

Tracing down the historical development of the legal concept of the right to know one's origins
Has 'to know or not to know' ever been the legal question?

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Abstract

This article aims to contribute to the identification and understanding of the main legal questions surrounding the delineation of the material scope of the right to know one's origins or genetic descent as a legal concept and a procedurally enforceable right. With that dual purpose in mind, a historical analysis is not only offered of the relevant case law of the European Court of Human Rights (ECtHR), but also a critical examination of the procedural rules that have recently been devised in a German Act to promote this right's enforceability. The *ratione materiae* of the article is centred on issues concerning the identification of the biological father in the context of socio-legally constructed paternity. It is argued that the recently enacted Act in Germany providing for the creation of a separate, 'exclusively informational' procedure to ascertain biological fatherhood not only accords a greater measure of constitutional protection to the right to know than the ECtHR provides, but also has the additional advantage of ensuring that the personal informational interest is taken seriously as a legal value in itself distinguishable from the establishment of legal paternity *per se*. Nonetheless, in the recently enacted German law a number of procedural problems remain since the legislature was not prepared to consequently distinguish informational interests from the establishment of legal paternity.

Keywords

family law; parentage law; the child's right to know her or his origins; German law; European Court of Human Rights

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