in Germany (Geneticist 2).

Even today, there are more applications for family reunification than for asylum. In 2010, 48,589 asylum seekers submitted applications for asylum (41,332) or the renewal of their asylum status (7,257), while 54,865 residence permits were granted for the purpose of family reunification (Federal Office for Migration and Refugees, 2011: 13, 91). Given its quantitative dimension, family reunification receives a great deal of attention from policy makers, legislators, and NGOs and is considered of strategic importance to steer immigration to Germany.

Family Reunification and Administrative Decision-making: Informational Self-determination vs. Genetic Surveillance

Family members who apply for family reunification in Germany have to establish their family status by official documents or other suitable pieces of evidence. A lawyer specialising in immigration law mentioned in an interview that there are at least 15 possible ways to prove a family relationship in immigration cases: certificates of birth, marriage or death, wedding photos, family and holiday photos, statements in the asylum procedure hearings, sworn declarations by the applicants or by persons who know the applicants personally, common bank accounts, regular money transfers, phone calls, email exchanges and internet chats or sound and full particulars about the family relations made in the course of the official interview for the asylum application (Lawyer 2).

However, German immigration offices will not necessarily accept these pieces of evidence for an existing family relation, either because they consider them insufficient to

prove family bonds or because they suspect fraud.⁶ Even in cases where legal documents are provided, it is a common administrative practice to ask the applicants for a DNA kinship report (European Migration Network, 2011b; Federal Government of Germany, 2008; Frenz, 2008; Kreienbrink and Rühl, 2007). Moreover, the German Federal Foreign Office has published a list of over 40 countries whose documents are not acknowledged by German embassies at all because they assume that their system of identity registration lacks systematic and sound procedures (Federal Government of Germany, 2008).⁷ Immigrants from these countries will find it extremely difficult to prove a family relationship by official documents. To obtain permission to reunite with family members, they generally have to resort to DNA testing.

DNA kinship testing is explicitly mentioned in the general administrative regulations for the Residence Act (no. 27.0.5 AVwV AufenthG). The Federal Government of Germany and the Federal Ministry of the Interior stress that DNA tests are not to be seen as a constraint but as an opportunity for the sponsors and applicants to prove the validity of their application (Federal Government of Germany, 2008). Furthermore, they emphasise the voluntary character of the DNA tests and argue that it is up to the applicants whether they wish to take up this option. Finally, the authorities point out that DNA analyses are only used as a last resort to establish family links required if all other possible options to verify family relatedness have been exhausted. 'Normally, we just check the documents and that's it. We really only ask for the DNA test in very rare cases, where no legal documents can be provided' (Immigration officer 2).⁸ Similarly, the Federal Foreign Office, which is responsible for issuing visas for family reunification, stated in response to an inquiry by the authors that the 'DNA test for family reunification is not a standard but only an exceptional case and [. . .] is only offered to the applicants if evidence relevant to the issue cannot otherwise be provided' (Immigration officer 4).

However, the results of our research indicate that DNA testing for family reunification is not an ultima ratio but a standard tool for the verification of a family relationship in immigration cases (UN High Commissioner for Refugees, 2008; NGO officer 2, NGO officer 3). The head of the immigration authority of a major city in Germany declared in a written statement sent in response to an inquiry by the authors: 'While there is no obligation for applicants even from countries with an insufficient official documentation system to prove family relation by DNA evidence, parental testing is an *appropriate and frequently used tool of verification*' (Immigration officer 5, emphasis by the authors). A senior UNHCR officer mentioned in an interview that 'we observe an inflationary use of DNA analyses for family reunification for refugees from Africa and South East Asia' (NGO officer 3). Similarly, a refugee advisor from a church information centre stated that in 2010 alone she had supervised more than 20 cases of Somali refugees who were asked to prove their family relations by a DNA test in the course of the family reunification procedure.

