Minnesota Journal of Law, Science & Technology

Volume 7 | Issue 2 Article 3

2006

Foster Care Safety and the Kinship Cue of Attitude Similarity

David J. Herring

Articles

Foster Care Safety and the Kinship Cue of Attitude Similarity

David J. Herring*

INTRODUCTION

The work of researchers in the field of behavioral biology provides insights into human behavior that are useful to public policymakers and legal decisionmakers.[1] One line of research involves the identification of kinship cues and the behavioral implications of these cues. Evolutionary theorists postulate that individuals develop behavioral mechanisms that lead them to treat biologically related others more favorably than unrelated others.[2] Experimental research conducted to test and explore these postulates has confirmed this core hypothesis concerning favorable treatment of kin.[3]

Of course, effective behavioral mechanisms for favorable

* Professor of Law, University of Pittsburgh School of Law. I would like to thank Owen Jones, Robin Magee, Margaret Mahoney, Thomas Ross, Edward Sites, Christopher Tate, George Taylor, and Lu-in Wang for comments and support.

1. *See* Owen D. Jones & Timothy H. Goldsmith, *Law and Behavioral Biology*, 105 COLUM. L. REV. 405, 431-501 (2005); Owen D. Jones, *Evolutionary Analysis in Law: An Introduction and Application to Child Abuse*, 75 N.C. L. REV. 1117 (1997).

2. *See* ROBERT TRIVERS, SOCIAL EVOLUTION 126-35 (1985); William D. Hamilton, *The Genetical Evolution of Social Behavior*, 7 J. THEORETICAL BIOLOGY 1, 21-26 (1964).

3. *See generally* DAVID J. C. FLETCHER & CHARLES D. MICHENER, KIN RECOGNITION IN ANIMALS (1987); PETER G. HEPPER, KIN RECOGNITION (1991); Eugene Burnstein, Christian Crandall & Shinobu Kitayama, *Some Neo-Darwinian Decision Rules for Altruism: Weighing Cues for Inclusive Fitness as a Function of the Biological Importance of the Decision*, 67 J. PERSONALITY & SOC. PSYCHOL. 773 (1994); Daniel J. Kruger, *Evolution and Altruism: Combining Psychological Mediators with Naturally Selected Tendencies*, 24 EVOLUTION & HUM. BEHAV. 118, 119-24 (2003).

treatment of kin require individuals to have the capacity to recognize kin. More specifically, an individual's brain must have mechanisms that identify another individual as being biologically related or biologically unrelated.[4] In fact, because the degree of favorable treatment should, according to evolutionary theory, vary with the degree of biological relationship, one would expect the kinship recognition mechanism to be more complex than simply an "on" or "off" protocol. It should lead one to treat a son more favorably than a nephew, a sister more favorably than an aunt, and a parent more favorably than a grandparent.[5] Experiments have largely confirmed the existence of this type of sophisticated kinship recognition mechanism.[6]

Despite this level of sophistication, kinship mechanisms or decision rules are not infallible. In fact, they often recognize someone as kin who is not actually biologically related.[7] Thus, an individual may confer favorable treatment on others who are not kin, acting under a mistaken belief that they are biologically related.[8]

A primary goal of public foster care systems is to encourage adult caretakers to provide favorable treatment to children whom state actors have removed from parental custody.[9] In order to achieve this goal, it might be useful to activate unconscious kin recognition mechanisms in foster parents as they relate to their foster children. In other words, it might be useful to have foster parents mistakenly recognize their foster children as close kin. Attempts to activate kin recognition mechanisms could result in more favorable treatment of foster children, a decrease in abuse and neglect within the foster care system, and an increase in the prevalence of minimally

4. *See* Martin Daly, Catherine Salmon & Margo Wilson, *Kinship: The Conceptual Hole in Psychological Studies of Social Cognition and Close Relationships*, *in* EVOLUTIONARY SOCIAL PSYCHOLOGY 265 (Jeffrey A. Simpson & Douglas T. Kenrick eds., 1997).

5. *See* TRIVERS, *supra* note 2, at 126-35.

6. *See* Burnstein, Crandall & Kitayama, *supra* note 3, at 773.

7. Justin H. Park & Mark Schaller, *Does Attitude Similarity Serve as a Heuristic Cue for Kinship? Evidence of an Implicit Cognitive Association*, 26 EVOLUTION & HUM. BEHAV. 158, 163-68 (2004).

8. *Id.*

9. *See* 42 U.S.C. § 671(a)(15)(A) (2000). In clarifying the federal law requirement that public child welfare agencies must make reasonable efforts to reunify families, Congress expressly mandates in this Act that "the child's health and safety shall be the paramount concern." *Id.*

adequate foster homes.[10]

This article identifies a specific kinship cue and explores this insight and its implications for foster care placement practices and policies. Part I describes the goals of a larger project concerning foster care placements and kinship cues. This Part makes clear that the goals of this larger project, and the values that they reflect, do not derive from behavioral biology research. The behavioral research does not inform decisions about what goals society *ought* to pursue, but this research can help public actors to achieve more effectively goals that the public has established outside the examination of the biological *is*. Part II provides basic background information on the impact of perceptions of kinship in fostering favorable treatment of others. Part III then discusses kinship cues, focusing primarily on a recent line of research examining the impact of perceived attitude similarity. Finally, Part IV explores the possible implications of the attitude similarity kinship cue for foster care placement practices and policies.

In addition to presenting this basic exploration, this article has two secondary purposes. First, this article will demonstrate the possible benefits of opening a dialogue between behavioral biology researchers and legal scholars. A dialogue between scholars in these fields will help ensure that at least some of the research is relevant to legal inquiry and legal issues. It may even lead to collaboration in setting research agendas that will address important public goals and legal issues. This article hopes to spur such interdisciplinary dialogue and collaboration that will lead to advances in public policy and law through small, practical steps.

Related to the first secondary purpose, this article takes another step in using behavioral biology research to provide insights useful in securing the public goal of minimally adequate environments for child development. This is a large, ambitious project. Findings from behavioral biology research indicate some of the minimal conditions necessary for child safety and adequate development. For example, the research indicates that the lack of certain types of support and resources

10. *See* David J. Herring, *Child Placement Decisions: The Relevance of Facial Resemblance and Biological Relationships*, 43 JURIMETRICS J. 387, 404-09 (2003) (recommending that facial resemblance be taken into consideration by agencies when making and monitoring foster care placements because studies have shown that facial resemblance is associated with prosocial behavior).

helps to explain the occurrence of infanticide, abandonment, and neglect.[11] This behavioral biology research could potentially help public officials in fashioning an effective preventive services program for families and children. This research could provide insights that buttress and guide preventive approaches such as the provision of financial resources, maintenance of biological parent/child relationships, and encouragement of strong, healthy attachments between parent and child.

Additional research findings likely could assist the public in securing minimally adequate care for children. Again, this research could play a useful, if not comprehensive role in buttressing and guiding public policies and laws related to families and children. It is certainly worthy of exploration by behavioral biology researchers and legal scholars.

I. SOCIAL VALUES AND PUBLIC GOALS RELATED TO FOSTER CARE PLACEMENTS

It is important at the outset to be clear on how this article uses findings from research in the field of behavioral biology. This article *does not* use these findings to identify or define social values or public policy goals. As Professor Owen Jones repeatedly states in his careful work on evolutionary analysis in law, behavioral biology does not assist a society in setting and defining its values and goals.[12] Other sources must provide assistance and guidance in this area. Using findings from behavioral biology research to establish social values and to set public goals would essentially equate what is with what ought to be. This article strives to avoid this fundamental error. That is not to say that this article proceeds without identifying a set of public policy goals, but the goals are not derived from behavioral biology. Public actors have formulated these goals using other sources and without regard to basic behavioral biology research.

