



# New legal paths to discover and establish genetic origins?

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# Introduction

- Societal changes invite us to rethink the legal framework
- Challenges:
  - How to deal with questions of genetic origin?
  - How to deal with questions of defining the legal relationship between a person and a child?
  - How to protect existing family life?
- No European consensus
- Same track, but different speed



# Introduction

- Court decisions => *ad hoc* answers
- New legal paths => new balance of rights and interests
  - Balancing by law (general approach)
  - Balancing by judge (case-by-case-approach)
- Absence of a global approach



# Introduction – Schedule



# Discovering



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# Discovering

- **Does there exist a legal duty for parents to inform their child?**
  - Belgium: only in cases of adoption encouraged
  - The Netherlands: providing information is one of the duties of parental authority
  - Dutch Government Committee:
    - establish in the civil code explicitly the duty of parents
    - “information about the origin”
    - create a register of origin (larger than donor data)



# Discovering

- **Does there exist a legal duty for parents to inform their child?**
  - German law: balance of interests by court
  - Irish law: donor conception notified in the Register of Births => informed by birth certificate
  - American Society for Reproductive Medicine: “parents tell your children about their genetic origins!”



# Exploring



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## Exploring

- **How can a child discover the (potential) identity of his or her genetic parent?**

⇒ Right to access information about ones genetic origins (Elodie Decorte)



# Exploring

- **Are there other paths to discover genetic origins?**
  - Protection of the traditional family structure (avoiding questions)
  - Genetic testing on a voluntary base?
  - Websites like 23andme.com => guarantee of anonymity under pressure



# Establishing



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# Establishing

- **First approach: expansion of old paths**
  - Impact case law ECHR on the establishment of parentage: Parentage Proceedings as a path to establish one's genetic origin
  - DNA-testing: imposed? compulsion? Procedural measures?



# Establishing

- **Second approach: creation of new legal paths**
  - Parentage Proceedings: the right path to follow?
  - No obligation to use Parentage Proceedings to respect right of identity (ECHR)



# Establishing

- **Second approach: creation of new legal paths (in general)**
  - German law: clarification proceedings ('Abstammungsklärung')
  - Clarification of genetic paternity without putting the legal paternity in jeopardy
  - Family court can order that individuals submit themselves to testing
  - Consideration of potential harm to the child



# Establishing

- **Second approach: creation of new legal paths (criticism)**
  - Clarification proceedings has left open unresolved rights and interests
  - Bridges between both proceedings: a wise decision?
  - Belgium's legal scholars pro the introduction of a specific proceeding without bridges



# Establishing

- **Second approach: creation of new legal paths (ad hoc)**
  - Linking a limited number of legal consequences in general and/or case-by-case
    - Example 1. clarification proceeding to obtain maintenance payments
    - Example 2. biological parenthood and visiting rights
    - Example 3. establishment of parentage after adoption without generating legal consequences contrary to the adoption (multi-parenthood)





# Establishing

- **Third approach: expanding the bounds of what a family can be**
  - Rethinking the concept of ‘legal family’?
  - Creation of multi-parenthood?
    - Dutch Government committee: facilitate multi-parenthood under certain conditions
    - Adoption cases: maintain legal ties with the original family
    - UPA 2017: a court may adjudicate a child to have more than two parents



# Establishing

- **Third approach: expanding the bounds of what a family can be**
  - Parental responsibilities exercised by third parties
    - Recognition of stepparents, foster parents, .. Why not genetic parents?
    - English law: parental responsibility agreement or court order
    - English's legal scholars:

*"The question is not whether to prefer the genetic or social parent but how to accommodate both on the assumption that they both have distinctive contributions to make to the life of the child."*



# Establishing

- **Third approach: expanding the bounds of what a family can be**
  - Protect the right to parent without fear
    - Protection against other adults who might have a biological claim
    - Belgium, France: the donor has neither legal rights nor legal responsibilities to their offspring



# Conclusion



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## Conclusion

- Complex society => tailore-made answer
- Treating children with questions about genetic origin equal?
- Adoption and mind shift
- Discovering: create openness
- Exploring: access to information
- Establishing: use a blended approach



# Conclusion

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