While the Federal Foreign Office and the Aliens Departments in the urban districts make no secret of the fact that DNA tests are used to determine the legitimacy of an application for family reunification, they do not publish any statistics on how frequently they employ this measure (Federal Government of Germany, 2008, 2010). At present there is no reliable information on the number of tests that have been conducted so far in the application process for family reunification. The use of DNA tests for family reunification

has been covered by the German press, and articles in several newspapers published some years ago suggested that such tests were at that time being conducted in at least 600 cases annually (Funk, 2007; Gaserow, 2007). Since then, the number has certainly increased. The five laboratories we visited to interview geneticists and forensic doctors alone conducted a total of approximately 900 tests for family reunification in 2010. There is a very competitive market for DNA kinship testing in general and for immigration purposes in particular, and there are more than 50 laboratories in Germany that offer DNA analyses for family reunification.⁹ Refugee advisors and representatives of NGOs we spoke to report that applicants from some countries such as Somalia, Eritrea, or Burma are almost always asked to provide DNA evidence for their family relations (NGO officers 1 and 2, Lawyers 1, 2, 4). Thus, there is empirical evidence to indicate that the number of DNA analyses conducted in immigration cases is significantly higher than 900 per year.

Moreover, it is important to note that the figure provided here is not identical with the number of persons involved and the visas issued on the grounds of a DNA test result. A single DNA test for family reunification normally includes at least three persons: the alleged father, the alleged mother, and the child. If the test is positive and confirms the biological relatedness, two visas for family reunification are granted as normally only one person is already living in Germany. Given that there are many cases with two, three, or even more children, the number of visas granted on the basis of a DNA test is even higher. In our interviews with the applicants for family reunification the average family consisted of five persons, which results in four visas that are granted on the basis of a single DNA test. Therefore, it is reasonable to assume that at least 3600 visas or 9 per cent of the total of 40,210 visas for family reunification in 2010 were granted only after DNA evidence was provided (Federal Office for Migration and Refugees, 2011: 91).

Since their introduction in the beginning of the 1990s, kinship tests for family reunification in Germany have been conducted in a legal grey area, since the procedure was not covered by any law. DNA testing for immigration purposes was first regulated in the Genetic Diagnostics Law (*Gendiagnostikgesetz*, *GenDG*), which contains a section dealing exclusively with parental testing (*GenDG*, Part 3, Sec. 17). The law was passed by the German parliament on 24 April 2009 and entered into force on 1 February 2010. The general focus of this law is on the right to informational self-determination, with the aim of protecting individuals from the abuse of their genetic information.¹⁰

However, for the use of genetic data in the context of family reunification important legal guarantees are inoperative. Firstly, and this almost goes without saying, the right to informational self-determination in the context of family reunification is just a formal or theoretical right. In practice, it may well be the only chance for a person to reunite with his/her family if the documents he/she has provided are not deemed appropriate to prove family relations. A burden of proof is on the applicant, which may force him or her to resort to a DNA test. Therefore, it might be doubted how voluntary the use of DNA analysis in this context can be if the application for family reunification will be rejected otherwise. A senior UNHCR officer we interviewed argued that the voluntariness of the DNA test can be compared to the 'voluntary departure' from Germany for rejected asylum seekers who will otherwise be deported anyway (NGO officer 3). Here, we note a remarkable parallel to forensic DNA profiling: 'Persons who refuse to give a "voluntary" sample (which is their

legal right) attract police attention and become more suspicious as a result.’ (Walsh and Buckleton, 2005: 459) It is assumed that someone who rejects the ‘voluntary’ DNA test has something to hide (Prainsack, 2010; Zadok et al., 2010).

Secondly, immigrants have no right to decide what happens to the DNA profiles once the test has been carried out. They cannot demand that their samples be destroyed, and their data might be used for criminal prosecution purposes if there is reasonable suspicion that a criminal offence has been committed by the immigrant in question (GenDG, Sec. 17, Clause 8). Their profile may be stored in a DNA database in accordance with the Prüm Convention, and this information may be exchanged among European member states for crime prevention purposes (Prainsack and Toom, 2010). Therefore, applicants for family reunification may come under general suspicion of criminal activity. While the Genetic Diagnostics Law in its entirety strengthens the right to informational self-determination for German citizens, it denies immigrants this right. In general, the legal framework for DNA testing in family reunification cases establishes an environment of mistrust towards immigrants and provides new means for surveilling them (Aas, 2006, 2011).