Over the past thirty years, the American public has identified and embraced two primary goals for children placed

---

11. *See* Martin Daly & Margo Wilson, *Discriminative Parental Solicitude: A Biological Perspective*, 42 J. MARRIAGE & FAM. 277, 281-85 (1980).

12. *See* Jones & Goldsmith, *supra* note 1, at 431-501; Jones, *supra* note 1, at 1124; *see, e.g.*, Owen D. Jones, *Sex, Culture, and the Biology of Rape: Toward Explanation and Prevention*, 87 CAL. L. REV. 827, 837 (1999) [hereinafter Jones, *Sex, Culture, and the Biology of Rape*].

in foster care. First, the public wants state actors to make sure that each child in foster care is safe and healthy.[13] Second, the public wants state actors to secure a stable, committed, and permanent placement for each child within a timeframe that meets the particular child's developmental needs.[14] The public views the achievement of these goals as necessary for the minimally adequate development each child deserves and a large democratic society requires.[15]

The goal of safety and health is not limited to protection from physical and sexual abuse. It also potentially entails comprehensive protection from emotional abuse and neglect that threaten a child's physical or mental well-being.[16] The public charges state actors with securing caretaking environments that allow each child to develop into a healthy, competent adult.[17] Although this goal does not require the best possible developmental environment for each child, the public clearly seeks to guarantee at least a minimally adequate environment for each child. Such an environment requires the presence of at least one adult caretaker who will provide a child with a significant degree of beneficial treatment.[18]

The goal of achieving timely permanent placements requires each child to have at least one adult who has made a permanent commitment to actively provide necessary care.[19] Ideally, a permanent placement includes a loving, caring relationship between adult and child. The adult must be committed to this relationship for the long term, at least until the child reaches the age of adulthood, but ideally for the child's entire life. This permanent caring relationship is to be recognized by the law through formal mechanisms such as adoption or permanent guardianship. It means much more in terms of commitment than a temporary, contingent, contract-

13. *See* Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115 (1997); 42 U.S.C. § 671(a)(15)(A) (2000); David J. Herring, *The Adoption and Safe Families Act—Hope and Its Subversion*, 34 FAM. L.Q. 329, 336-40 (2000).

14. *See* Herring, *supra* note 13, at 336-40.

15. *See id.*; *see also* DAVID J. HERRING, THE PUBLIC FAMILY: EXPLORING ITS ROLE IN DEMOCRATIC SOCIETY 159-79 (2003).

16. *See generally* J. Robert Shull, *Emotional and Psychological Child Abuse: Notes on Discourse, History, and Change*, 51 STAN. L. REV. 1665 (1999).

17. *See* Maxine Eichner, *Dependency and the Liberal Polity: On Martha Fineman's* The Autonomy Myth, 93 CAL. L. REV. 1285, 1313-19 (2005).

18. *See* ANTHONY N. MALUCCIO ET AL., PERMANENCY PLANNING FOR CHILDREN: CONCEPTS AND METHODS 6-8 (1986).

19. *See id.*

based foster care placement. As with the goal of safety, the goal of permanency requires the presence of an adult caretaker who will provide a child with the desired level of beneficial treatment.[20]

These public goals arguably mirror the basic biological arrangement of parent and child. However, their source is not the existence of a biological relationship between a parent and a child. Rather, the source is the public's normative judgment that an appropriate adult caretaker/child relationship serves important purposes for individuals and society.[21] This judgment may arise from the widely shared, common experience of childhood and the personal value placed on the parent/child relationship by many citizens.[22] It may also arise from theories of child development, including attachment theory, which emphasizes the need for an engaged adult caretaker for each child.[23] The public judgment may arise from religious traditions and convictions that highly value the biological family and the parent/child relationship.[24] It may also arise from political theory addressing the proper functioning of democratic societies.[25]

There are many possible explanations for why the public has established the goals of securing safety, health, and permanency for children in the public foster care system. However, none of these explanations depends on findings from behavioral biology. The public defines what "ought" to be the conditions for foster children through a process independent and separate from the findings of behavioral biology research. It is a matter of social values, choices, and ambitions, not of discoveries of what "is" our biology or "are" our behavioral tendencies.[26]

---

20. *See id.*

21. *See generally* HERRING, *supra* note 15.

22. *See generally id.* at 100-09; CHRISTOPHER LASCH, HAVEN IN A HEARTLESS WORLD: THE FAMILY BESIEGED (1977); PHILLIP MEYER, THE CHILD AND THE STATE: THE INTERVENTION OF THE STATE IN FAMILY LIFE 28-39 (1983).

23. *See generally* JOHN BOWLBY, ATTACHMENT AND LOSS (1969); VERA I. FAHLBERG, A CHILD'S JOURNEY THROUGH PLACEMENT (1991); JOSEPH GOLDSTEIN ET AL., BEYOND THE BEST INTERESTS OF THE CHILD 38-41 (1973).

24. *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 214-15 (1972).

25. *See* HERRING, *supra* note 15.

26. *See* Jones & Goldsmith, *supra* note 1; Jones, *supra* note 1; Jones, *Sex, Culture, and the Biology of Rape*, *supra* note 12.

Despite their irrelevancy in the determination of which goals the public should strive to achieve, findings from behavioral biology research provide useful insights into human behavioral tendencies that policymakers should take into account as they seek to achieve established goals.[27] For example, research findings can identify behavioral tendencies that indicate a particular public goal will be very difficult to achieve and will impose a high cost on society if sought.[28] The public goal of communal childcare within Israeli kibbutzim provides a powerful illustration of this point.[29] The severe restrictions imposed by these communities on parental love and supervision of children conflicts with the strong behavioral tendency to provide care preferentially to biologically related children. While the members of a kibbutz may be willing to incur substantial financial and emotional costs for a considerable period in order to sustain this system of childcare, the behavioral biology research indicates that this system is not sustainable in the long term without the adoption of a strict authoritarian approach.[30]

Knowing about these substantial costs would assist policymakers in designing and implementing a system of communal childcare. This knowledge presents them with the choice of either allowing a significant level of parental involvement or initiating a high degree of public coercion and force. In other words, the public could decide either to reduce the foreseeable costs or to consciously incur very high costs.[31]

Of course, most public goals do not conflict so directly and dramatically with a strong behavioral tendency. But even in the more typical situation, behavioral research can contribute to public policy formation, albeit in a more complex manner. The situation of serious child maltreatment by biological parents presents this more typical scenario. Although such maltreatment may affect a relatively small fraction of the child population whose loss arguably does not threaten society's basic functioning, the public has adopted a goal to protect and provide appropriate care for these children.[32]

---

27. *See* Jones, *supra* note 1, at 1165; Jones & Goldsmith, *supra* note 1.

28. *See* Jones, *supra* note 1, at 1165; Jones & Goldsmith, *supra* note 1

29. *See* HERRING, *supra* note 15, at 13-16.

30. *See id.*; LIONEL TIGER & JOSEPH SHEPHER, WOMEN IN THE KIBBUTZ 37-39 (1975).

