

COMPLICATIONS IN FAMILY REUNIFICATION

• ANNA-MARIA TAPANINEN •

Various international conventions define and secure the right to family, including the Universal Declaration of Human Rights (1948) where the family is seen as 'the natural and fundamental group unit of society'. Even more relevant to the current discussion is Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that 'everyone has the right to respect for his private and family right, his home and his correspondence' and that any grounds for legitimate interference must be qualified by the standards of 'a democratic society'. Article 8 also has juridical consequences when family life is being evaluated as valid and genuine, and when legitimate interferences in it are being justified in courts of law. Human rights, like the right to family, are extremely complicated issues in the context of global movements of people. Asylum and family reunification are presently the most important admission channels to Europe for aliens. In many European countries, more than half the applications for residence permits are based on family ties. In Finland these amounted to 42 per cent of all applications in 2009, while employment-based immigration clearly decreased due to the economic recession. The number of asylum-seekers increased, too, and then started to decline. Family migration is seen as a particularly complicated category. But this is not only because of growing numbers but also because of continuous, increasingly restrictive amendments in legislation that can be seen as a response to it.

In the absence of legitimate documentation, the biological family tie is, since 2000 in Finland, routinely tested in laboratories. The many contexts of DNA testing in family reunification are my current research topic in an interdisciplinary, trilateral research project IMMIGENE, on the social, political and ethical implications of genetic testing for the purposes of family reunification in Austria, Finland and Germany. In Finland, the *option* of DNA testing is offered to people principally coming from the war-ridden countries of Somalia, Iraq and Afghanistan where documents of family relations are lacking or considered unreliable.

Family reunification is not solely a complicated bureaucratic *category* but also part of complicated social processes, as anthropologists would readily agree. For most anthropologists, the family is not a 'natural group unit of society', as defined in the Universal Declaration of Human Rights. Rather, the concept of family cannot be divorced from kinship as an analytic category. The family does not merely refer to a segment of a kinship system as represented in technical diagrams, but to a complicated and dynamic structure with complex and weighty political, economic and ideological implications. Anthropologists tend to complicate the conundrums of kinship further through their steadfast questioning of its natural bases.

It is considered common sense, not only in bureaucratic rhetoric but also in ordinary discussions, that family ties can be both biological and social. However, contemporary views of this divide tend to be ahistorical; the epochal novelty of our times is habitually exemplified by phenomena like new reproductive technologies, same-sex unions

and divorces. These put the supposedly traditional, stable family to test. But what if the family—taken collectively—has been social all along? It is inevitably historically constructed, variably defined as a political, economic and juridical unit, and invested with meanings and metaphors like blood. In contrast the usual presentist perspective which stresses unparalleled novelties, erases many histories of exclusions, regulations and transformations. Thus, DNA testing would seem to be testimony to the triumph of the biological knowledge that makes the natural facts explicit. The aliens, in contrast, would be expected to be carriers of more extended and social views of families. The tension between the two views of family ties is evident and recognized also in bureaucratic parlance, and this is clearly one facet of the complicated nature of family reunification. Furthermore, evoking the ‘social’ to contrast it with the ‘biological’ is itself one facet of current biologization of social relations.

The social nature of kinship categories—in this extended sense—is also reflected in bureaucratic categorizations of varying complexity. There are many categories of international protection, and many types of residence permit. When the persons given residence permits apply for family reunification, these differences all but vanish as the relatives are received as spouses, partners, children, parents, guardians and others like foster children, siblings and grandparents within a model of relatedness that appears universal. The right to family seems to transcend the differences between the categories.

Yet the categories do make a difference in terms of requirements and rights; the relations of Finnish citizens, citizens of other EU countries and third country nationals are delineated differently. And, finally, certain relations have to be verified by biotechnological tools. DNA testing does not, however, solve the complications of family reunifications. In administrative practices, the existence of biological family ties is not enough, for the applicants have to validate the history of close family life that they intend to continue in Finland in the future. It is also obvious that the people without valid documents—where DNA testing is supposed to provide a substitute—are also the ones who are most likely to have lost contact with their relatives. Also, configurations and practices, for example of polygamy, fostering, and various changing family formations, may complicate the legal and administrative ideas of ‘household’, ‘dependency status’ and ‘de facto care’.

Legislators are increasingly wary of illegal border crossing and fraudulent claims made by asylum-seekers. The latest amendments to the Finnish Aliens Act (549/2010) point to increasing surveillance of identities. In section 36, it is stated that ‘a residence permit by reason of family ties may be refused if there is reasonable grounds for suspecting that the sponsor has received a residence permit by circumventing the provisions on entry or residence by providing false information on his or her identity or family relations’. Thus, for example, if the sponsor living in Finland has received his/her residence permit as an under-age, unmarried asylum seeker or family member before lodging an application for his/her spouse and/or child(ren), this is considered a fraudulent claim. Means of survival, kinship obligations, potential abuse of welfare systems and maybe also trafficking in persons cannot be separated easily. One way to approach this is to note that kinship is not merely about continuity or belonging. It is about tactics, elasticity and about relations that are made. Efforts to differentiate between practiced kinship and intended and even orchestrated frauds are thus problematic.

No wonder that verifying or negating the existence of *close family life* is quite topical. With the deployment of DNA testing, applications to reunite with foster children have increased, lodged especially by Somalis. I agree with Petri Hautaniemi that we must stress the evident ineffectiveness of the biotechnological tools. Genetic ties cannot and do not, by themselves, give evidence of the existence of family ties. In a world of diasporas, proving the closeness at the level of households is of course an intricate issue. Browsing the International Red Cross Family Service lists of missing relatives gives striking testimony to the paradoxes involved. For any individual, the particulars given are the (often quite similar) names, sex and the father's name, (sometimes) the place of birth and (rarely) the date of birth. Red Cross Finland advises applicants to give additional information on the latest known address, however unclear, by drawing a map, or by giving the names of commonly known destinations like mosques or market places. If the tracing is successful, the found relatives still need to undergo other demanding and complicated processes of identification, also at the molecular level.

How can family-life in Somalia (or Iraq or Afghanistan) be juxtaposed, described as similar enough or too dissimilar to the 'family' as defined in Finnish legislation and, for example, in the Council Directive 2003/86/EC on the right to family reunification of third-country nationals? This challenge is evident in the continued proliferation of legal amendments that do not solve the challenges of increasing numbers of applications with increasingly complicated profiles. Incommensurate and paradoxical views on blood ties and relatedness coexist in the social practices of a globalized society. Recognizing differences and having knowledge of another culture, gleaned for instance via anthropological expertise, are evidently not enough to make sense of how global processes infiltrate through intimate experience.

I believe that one of the shortcomings of (many) anthropologists that prevents them from getting (or demanding) the floor in the debates around family reunification is their persistent refusal to engage with what they see as reductive views of social relations that are claimed to be universal-cum-natural. If all anthropology can do is to offer skilled reservations, debates bordering on theoretical overkill and descriptions tangled by an excess of perplexing minutiae in lieu of easy answers to current questions, it is obvious that their contributions may not be sought after. Yet, anthropologists have at the very least questions that are worth asking about the shifting contexts of family relatedness, ours included. By posing the questions, the incomparable can be brought into the same discussions, and where comparisons do not work, this itself can lead to new insights. What seem like limitations can thus also be potential resources in fields increasingly suffused with naturalizing tendencies and ideological notions. The concept of family is just a notable case in point.

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