Kinship and DNA Testing: Social vs. Biological Concept of the Family

The strong focus on a biological family model in family reunification cases contrasts with the social understanding and the legal framing of the family in Germany. The routinisation of divorce and remarriage and the legal recognition of same-sex unions with the introduction of the Life Partnership Act (*Lebenspartnerschaftsgesetz*, LPartG) in 2001 have generated heterogeneous patterns of family structure and a diversity of new kin connections that are not necessarily based on biological ties. In recent years, several laws have come into force or been amended with the aim of emphasising the social aspects of parenthood and paternity, e.g. the Children’s Law Reform Act (*Kindschaftsrechtsreform*) of 1998 and the amendment of the regulations for paternity fraud. In this perspective, parenthood is not defined in terms of biological relatedness but rather as a social relation. The Federal Court of Justice (2008) argued in a judgement that such a socio-familial relation exists if the legal father has been shown to be responsible for looking after the child. If this is the case, the biological father cannot challenge the already existing social fatherhood. This line of argumentation of the Federal Court of Justice has recently been upheld by the European Court of Human Rights (*Ahrens v. Germany*, 2012; *Kautzor v. Germany*, 2012).

Furthermore, married and unmarried couples have increasingly been treated equally in legal practice in the last 10 to 15 years, and it has been made easier for unmarried couples and same-sex partners to adopt stepchildren. These legislative steps also stress the family as a social relation. In a press release in 2009, the Federal Constitutional Court (2009) pointed out that ‘biological parenthood is not prioritized over legal and social notions of the family in the jurisdiction of the Federal Constitutional Court’ (see also Fehrenbacher, 2009).

However, in German immigration law a different trend can be observed. The increasing use of parental testing in family reunification cases endorses an understanding of

family as a biological entity. Consequently, migrants will find it difficult to enter Germany if they live as part of different kinds of family. The restriction to the nuclear family makes it nearly impossible for larger families that consist of more than just parents and their biological underage children to reunite in Germany (European Migration Network, 2011a). Relevant carers who live in the same household and relatives with whom important emotional bonds exist (e.g. the grandparents) may have to stay in the migrant's country of origin. Even foster children and adopted children are not covered by the biological family concept. According to German immigration law, no distinction shall be made between biological children and adopted children if the applicants can prove the adoption by official documentation. However, as German authorities regard official registration systems in many countries as insufficient, this will lead to problems in administrative practice. In such cases, investigations by lawyers officially accredited by the German embassies in the country of origin are required to allow for successful family reunification (Federal Government of Germany, 2008). These lawyer-assisted investigations are not only difficult to initiate but also expensive. Another problem of parental testing for family reunification is related to the current practice of German authorities to ask for both a maternal lineage test and DNA kinship reports on all family members. The German Lawyers Society reported a case of an Afghan family where the father only learned from the DNA test in the visa application procedure that one of the children born in the marriage was not his biological child (German Bar Association, 2009). Such discoveries are a heavy burden for all family members, and may result in estrangement between family members and in extreme cases in family separation instead of reunification.

The administrative practice of family unification in Germany displays a substantial legal and social difference between and contradictory treatment of native citizens and immigrants. The latter have to comply with a traditional heterosexual biological family model in order to be officially recognised as family in immigration cases. At the same time, in public opinion and in recent legislation the family is mostly defined by social dimensions for native German citizens. As social aspects such as affection and caring for each other become more and more important, the biological family model seems increasingly inadequate to capture the complexities and dynamics of contemporary family relations. Furthermore, the legally enforced definition of the family as biological ancestry often contrasts with concepts of family in the migrants' countries of origin. In many cultures, the term 'family' goes beyond biologically related persons by including persons to whom only social relations exist.¹¹