31. Jones & Goldsmith, *supra* note 1, at 459-65.

32. *See* David J. Herring, *Exploring the Political Roles of the Family:*

At a minimum, this goal requires temporary protection from biological parents. The public must decide how to provide this protection. There are many possibilities, which include placing the children in any of the following environments: group homes, randomly selected single family homes, carefully selected single family homes, homes with kin other than parents, or in closely monitored homes with their biological parents.[33]

Insights from behavioral biology research could help public policymakers in choosing among the alternatives for child protection. For instance, if an adult caretaker tends to treat the children of kin better than the children of nonkin, placement in kinship care when possible may help to secure appropriate, safe childcare.[34] Thus, public actors may want to encourage foster care placements with kin when possible. If this is not possible or is inadvisable for other reasons, public actors may want a system that promotes placement in foster homes that mimic placements with close biological family members as much as possible, avoiding the group home setting or traditional orphanages.[35]

The above placement preferences largely reflect common sense and are consistent with current approaches within public foster care systems. Findings from behavioral biology research are unnecessary in establishing appropriate public policies in pursuit of child protection in this area. Without any apparent reliance on behavioral biology research, policymakers have established the following decision rules. First, place the child in the care of biologically related kin if they have the capacity to provide at least minimally adequate care. If this is not possible, place the child in the care of unrelated adults who provide a single family home setting that mimics the biological nuclear family. However, if this is not possible due to a lack of

---

Justifications for Permanency Planning for Children, 26 LOY. U. CHI. L.J. 183, 185-91, 230 (1995).

33. *See, e.g.*, SUSAN WHITELAW DOWNS ET AL., CHILD WELFARE AND FAMILY SERVICES 344-51 (7th ed. 2004); Peter J. Pecora et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* 25 (2005), *available at* http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/300/nw_alumni_study_full_apr2005.pdf.

34. *See* Mary I. Benedict et al., *The Reported Health and Functioning of Children Maltreated While in Family Foster Care*, 20 CHILD ABUSE & NEGLECT 561, 567-69 (1996).

35. *See* DOWNS ET AL., *supra* note 33, at 333-35.

foster homes or because of a particular child's special needs, then place the child in a group care facility that provides appropriate support services.[36]

Despite the apparent embrace of this approach to secure child safety—an approach that appears consistent with human behavioral tendencies—the public consistently fails to achieve its goals. Children are not relatively safe in foster care. In fact, they face a substantial risk of continued harm.[37] Foster homes are often overburdened and poorly supervised.[38] The high rate of sexual abuse among foster children living within the same home is an indication of these high-risk conditions.[39] In addition, foster children face a significant risk of abuse from their caretakers.[40] Furthermore, foster children frequently experience educational neglect throughout childhood, and they are often abandoned when they become adults.[41]

These conditions might be acceptable if the child welfare system quickly secured permanent placements for foster children. Children could then exit the foster care system without significant exposure to a high risk of harm. But the system frequently fails to achieve timely permanent

36. *Id.*

37. *See* Diane DePanfilis & Heather Girvin, *Investigating Child Maltreatment in Out-of-Home Care: Barriers to Effective Decision-Making*, 27 CHILD. & YOUTH SERVS. REV. 353, 354 (2005); Pecora et al., *supra* note 33, at 32 (finding that one in four foster children suffer from post-traumatic stress disorder and experience many negative outcomes).

38. *See* Cristina Chi-Young Chou, *Renewing the Good Intentions of Foster Care: Enforcement of the Adoption Assistance and Child Welfare Act of 1980 and the Substantive Due Process Right to Safety*, 46 VAND. L. REV. 683, 683-87 (1993); Michael J. Dale, *Providing Counsel to Children in Dependency Proceedings in Florida*, 25 NOVA L. REV. 769, 776 (2001).

39. *See* Mary I. Benedict et al., *Types and Frequency of Child Maltreatment by Family Foster Care Providers in an Urban Population*, 18 CHILD ABUSE & NEGLECT 577 (1994).

40. *See id.*; *see also* Benedict et al., *supra* note 34; DePanfilis & Girvin, *supra* note 37; Martin Daly & Margo Wilson, *Child Abuse and Other Risks of Not Living with Both Parents*, 6 ETHOLOGY & SOCIOBIOLOGY 197 (1985); Georgina F. Hobbs, Christopher J. Hobbs & Jane M. Wynne, *Abuse of Children in Foster and Residential Care*, 23 CHILD ABUSE & NEGLECT 1239 (1999); Brian Minty & Sheila Bray, *Allegations Against Foster Carers: An In-Depth Study*, 10 CHILD ABUSE REV. 336 (2001); Michael A. Nunno & Janet K. Motz, *The Development of an Effective Response to the Abuse of Children in Out-of-Home Care*, 12 CHILD ABUSE & NEGLECT 521 (1988); James A. Rosenthal et al., *A Descriptive Study of Abuse and Neglect in Out-of-Home Placement*, 15 CHILD ABUSE & NEGLECT 249 (1991); Susan J. Zuravin et al., *Child Maltreatment in Family Foster Care*, 63 AM. J. ORTHOPSYCHIATRY 589 (1993).

41. *See generally* Pecora et al., *supra* note 33, at 4-6.

placements.[42] The average stay in foster care exceeds two years in many jurisdictions, with some children spending significantly more time in these "temporary" placements.[43]

In light of society's use of foster care to protect children from parental maltreatment and its failure to provide children with timely exits from foster care, the public goal of child safety and health requires the improvement of foster care conditions. Although a growing number of foster care placements involve adult caretakers who are biologically related to the child (although not as closely related as parent and child), the majority of placements put unrelated adults in the role of foster parent.[44] In this common situation, the behavioral tendencies captured in the biologically based concepts of parental investment or kinship altruism do not apply. More specifically, the behavioral tendency to provide favorable treatment to biologically related children is not in operation.[45]

The question raised in this article, and in a larger project of mine, is whether behavioral biology research addressing kinship cues can help to alter this situation and to enhance safety in foster care. Specifically, can public actors use this research to create kinship cues that cause foster parents to treat unrelated foster children more like their own children or other close kin? If public actors can effectively introduce kinship cues within specific foster care settings, they may be able to enhance child safety and health significantly in those settings.

The initial product of the larger project addressed the

---

42. *See* Herring, *supra* note 13, at 403.

43. The most recent national statistical estimates for children in foster care (from fiscal year 2001) reveal that thirty-one percent of children who exited foster care had spent more than two years in care, with eleven percent having spent three to four years in care prior to exit and nine percent having spent more than five years in care. NATIONAL CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT INFORMATION, U.S. DEP'T OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN & FAMILIES, FOSTER CARE NATIONAL STATISTICS 4 (2003) [hereinafter STATISTICS], http://nccanch.acf.hhs.gov/pubs/factsheets/foster.pdf.

44. The most recent national statistical estimates for children in foster care (from fiscal year 2001) reveal that 76% of foster care placements involved non-relative foster parents, while 24% involved relatives as foster parents. *Id.* at 2.

45. *See* DAVID J. BULLER, ADAPTING MINDS 351-55 (2005); TRIVERS, *supra* note 2, at 109-44.

kinship cue of facial resemblance.[46] A series of behavioral studies indicates that males treat favorably those children whose facial appearance resembles their own.[47] Facial resemblance appears to operate as a significant proxy for biological relationship, thus reducing paternity uncertainty.[48] These research findings reveal the potential benefits of matching facial characteristics of foster children and male foster parents. If public actors could achieve such matching within the foster care system, then foster families—especially foster fathers—may treat children placed with them more favorably.[49]

The second product of the larger project addressed the kinship cue of co-residence during early childhood.[50] A series of studies has established that children who live together during the first three to six years of their lives develop an aversion to sexual activity with one another as teenagers and adults.[51]

46. Herring, *supra* note 10. It should be acknowledged that the larger project had its genesis in Owen Jones's work surrounding evolutionary analysis in law. *See* Jones, *supra* note 1.