The problems that arise from these conflicting definitions of the family for native citizens and immigrants can be illustrated by a parental test that was carried out in a German laboratory in 2010. The application for family reunification by a man, a woman and a girl from Somalia was turned down by the German authorities earlier that year because they questioned the authenticity of the documents provided. Thus, the applicants had to resort to a DNA test to prove their family relatedness. The test result showed that neither the alleged father nor the alleged mother was biologically linked to the child. In other words, the test result demonstrated that these three persons were not a family in terms of biological relatedness. However, the staff of the DNA lab were so convinced that the applicants were indeed a family, even though the result was negative, that they wrote letters to the

immigration authorities arguing that the result could only be explained by an exchange of children in the hospital and that they would nevertheless advocate family reunification. It is quite remarkable that the institution that produced a test result which eliminated the possibility of a family relation according to their own definition still felt obliged to argue that the three persons were a 'true' family. The case was reported to us by the geneticists involved in the procedure (Geneticist 3), and their argument was clearly based on a social definition of the family.¹²

These different standards for family recognition exist not only in Germany but in many host countries.¹³ As family policies in these countries favour social notions of the family, there is a possibility that the different legal status for native citizens and immigrants may further develop, as for the latter group the focus is on biological relatedness while same-sex partnerships and patchwork concepts of family are not equally recognised.

To understand the specific focus on family as a biological entity in immigration policy, it is useful to turn to the concept of 'geneticisation'. This term was coined by the Canadian sociologist Abby Lippman at the beginning of the 1990s to account for the social and cultural impact of the new genetics (1991). Lippman employs the neologism to critically analyse a (medical) perspective that conceives of genes as a programme for the development and regulation of organisms, and regards genetics as the central conceptual model to explain human life and behaviour, health and disease, normality and deviance. Since its original formulation, the term has been used by many social scientists to designate 'a social process through which concepts, theories, social structures, and individual and social practices [...] are gradually changing to recognise and incorporate the explanations and rationalities of the new genetics' (Lippman, 1991: 19; see also Fitzgerald, 1998; Koch, 2002; Ten Have, 2004). While some theoretical and normative underpinnings of the concept have met with significant criticism (Gibbon, 2002; Novas and Rose, 2000; Rouvroy, 2008), it is still useful as an analytical instrument and descriptive notion (Kollek and Lemke, 2008).

Medical anthropologist Kaja Finkler has used this theoretical perspective to analyse the impact of the new genetics on family relations and kinship. Her study is based on extensive fieldwork in the USA and interviews with breast cancer patients, healthy women from families affected by breast cancer, and adopted children seeking contact to their biological parents. The results show that the ideas of her interviewees on family and kinship are dominated by a 'genetic inheritance ideology' (Finkler, 2000: 10; see also Finkler et al., 2003). Concepts of inheritance and the significance of genetic transmission informed the experiences of the individuals and their relations to their children, parents and other relatives. Finkler demonstrates that family and kin connections are framed in terms of genetic ties. In this geneticised perspective, families are less defined by voluntary bonds than by a common genetic heritage. The genetic map postulates proximity between individuals that are separated by spatial or genealogical distance. It transcends emotional alienations and conflicts between family members. Even family members who no longer see each other or who have broken off contact remain genetically close. In this perspective family ties are primarily experienced in terms of genetic heritage, and genetic bonds are seen as more fundamental and stable than family ties based on love, affection and the free will of the partners (Finkler, 2000; Finkler et al., 2003).¹⁴

Thus, the idea of a common genetic origin determines the self-image and the identity of family members. It is, however, important to take into account another aspect of geneticisation: genetics not only shapes personal identity and concepts of family and kin, but it might also contrast with existing self-concepts. In institutional contexts, genetic tests often function as a kind of 'truth machine' (Lynch et al., 2008) that organises an epistemological field of visibilities and statements and determines what is within the realm of truth (Foucault, 2000). This machinery promises to verify the 'real' or 'genuine' criminal offender, and claims priority over non-genetic forms of explanation and experiences derived from everyday life (Lemke, 2004).

The use of DNA analysis in the context of family reunification can accordingly be conceived of as a 'truth machine' that will 'reveal' the 'true' kin and help to distinguish him/her from the 'pretended' family member. This procedure of family verification is seemingly more precise than identity papers and official documents, and claims to provide a transparent access to the body by making visible lines of belonging and networks of kinship. The idea of family verification by DNA analysis neglects the complexities of the technology and its internal limits.¹⁵ It relies on the erroneous idea of a stable and unchanging body (Lynch et al., 2008: 191; Mol, 2002) that can be addressed as the basis for identification, and supports the phantasm of a fictitious control by technological means that allows for more safety and efficiency. However, the search for identification and trust is the other side of a culture of mistrust and imagined danger by 'unidentified subjects' 'whose minds cannot be trusted but whose bodies do not lie' (Aas, 2006: 156).

This ambiguity of parental testing for family reunification in Germany and many other countries also points to the contradictory implications of biotechnological innovations for the concept of the family. On the one hand, genetic and reproductive technologies such as in vitro fertilisation or egg donation allow for a detachment of social parenthood from biological relatedness. Some social scientists have argued that parenthood can be disassembled into its integral parts – in analogy to a construction kit – and recombined in a completely flexible way (Beck, 1990). On the other hand, the same technologies are used to reproduce and reinstate the idea of an unchangeable body and 'natural' concept of family (Weigel, 2002). As a consequence, biological notions of family and kinship are strengthened further. Here we note an interesting paradox: while genetic and reproductive technologies undermine the idea that family relations and parenthood are natural relationships founded on biology, they are simultaneously being employed to reaffirm and re-establish this idea. Apparently, the decomposition of natural family relations and the reconfiguration of family concepts by the use of genetic technologies comes at the price of a naturalisation of society (Franklin, 2000).

Conclusion

In this article we have discussed some implications that result from the use of DNA testing in the context of family reunification. While it is certainly a legitimate interest of the German political authorities, and generally of all nation-states, to regulate immigration and to prevent fraudulent family reunification, the trend to rely increasingly on DNA testing results is a two-fold problem. Firstly, the idea of a scientific and safe basis of family relations that 'trumps' any other kind of evidence to document family relations (from

interview material to identity papers) fails to take into account privacy concerns and the right to informational self-determination concerning genetic data. Secondly, the use of DNA tests in the context of family reunification nurtures the idea of a biological family and tends to devalue alternative conceptions of family as less important and secondary. The requirement of a biological link between family members contrasts with family recognition policies and legislation in Germany, and in many other host countries, which emphasise social rather than genetic ties.

To be clear: the argument presented here is not directed against the use of DNA kinship tests in family reunification procedures as such; nor is it our intention to argue for a ban on their use in the context of immigration. Quite the contrary: under certain conditions, they may well be a helpful tool for both applicants and immigration authorities. In Germany, applicants often have to wait for years until their documents are checked and verified by the authorities and it takes a long time before they can hope to be reunited with their family members. With a DNA test, the decision is sometimes made within less than four months from the application to the final decision. This is also why immigration lawyers often advise their clients to take the test. 'We, the lawyers, are quite pragmatic in this respect. It has to go fast [and] the DNA test is helpful in this respect' (Lawyer 2). Also, a DNA test might be useful if no official documentation and identity papers are available and the application would be rejected otherwise.

However, the findings of this empirical study indicate that a more balanced approach is needed in German immigration policy, one that acknowledges the limits of DNA kinship testing as a way of verifying family relatedness. It is necessary to reconsider administrative decision-making in order to take into account privacy concerns, issues of data protection, and the complexities and diversity of family arrangements in contemporary societies. The institutional focus on DNA testing as a way of proving family relations and the mobilisation of a biological concept of family which consequently marginalises social aspects of family life produce new constraints for immigrants. They establish double standards as applied to native citizens and immigrants in respect of their legal and political rights, and promote a culture of mistrust and fear.

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Notes

1. In 2009, two million first residence permits were issued in the European Union. At 27 per cent, family reasons were the most important ground on which a residence permit was issued, followed by remunerated activities with 24 per cent (European Migration Network, 2011c: 1).