47. Herring, *supra* note 10; Lisa M. DeBruine, *Resemblance to Self Increases the Appeal of Child Faces to Both Men and Women*, 25 EVOLUTION & HUM. BEHAV. 142 (2004); Steven M. Platek et al., *Reactions to Children's Faces: Resemblance Affects Males More than Females*, 23 EVOLUTION & HUM. BEHAV. 159 (2002) [hereinafter Platek et al., *Children's Faces*]; Steven M. Platek et al., *How Much Paternal Resemblance is Enough? Sex Differences in Hypothetical Investment Decisions but Not in the Detection of Resemblance*, 24 EVOLUTION & HUM. BEHAV. 81 (2003) [hereinafter Platek et al., *Paternal Resemblance*]; Steven M. Platek et al., *Reactions to Children's Faces: Males Are More Affected by Resemblance than Females Are, and So Are Their Brains*, 25 EVOLUTION & HUM. BEHAV. 394 (2004).

48. Park & Schaller, *supra* note 7, at 160.

49. *See* Herring, *supra* note 10. This initial project also addressed a second line of research concerning the importance of the degree of parental investment to child safety and well-being. The research indicated the importance of family preservation efforts that avoid the need for foster care and the importance of involving biological parents, especially biological mothers, in the lives of their children even after removal and placement in foster care.

50. David J. Herring, *Foster Care Placement: Reducing the Risk of Sibling Incest*, 37 MICH. J.L. REFORM 1145 (2004).

51. *Id.* at 1172; *see* JOSEPH SHEPHER, INCEST: A BIOSOCIAL VIEW 61 (1983); ARTHUR P. WOLF, SEXUAL ATTRACTION AND CHILDHOOD ASSOCIATION: A CHINESE BRIEF FOR EDWARD WESTERMARCK 198-213 (1995); Irene Bevc & Irwin Silverman, *Early Separation and Sibling Incest: A Test of the Revised Westermarck Theory*, 21 EVOLUTION & HUM. BEHAV. 151, 160 (2000); Irene Bevc & Irwin Silverman, *Early Proximity and Intimacy Between Siblings and Incestuous Behavior: A Test of the Westermarck Theory*, 14 ETHOLOGY & SOCIOBIOLOGY 171 (1993); Justine McCabe, *FBD Marriage: Further Support for the Westermarck Hypothesis of the Incest Taboo*, 85 AM. ANTHROPOLOGIST

Disrupting co-residence during this period significantly increases the risk of sibling incest later in life.[52]

Although this second project focused on the relationships among siblings placed in foster care rather than the relationships between foster parent and foster child, it had significant implications for securing foster care placements that do not cause subsequent harms to affected children—namely, an increased risk of sibling incest.[53] Despite a prevalent and longstanding public policy to place siblings together in foster care, public actors separate a large number of siblings each year upon placement in foster care.[54] The policy to place siblings together rests largely on a general rationale concerning the importance of the sibling relationship and the positive effects of such a relationship on child development.[55] The rationale does not appear to be supported by powerful principles or compelling empirical research. It seems to derive more from emotional traditions and the experiences of policymakers concerning the importance of their own sibling relationships.[56] The weak rationale leads to failure in a resource-poor system to actually place siblings together in foster homes.[57]

In light of this situation, the behavioral biology research concerning the increased risk of sibling incest due to separation at a critical age could provide policymakers with information that is relevant to sibling placement policy. The public has already adopted a goal of placing siblings together.[58] It also has established a goal of avoiding sibling incest.[59] As noted

---

50 (1983).

52. *See* Herring, *supra* note 50, at 1161.

53. *See id.* at 1171-79.

54. *See id.* at 1179; Sharon G. Elstein, *Making Decisions About Siblings in the Child Welfare System*, 18 A.B.A. CHILD L. PRAC. 97, 97 (1999-2000) (noting that each year approximately 30,000 brothers and sisters are separated into different foster or adoptive homes).

55. *See* Elstein, *supra* note 54, at 102-03; Herring, *supra* note 50, at 1162-64; William Wesley Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Associational Rights*, 48 U. MIAMI L. REV. 745, 760-68 (1994).

56. *See* Herring, *supra* note 50, at 1162-64, 1178-79.

57. *Id.* at 1167-71.

58. *Id.* at 1165-67.

59. *Id.* at 1177-78 & n.273. *See generally* WOLF, *supra* note 51 (discussing justifications for society's incest taboo based on biological concepts and the psychological trauma experienced by female participants); S. Kirson Weinberg,

above, the public sets these goals in a process separate from behavioral biological research,[60] but information from the biological research can assist public actors in achieving these public goals. Although they may be unable to place all siblings together in foster care, public actors may be able to target foster care resources in order to place together those siblings who are in the critical period for development of sexual aversion.[61] Achieving this result would minimize the increased risk of subsequent sibling incest, an increased risk that may be relatively low even if siblings are separated, but which society may have a strong motivation to eliminate for various moral and religious reasons.[62] In this way, public actors could use behavioral biology research to combine and achieve public goals in a targeted way that does not overwhelm public resources.[63]

Findings from behavioral biology research could eventually provide numerous insights that would assist public actors in constructing and supporting minimally adequate and safe developmental environments for children in foster care. For example, lines of research might support the increased use of kin as foster parents as well as provide insights into the particular conditions that make such placements particularly safe and strong.[64] Additional research might identify the benefits of keeping a biological parent involved in the life of a foster child, supporting policies and practices that encourage parental visitation and participation in case planning and management.[65] Other research might identify benefits from providing foster families with a high level of support resources, both in terms of financial resources and support services.[66]

The list of possible uses of this research is potentially long and as yet undefined. As indicated above, one line of behavioral biology research that may provide useful insights

---

Incest Behavior, *in* SEX AND SOCIETY 172-78 (John S. Edward ed., 1972) (discussing justifications for society's incest taboo based on the disruption of family relationships).

60. *See* Jones & Goldsmith, *supra* note 1, at 464-65; Herring, *supra* note 50, at 1177-78 & n.273.

61. *See* Herring, *supra* note 50, at 1171-79.

62. *See id.*

63. *See id.*

64. Benedict et al., *supra* note 39, at 582.

65. *See* Herring, *supra* note 10, at 392-401, 409-13.

66. *See* Daly & Wilson, *supra* note 11, at 281-85 (discussing the increased risk of child maltreatment, abandonment, and infanticide presented by parents who are unrelated to children in their care and by all parents who do not possess adequate resources).

examines the nature and implications of kinship cues. Several types of kinship cues have been identified and largely verified, including co-residence during early childhood, facial resemblance, smell, feelings of empathy, and attitude similarity.[67] Research surrounding this last kinship cue is the primary subject of this article. If holding similar attitudes signals a kinship relationship that evokes beneficial treatment, then would an effort to match the attitudes of foster parents and foster children enhance the safety and adequacy of foster care?[68]

II. THE IMPACT OF PERCEIVING CUES ASSOCIATED WITH KINSHIP

Kin selection theory posits that evolved social cognitive mechanisms include those that lead individuals to recognize and discriminate favorably in regard to kin.[69] These mechanisms evolved because individuals with a predisposition to favor kin by providing resources that contribute to survival and successful reproduction left more copies of their own genes, on average, than did individuals who lacked this predisposition. With these cognitive mechanisms in place, kin regularly engage in seemingly altruistic behavior that provides significant benefits to an individual organism.[70]

In evolutionary terms, the ultimate cause[71] of this

67. Park & Schaller, *supra* note 7, at 160.

68. This article focuses on foster care placements because these placements arguably constitute the non-biological family-type setting that presents the highest risk to children. For many of these placements, the adult caretaker has not made a long-term commitment to care for the child, yet the placement may extend over a period of years. Thus, the creation of kinship cues and prosocial behavior toward a particular child may be especially beneficial in this context. Of course, the creation of kinship cues may also benefit children in adoptive placements or permanent guardianship arrangements with unrelated adult caretakers.

69. *See* Daly, Salmon & Wilson, *supra* note 4; Park & Schaller, *supra* note 7, at 159.

70. *See* TRIVERS, *supra* note 2, at 143; Daly, Salmon & Wilson, *supra* note 4.