2. See Council Directive 2003/86/EC Art. 5, Sec. 2, Clause 2 'The application shall be accompanied by documentary evidence of the family relationship [. . .]. If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary. When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.'
3. The European Migration Network provides an overview of the different legislation and administrative practices in the European Union (<http://emn.intrasoft-intl.com/html/index.html>).
4. The German Immigration Act was ratified in 2004, and entered into force on 1 January 2005.
5. Refugees do not need to provide a living wage and living space if they apply for family reunification within three months after they have been officially recognised by the Federal Office for Migration and Refugees.
6. There has been press coverage of a case where more than 10 pieces of evidence were provided but not accepted by the German Foreign Office (Funk, 2008; Gaserow, 2007). As it is very time consuming to file a complaint in a German court against the immigration authorities, the lawyer advised the clients to take the DNA test (Lawyer 2).
7. Almost all blacklisted countries are from Sub-Saharan Africa and Central and South-East Asia. The latest information is available on the website of the German Federal Foreign Office: http://www.konsularinfo.diplo.de/Vertretung/konsularinfo/de/05/Urkundenverkehr___Allgemein/Urkundenverkehr.html
8. All quotes from the interviews have been translated by TH.
9. The professional organisation for experts in parental testing ('Kommission zur Feststellung der Qualifikation von Abstammungsgutachtern') lists 54 laboratories that offer DNA analyses for family reunification (see <http://www.kfqa.de>). The authors know of eight additional laboratories that are not included in the list but are officially accredited to perform DNA kinship tests.
10. The right to 'informational determination' is grounded in the general right of personality rooted in Art. 2(1) and Art. 1(1) of the Basic Law, which protects the personal sphere of life, guaranteeing the respect of human dignity and the right of free development of one's personality. The term was introduced by the German Federal Constitutional Court (Bundesverfassungsgericht) in a ruling relating to personal information. In its decision on 15 December 1983 it held that '[. . .] in the context of modern data processing, the protection of the individual against unlimited collection, storage, use and disclosure of his/her personal data is encompassed by the general personal rights of the Basic Law. This basic right warrants in this respect the capacity of the individual to determine in principle the disclosure and use of his/her personal data. Limitations to this informational self-determination are allowed only in case of overriding public interest.' The Court claimed that every citizen has in principle a right to control the flux of all information relating to him/her. It also reasoned that the present and future conditions of data processing and collection permit a wide variety of possible abuses against which the individual has to be protected (65 BVerfGE 1, 1983).
11. A case in Denmark impressively illustrates this problem: 'Of all the Somalis who were subjected to DNA testing by the Danish Immigration Service from January 1997 to September 1998, 58% received a negative result. Somali community leaders responded to these findings by stating that "the concept of family is very different in [Somali] culture, and many Somalis are not aware of the Danish concept of who is a family member and thereby entitled to family reunification"' (Taitz et al., 2002b: 26–7).

12. At the time of the interview, the applicants were still waiting for the decision of the immigration authorities.
13. Murdock (2008: 1521) describes the situation in France as follows: 'While parenthood is considered a multi-faceted relationship for French citizens, immigrants are limited to defining the parent-child relationship as genetics-based. While French family law was modified to prevent the creation of any formal distinction between legitimate and illegitimate children, the differing standard applied to immigrants creates a new foundation for disparity. Children of immigrants who are not genetically linked to their parents are given a secondary status and the relationship is not recognized, despite the fact that the child may be with the only parent she has ever known. This dual standard implies that French families may recognize multi-faceted relationships, but without documentation, an immigrating family may only be trusted when they assert the most basic nuclear family structure.'
14. See also the results of the qualitative study conducted by David Armstrong, Susan Michie and Theresa Marteau. They analysed sessions of genetic counselling, and investigated how the identity of the counselees is constructed in the counselling process and how the genetic definition of family was endorsed by the counsellors at the expense of social concepts: 'The processes of exploring the family tree and mapping the genetic links therefore serve to state forcibly that genetic status was non-negotiable. There was never discussion of "who you are" as this was pre-given by the density of the genetic map: identity was located in genetic make-up' (Armstrong et al., 1998: 1657).
15. While parental testing is a very precise way to determine biological relatedness, the technology itself also has some limits: e.g. mutations may occur that lead to an exclusion of maternity or paternity even though a biological relation exists (Dawid et al., 2001; Karlsson et al., 2007; Mansuet-Lupo et al., 2009; Morling et al., 2003).

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