71. Professor Owen Jones has described the biological term "ultimate cause" by comparing it to the term "proximate cause":

> In biology, the term "proximate cause" refers only to the "how" of behavior. It peacefully coexists with the term "ultimate cause," which describes the larger "why" of behavior. More precisely, "proximate causes" describe immediate causes, related to the internal mechanisms and development that cause an organism to manifest a

altruistic behavior is captured in the concept of inclusive fitness. Because kin share a significant percentage of the genetic material that varies in a population, they have a genetic interest in seeing that members of their kinship group survive and reproduce.[72] In this way, an individual increases the likelihood that a significant percentage of his or her own genes will pass to the next generation. For example, an individual shares with a full sibling approximately 50% of genetic material that varies in a population. If this sibling survives and successfully reproduces, the resulting child will possess approximately 25% of the original individual's genes.[73] In contrast, the successful reproduction of nonkin provides no measurable genetic benefit because they do not pass on any shared variable genetic material. There may be other reasons to provide this nonkin individual with benefits, such as the possibility of reciprocation in the future, but there are no reasons in terms of the propagation of shared genetic material.[74] As a result, there has been evolutionary pressure to develop cognitive mechanisms that evoke altruistic acts that benefit kin as opposed to nonkin.[75]

The concept of degree of relatedness is important in assessing the strength of kin altruism in regard to particular biological relationships. As described above, non-twin, full siblings share approximately 50% of genetic material that varies in a population, and biologically unrelated individuals share a negligible amount that may approach 0%. Additionally, monozygotic twins share 100%, parents and children share 50%, and half-siblings share 25%, as do grandparents and grandchildren, uncles and nephews, aunts and nieces. Cousins share 12.5%.[76] Therefore, in terms of inclusive fitness concepts, natural selection has generally

---

> particular behavior. They may be defined in terms of physiology and biochemistry, for example, as well as, at times, an organism's unique developmental-environmental history. "Ultimate causes," on the other hand, describe evolutionary processes by which the same behavior came to be commonly observable. These may be defined in terms of the history and reproductive consequences of behavior. Proximate and ultimate cause operate together, with all behavior depending on ultimately-shaped proximate mechanisms.

Jones, *supra* note 1, at 1127-28 (citations omitted).

72. *See* TRIVERS, *supra* note 2, at 109-44.

73. *Id.*

74. *Id.*

75. *Id.*

76. BULLER, *supra* note 45, at 351-55.

favored heritable tendencies to provide more benefits to a full sibling than to an uncle or a cousin.[77] Targeting altruistic behavior in this way increases the likelihood that more of an individual's genetic material will pass to future generations.[78]

Studies of prosocial behavior support kin selection theory, including the concepts of inclusive fitness. Several studies reveal that animals tend to provide more benefits to those who are closely related to them.[79] As to humans specifically, a series of studies indicates that individuals provide more assistance to kin than to nonkin.[80] In addition, people tend to provide more assistance to closer kin as opposed to more distant kin.[81] These studies reveal a range of kin-favoring prosocial behavior.[82]

In summary, studies of prosocial behavior identify the relevance and importance of kinship in eliciting favorable, beneficial treatment. Individuals discriminate among close kin, more distant kin, and unrelated individuals in order to vary the extent of their altruistic behavior. If an individual perceives cues that indicate another as close kin, he will tend to treat the other person more favorably than those he perceives as distant kin, whom in turn he will treat more favorably than those he perceives as unrelated.

This discrimination and the resulting variance in the degree of beneficial treatment do not necessarily result from rational calculations consciously made by the actor. In other words, this form of prosocial, altruistic behavior is not necessarily, or even frequently, the product of rational assessments of genetic relatedness.[83] People use a set of signals or cues as indicators of kinship.[84] These kinship cues activate kinship recognition and motivate prosocial action. Thus, while the ultimate evolutionary cause of beneficial

77. TRIVERS, *supra* note 2, at 113-14.

78. *Id.*

79. *See id.*; FLETCHER & MICHENER, *supra* note 3; Paul W. Sherman, *Nepotism and the Evolution of Alarm Calls*, 197 SCIENCE 1246 (1977).

80. *See* Burnstein, Crandall & Kitayama, *supra* note 3; Daly, Salmon & Wilson, *supra* note 4; Kruger, *supra* note 3.

81. *See* Burnstein, Crandall & Kitayama, *supra* note 3; Daly, Salmon & Wilson, *supra* note 4.

82. *See* Daly, Salmon & Wilson, *supra* note 4; Park & Schaller, *supra* note 7.

83. *See* Park & Schaller, *supra* note 7, at 159.

84. *See id.*

treatment of kin is the increased likelihood of the actor's differential genetic material passing to future generations, the proximate cause or mechanism for this behavior is the perception of cues historically associated with close kinship and the activation of the subjective and emotion-laden feelings of closeness or empathy.[85]

Accordingly, the important starting point for harnessing the proximate mechanisms of prosocial behavior to further public goals is to identify specific kinship cues. The arousal of feelings of closeness and empathy depends on the detection of primary perceptual and cognitive cues.[86] One line of research has identified attitude similarity as a kinship cue.[87]

III. KINSHIP CUE: PERCEIVED ATTITUDE SIMILARITY

People often respond to superficially similar others in a manner that parallels responses to actual kin. For example, fathers favor children who look most like them.[88] Adult males are also more willing to help unrelated children who share their facial features.[89] In addition, people are more likely to assist someone who they are told shares their name or their fingerprints, especially if the shared feature is relatively uncommon or unique.[90]

Other phenotypic similarities may also evoke prosocial, altruistic behavior because the particular similarity serves as a signal of kinship. One such possible similarity relates to individuals' attitudes about particular matters.[91] Several studies indicate that individuals who share differential genetic material also share a wide range of attitudes. While there is a significant degree of variability in the extent to which attitudes are heritable, behavioral genetic research reveals that many

85. *See id.*

86. *See id.* at 160.

87. *See id.*

88. *See* Rebecca L. Burch & Gordon G. Gallup, Jr., *Perceptions of Paternal Resemblance Predict Family Violence*, 21 EVOLUTION & HUM. BEHAV. 429, 433 (2000).

89. *See* DeBruine, *supra* note 47, at 143; Platek et al., *Children's Faces*, *supra* note 47, at 164; Platek et al., *Paternal Resemblance*, *supra* note 47, at 86.

90. *See* Jerry M. Burger, Nicole Messian, Shebani Patel, Alicia del Prado & Carmen Anderson, *What a Coincidence! The Effects of Incidental Similarity on Compliance*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 35, 41 (2004).

91. *See* Park & Schaller, *supra* note 7, at 160–61.

common attitudes have a significant degree of heritability.[92]

One major twin study in this area measured the heritability of thirty specific attitudes.[93] The measured attitudes included those toward specific objects (for example, sweets, roller coaster rides), social issues (such as capitalism, abortion on demand, making racial discrimination illegal), and activities (for example, playing chess, exercising, reading books). A comparison of correlations between identical (monozygotic) twins and fraternal (dizygotic) twins revealed a positive contribution of genetic factors in the formation of twenty-six of the thirty specific attitudes measured.[94] In other words, for twenty-six attitude measures genetic effects contributed to the development of different attitudes within the tested population in varying positive percentages. For example, the variance among the tested population in attitudes about reading books is 57% attributable to genetic effects, 43% attributable to non-shared environmental effects (environmental conditions or incidents experienced only by one of the twins) and 0% attributable to shared environmental effects.[95] The attributable variance in attitudes about sweets is 22% genetic, 65% non-shared environment, and 12% shared environment.[96] The average genetic effect for the variance in the thirty attitudes measured is 35%, ranging from a low of 0% to a high of 57%.[97] The five attitude factors with the highest genetic effects on variance are reading books (57%), abortion on demand (54%), playing organized sports (52%), roller coaster rides (52%), and death penalty for murder (50%).[98] The four items with no genetic effect contributing to variance within the tested population are attitudes toward separate roles for men and women, playing bingo, easy access to birth control, and being assertive.[99]

Overall, this twin study indicates that many attitudes are heritable to a significant degree. Based on this finding,

92. *See* James M. Olson, Philip A. Vernon, Julie Aitken Harris & Kerry L. Jang, *The Heritability of Attitudes: A Study of Twins*, 80 J. PERSONALITY & SOC. PSYCHOL. 845, 859 (2001).

93. *Id.* at 847.

94. *Id.* at 859.

95. *Id.* at 849.

96. *Id.*

97. *Id.* at 850.

98. Olson, Vernon, Aitken Harris & Jang, *supra* note 92, at 850.

99. *Id.*

attitude similarity could serve to signal genetic similarity—the primary function of a kinship cue.[100] Although the relationship between attitude similarity and genetic similarity is imperfect, it is positive. Closely related individuals generally do have more similar attitudes. As behavioral researchers have concluded, "Just as shared physiognomy [for example, facial features] can be helpful (if not perfectly reliable) in distinguishing kin from nonkin, so too can shared attitudes."[101]

In addition to the link between attitude similarity and genetic similarity, a separate line of research indicates that individuals often respond to others who share their attitudes in a way that parallels their responses to actual kin.[102] Perceived attitude similarity seems to evoke higher levels of liking, positive affect, empathy, and prosocial behavior.[103] Based on this line of research, along with evidence of the significant heritability of attitudes, it is reasonable to hypothesize that attitude similarity actually operates as a kinship cue. In other words, "kinship might be heuristically signaled by similarity in attitudes."[104]

This reasonable hypothesis provided the foundation for a behavioral experiment designed and conducted by Justin Park and Mark Schaller.[105] They began with an approach determined by two overarching methodological elements. First, the experiment would involve the reaction of perceivers to previously unknown and unseen nonkin target individuals. This approach would allow the researchers to separate attitude similarity from other cues that indicate genetic similarity such as similar physical build or early cohabitation. The nonkin targets would not send cues of kinship other than the cue that is the subject of the experiment—attitude similarity.[106]

Second, the experiment would not simply measure

100. *See* Park & Schaller, *supra* note 7, at 160–61.

101. *Id.* at 161.

102. *See generally* D. Byrne et al., *The Ubiquitous Relationship: Attitude Similarity and Attraction: A Cross-Cultural Study*, 24 HUM. REL. 201 (1971); Fang Fang Chen & Douglas T. Kenrick, *Repulsion or Attraction? Group Membership and Assumed Attitude Similarity*, 83 J. PERSONALITY & SOC. PSYCHOL. 111 (2002); Milton E. Rosenbaum, *The Repulsion Hypothesis: On the Nondevelopment of Relationships*, 51 J. PERSONALITY & SOC. PSYCHOL. 1156 (1986).

103. *See* Park & Schaller, *supra* note 7, at 161.

104. *See id.* at 160.

105. *Id.*

106. *Id.* at 161-62.

perceivers' more positive response to targets displaying the hypothetical cue (attitude similarity) in comparison to targets not displaying the cue. General positive responses by themselves do not necessarily indicate the activation of feelings of kinship. Therefore, the researchers would design their experiment so as to measure responses that are not merely positive, but that are specifically related to the concept of kinship.[107]

With the two overarching methodological elements in mind, the researchers recruited forty-five students from the University of British Columbia to participate in the study. The study required the participants to complete questionnaires addressing selected demographic variables and individual differences. One questionnaire provided information that would allow researchers to assess individual differences among the participants as to the degree of faith they had in their own intuition.[108] The "Faith in Intuition" questionnaire asked participants to designate their level of agreement with twelve assertions that indicate the extent to which they trust their hunches, intuitive feelings, and first impressions.[109] The researchers hypothesized that participants' faith in intuition may affect the perceived strength of kinship cues because activation of kinship cognitions may be largely due to a reflexive, non-rational cognitive mechanism—in other words, a heuristic cue-based process outside the realm of conscious awareness or rational thought. Collecting this information would allow them to test this hypothesis as part of the study.[110]

Participants also completed a short attitudes questionnaire.[111] The questionnaire presented each participant with five statements related to particular issues or activities. Participants revealed their own attitudes about the particular issue or activity by rating on a six-point scale their level of agreement with each statement. Approximately half of the participants rated statements related to death penalty for murder, playing organized sports, abortion on demand, reading books, and roller coaster rides. The other participants rated statements about separate roles for men and women, loud

107. *Id.*
108. *See* Park & Schaller, *supra* note 7, at 161-62.
109. *Id.*
110. *Id.*
111. *Id.*

music, playing bingo, easy access to birth control, and being assertive.[112] A previous study had identified the first set of five issues and activities as highly heritable and the second as low in heritability.[113] As Justin Park and Mark Schaller explained, "Previous research reveals that people express greater liking for others who are similar on more highly heritable attitudes suggesting the hypothesis that participants in the highly heritable condition might display especially strong implicit associations linking the similar other to kinship and to positive cognitions in general."[114] Park and Schaller noted that their study found no support for this hypothesis. Their statistical analysis revealed no significant effect of heritability on the strength of implicit associations of kinship.[115]

Upon completion of the questionnaires, the researchers introduced the participants to two fictional individuals, Elaine and Carol. The researchers performed the introductions by providing participants with three photographs of each fictional individual. The photos were all headshots of two women who were similar in age and attractiveness. The researchers varied the names assigned to the two sets of photos so as to eliminate any systematic bias by the participants.[116]

Upon viewing the photos, the researchers asked each participant to recall his or her responses to the attitude questionnaires. Each participant was told to imagine that Elaine's responses matched his or her response and that Carol's responses were very different. In order to enhance the stimulation of the participants' imaginations, the researchers asked each of them to guess how Elaine might have responded on three additional attitude items. The purpose of the procedures was to have participants form visual representations of two individuals—one who is attitudinally similar (Elaine) and one who is attitudinally dissimilar (Carol).[117]

The participants then completed two Implicit Association Tests (IAT).[118] The IAT is a computer-based reaction-time

---

112. *Id.* at 162–63; *see also* E-mail from Justin H. Park (Sept. 6, 2005) (on file with author).

113. *See* Park & Schaller, *supra* note 7, at 163.

114. *See id.* at 161.

115. *Id.* at 163.

116. *Id.*

117. *Id.*

118. *Id.*

task. The IAT presents participants with a series of words and/or photos and asks them to categorize each word or photo into one of two categories by pressing specified keys on the computer keyboard using either their left or right index finger. The computer records the elapsed time between the presentation of the word or photo and the particular participant's response on the keyboard. Researchers can use these reaction times to draw inferences about a participant's implicit cognitive associations.[119]

The first IAT task had participants judge whether stimulus photos depicted Elaine or Carol and judge whether particular words connoted either "family" or "stranger." This task had participants complete two batteries consisting of forty items each. For the first battery of items, the response categories of "Elaine" and "family" shared one response key and the responses of "Carol" and "stranger" shared the other response key. If, as expected, the participants cognitively associate the attitudinally similar other (Elaine) with kinship concepts (family), this key arrangement is psychologically consistent and will result in shorter reaction times.[120] For the second battery of items, "Elaine" and "stranger" shared a response key and "Carol" and "family" shared a key. If participants associate attitudinally similar Elaine with kinship concepts, then these pairings create psychological conflict. In confronting the psychological conflict created by the second battery, the study participants would take longer to respond.[121] As the researchers explain, "[t]he greater the cognitive association between 'Elaine' and 'family,' the greater the divergence in reaction times across the two [batteries]."[122] This difference in reaction times would allow the researchers to measure the strength of kinship cognitions in relation to an attitudinally similar other as compared to an attitudinally dissimilar

119. *Id.* For a detailed description of the IAT methodology, see Anthony G. Greenwald, Debbie E. McGhee & Jordan L.K. Schwartz, *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464-80 (1998), and Anthony G. Greenwald, Brian A. Nosek & Mahzarin R. Banaji, *Understanding and Using the Implicit Association Test: I. An Improved Scoring Algorithm*, 85 J. PERSONALITY & SOC. PSYCHOL. 197-216 (2003).

120. Park & Schaller, *supra* note 7, at 163.

121. *Id.* at 163-64.

122. *Id.* at 164.

other.[123]

The second IAT task had participants judge whether stimulus photos depicted Elaine or Carol and judge whether particular words connoted either "pleasant" or "unpleasant." The procedure for the second task was the same as for the first; however, participants categorized a different set of stimulus words. These words are irrelevant to kinship relations, but are generally pleasant or unpleasant. Therefore, instead of categorizing words that differed in terms of the concepts "family" and "stranger," participants categorized words that differed in terms of the concepts "pleasant" and "unpleasant."[124] For this second task, the differences in reaction times would allow the researchers to measure the strength of general positive feelings in relation to an attitudinally similar other.[125]

The researchers had participants complete the second task in order to obtain direct evidence for their hypothesis that attitude similarity serves as a kinship cue.[126] This requires the separation of responses to those who are attitudinally similar that are positive in general terms from responses that are positive specifically in terms of the concept of kinship. The researchers realized that it would be possible for the cognitive linkage between the attitudinally similar person and the semantic concept of "family" to emerge spuriously as the result of responses to positive concepts that do not relate to kinship. As the researchers stated, "a tendency to link the family concept to the similar target person could result indirectly as a byproduct of a more immediate tendency to associate the similar target person with pleasant thoughts of a nonspecific nature."[127] Having the participants complete one IAT task focused on specific concepts related to "family" and a second IAT task focused on more general concepts related to "pleasantness" allowed the researchers to assess whether participants associate the attitudinally similar person merely with pleasantness or, more specifically, with family.[128]

After completing the two IAT tasks, study participants completed a questionnaire about the importance and strength of each attitude response. In addition, they responded to three

123. *Id.*
124. *Id.*
125. Park & Schaller, *supra* note 7, at 164.
126. *Id.* at 162.
127. *Id.*
128. *Id.*

items related to both Elaine and Carol: (1) to what extent the participant could see things from Elaine's or Carol's perspective, (2) to what extent the participant would be willing to assist Elaine or Carol should either require help, and (3) to what extent the participant thought he or she shared genes with Elaine or Carol. Participants provided responses to each item on a six-point rating scale.[129]

The results of the study revealed that participants implicitly associated the attitudinally similar target person (Elaine) with family concepts. In addition, participants implicitly associated the attitudinally similar target person with pleasantness. The strength of the associations did not differ significantly, but the two indices were not substantially correlated. Noting these results, the researchers found that: (1) there was a clear tendency to associate implicitly an attitudinally similar person with kinship concepts, (2) this implicit association was no less strong than the association linking the attitudinally similar other to positive thoughts in general, and (3) the tendency for similarity to trigger kinship cognitions is largely independent of its tendency to trigger positive cognitions in general.[130]

Interestingly, the researchers also found that the Faith in Intuition measure was positively correlated with kinship associations, but not with pleasantness associations. As they explained:

> Participants who reported that they tend to rely on first impressions and gut feelings to navigate their social world showed an especially strong tendency to associate the attitudinally similar target person with kinship cognitions. Those who placed little trust in intuitions (and, hence, are more likely to use rational thought to overrule automatically activated gut feelings) did not show this tendency.[131]

There was no such effect for associations with pleasantness.[132] These results provide further support for the finding that the activation of kinship cognitions is not simply a byproduct of the activation of more general positive thoughts. In addition, the results support the finding that the activation of kinship cognitions is largely due to a reflexive, non-rational cognitive

129. *Id.* at 164.
130. Park & Schaller, *supra* note 7, at 164-65.
131. *Id.* at 165.
132. *Id.*

mechanism.[133]

This last point is reinforced and expanded by the researchers' findings surrounding the three questions about Elaine and Carol that addressed the ease of perspective taking, willingness to help, and estimation of shared genes. The participants gave Elaine higher ratings than Carol in their responses to each question. The higher ratings for Elaine on the ease of perspective taking question and the willingness to help question correlated with and were positively predicted by the IAT using family concepts, but not by the IAT using pleasantness concepts.[134] In contrast, the higher ratings for Elaine on the estimation of shared genes question correlated with the pleasantness IAT results, but not with the family concepts IAT results.[135] The researchers expressly recognized the crudeness of these three exploratory questions in terms of research design, but they used the results to draw interesting tentative conclusions:

> These results [from the first two questions] suggest that automatic activation of kinship cognitions is associated with empathic and prosocial responses to attitudinally similar others. . . . This result [from the third question] suggests that the activation of kinship cognitions is entirely separate from any rational assessment of genetic relatedness. . . . [T]he tentative conclusions are provocative: Kinship cognitions (activated by the perception of attitudinal similarity) may promote prosocial responses to total strangers.[136]

Although the conclusions are tentative, they are important and open a line of inquiry that may propel and guide useful research in the future.

As discussed above, a line of studies strongly indicates positive consequences of perceived attitude similarity in terms of prosocial behavior such as liking, sharing perspectives, empathy, and helping.[137] The Park-Schaller study adds to this social psychological literature by directly tying concepts of kinship to prosocial behavior spurred by attitude similarity. In this way, Park and Schaller's research also complements research on other kin-recognition mechanisms such as co-residence, facial similarity, and shared names.[138] The consistency with these two related lines of research has led

133. *Id.*
134. *Id.* at 166.
135. Park & Schaller, *supra* note 7, at 166.
136. *Id.*
137. *Id.* at 166-67.
138. *Id.* at 167.

Park and Schaller to state that, "[i]t is increasingly clear that kin recognition depends on heuristic cue-based processes that often operate outside the realm of conscious awareness or rational thought."[139]

As to Park and Schaller's study specifically, the findings support the hypothesis that the perception of attitude similarity activates kinship cognitions. The results indicate that the activation of kinship cognitions is largely independent of, and not simply a byproduct of, the general tendency to view similar people positively. In addition, the results indicate that the activation of kinship cognitions is especially strong among individuals who respond reflexively with intuition-based judgments. Finally, the results indicate that the similar attitudes/kin association (but not the similar attitudes/pleasantness association) predicts the ease of taking the similar person's perspective and the degree of willingness to help the similar person.[140] The researchers concluded:

> These results are consistent with the hypothesis that attitude similarity serves as a heuristic (and therefore fallible) kinship cue. . . . These results implicate a link between automatically activated kinship cognitions and prosocial responses—a link that, because of its heuristic nature, may operate even in interactions between total strangers.[141]

IV. FOSTER CARE POLICIES AND PRACTICES

It is interesting to note that Park and Schaller ended the discussion of their study by emphasizing the heuristic nature of kin recognition mechanisms and providing a summarizing illustration:

> Proximate mechanisms that facilitate discrimination between kin and nonkin are essential because there is no ordinary means of directly "reading" the genes of others. Kin recognition depends on inferences from necessarily imperfect perceptual cues and is therefore fallible—often, it seems, in an overinclusive manner. Consider reed warblers: The heuristic equation between "chicks in my nest" and "my own genetic offspring" is highly reliable but not always perfect. Consequently, warblers that employ this heuristic rule may not only contribute to the welfare of their own offspring, but also of parasitic cuckoos that exploit the rule. The evolved psychology of human beings is likewise prone to the use (and overuse) of similar

139. *Id.*
140. *Id.* at 166-68.
141. Park & Schaller, *supra* note 7, at 166.

heuristics.[142]

The heuristic, fallible nature of kin recognition mechanisms has potential implications for foster care policies and practices. Namely, it may help further the public goal of securing safe foster care placements if foster parents perceive their foster children as kin. This perception could elicit behavior that benefits foster children and protects them from environments that are not minimally adequate.[143]

Unfortunately, foster care placements expose children to a significant risk of harm. A primary illustration of this point is the relatively high rate of abuse and neglect experienced by children in foster homes. Studies have consistently found that the incidence of abuse and neglect is much higher for foster children than for children in the general population, who mostly live with at least one biological parent.[144] Two studies conducted by the National Foster Care Education Project found that foster children are ten times more likely to be abused than children among the general population.[145] In an interesting and more specific comparison, children who live with unrelated foster parents experience higher rates of abuse and neglect than children whom state actors have placed with kin.[146]

The alleged perpetrators in most of the reported cases of foster child abuse were foster parents.[147] Although state actors substantiated reports of abuse by foster parents at a rate lower than reports of abuse by other perpetrators, a child's risk of having a substantiated report of abuse was significantly higher in foster care than in the general community.[148] Children in foster care face considerable risks of being seriously maltreated.

Researchers have noted the need for public child welfare agencies to develop more sophisticated policies related to foster care placement, support, and monitoring.[149] Most of these

142. *Id.* at 167-68 (citations omitted).

143. *See* Herring, *supra* note 10, at 405-06 (describing that a man is likely to treat a foster child more favorably if the child resembles him).

144. *See supra* note 43.

145. Jill Chaifetz, *Listening to Foster Children in Accordance with the Law: The Failure to Serve Children in State Care*, 25 N.Y.U. REV. L. & SOC. CHANGE 1, 7 (1999).

146. Benedict et al., *supra* note 34, at 564.

147. Benedict et al., *supra* note 39, at 582.

148. *Id.*

149. *See id.* at 584; Benedict et al., *supra* note 34, at 569 (explaining that training and support may minimize physical abuse in foster care); DePanfilis

agencies have not developed detailed written policies and guidelines for the placement of children in specific foster homes. They have not developed systematic approaches to matching children removed from parental custody with foster parents.[150] The agencies appear merely to comply with general child protection laws and policies and use traditional practices that do not address child placement with any specificity, rigor, or sophistication. In fact, once an agency licenses a foster home, agency workers often simply assume that the foster parents are fit and safe for virtually any child needing placement. This common operating assumption results in a one-size-fits-all, generic approach to placing children in foster homes, especially in the many child welfare systems that face huge caseloads and shortages of foster homes.[151]

Researchers who have investigated agency policies and practices for placing children in specific foster homes characterize the process as exhibiting institutional neglect.[152] One group of researchers provides a detailed description of a typical chain of conditions and events that constitutes institutional neglect and results in abuse of a foster child:

> Dynamics in family foster care demonstrate the interaction of multiple causal factors. Low pay [for foster parents] leads to shortages in foster homes. These shortages create pressures to license marginal homes. Pressures to place children in the least restrictive setting direct difficult, behaviorally disturbed children into family foster care. Large caseloads mitigate against adequate supportive services by foster case workers. Inevitably, an overstrained family helps out in a crisis. [For example,] perhaps two abused children need emergency short-term placement. As no other placements are available, the short-term placements [sic] extends on. These events combine with stress in the family home—perhaps the husband is laid off at work—to create a tension-filled setting. A foster child reacts to this tension with provoking behavior and is abused. The children are removed, placed in another home, and a similar cycle repeats. The county investigation assigns blame to the foster

& Girvin, *supra* note 37.

150. *See* Herring, *supra* note 10, at 402.

151. *Id.*; *see* Emily Jean McFadden & Patricia Ryan, *Allegations of Maltreatment in Family Foster Homes*, *in* ASSESSING CHILD MALTREATMENT REPORTS 209, 213 (Michael Robin ed., 1991) (reporting that an agency's failure to match a child to foster family preferences was a variable related to abuse); Benedict et al., *supra* note 39, at 583.

152. *See* Herring, *supra* note 10, at 403; Rosenthal et al., *supra* note 40, at 251.

family.[153]

In this haphazard, crisis-driven process, the child welfare agency frequently fails to match children with appropriate foster parents and homes. Even in the absence of physical abuse, this placement process often results in continued developmental harm to children.[154]

In summary, the incidence of child maltreatment in foster care is significantly higher than that experienced by children in the general population. The safe haven of foster care is often not very safe. Public agencies have failed to develop research-based criteria that caseworkers can effectively use to place children in safe foster homes.[155] Thus, in many cases public agencies have failed to meet a primary public goal and there is a great deal of room for improvement in the policies and practices surrounding the placement of children with particular foster parents.

The research addressing kinship cues and the prosocial behavior that they elicit might assist public actors in developing useful criteria for matching children and foster parents. If foster parents perceive their foster children as kin, they may be more likely to provide them with safe, adequate care, thus diminishing the risk of maltreatment in foster care. Therefore, a matching process that attempts to activate the heuristic of kin recognition in foster parents may significantly enhance the safety of foster care and the capacity of public agencies to secure this societal goal.[156]

As discussed previously, this approach supports foster care placement procedures that incorporate the matching of facial features between foster fathers and foster children. Behavioral biology research indicates that facial resemblance is a robust kinship cue that evokes prosocial feelings and behavior. This appears to be especially true for adult males because facial resemblance may help them ascertain if a particular child is biologically related to them. In other words, facial resemblance reduces paternity uncertainty.[157]

Because research reveals that the majority of abuse in

153. Rosenthal et al., *supra* note 40, at 257-58.

154. *See* Pecora et al., *supra* note 33, at 8.

155. *See* Benedict et al., *supra* note 39, at 582; Benedict et al., *supra* note 34, at 569; Herring, *supra* note 10, at 402; DePanfilis & Girvin, *supra* note 37; McFadden & Ryan, *supra* note 151, at 213.

156. *See* Herring, *supra* note 10, at 405-06.

157. *See id.* at 405-08.

foster care is inflicted by men,[158] a public agency's attempt to construct a robust kinship cue for foster fathers may be helpful in securing safety for foster children. The agency could train caseworkers to assess a child's facial resemblance to a proposed foster father when placing children in foster care. More ambitiously, the agency may want to develop a computer program that efficiently and accurately assesses facial resemblance based on photographs of the child and the proposed foster father. In combination with other placement considerations (for example, proximity of foster family to original family, availability of special education services), these techniques could allow an agency to match foster children and foster fathers based on shared facial features, or failing this, to recognize the heightened risks faced by foster children whose faces do not resemble the face of their foster father. In the latter situation, the agency could work to provide targeted support services and monitoring mechanisms designed to secure child safety.[159]

Similar to the kinship cue of facial resemblance, a public agency may find it useful to develop a placement procedure that incorporates the kinship cue of attitude similarity. As discussed above, the behavioral biology research indicates that attitude similarity is a robust kinship cue that evokes prosocial feelings and behavior.[160] If an agency could achieve foster care placements that match the attitudes of foster parents and foster children, it may help the agency achieve the public goal of child safety and well-being. Foster parents may come to perceive their foster children as kin because they share certain attitudes. This perception of a kinship relationship may help to evoke adequate caretaking behavior and reduce the risk of maltreatment.

A public agency would face a significant challenge in trying to match the attitudes of foster parents and foster children at the time of initial placement. As noted above, agency personnel often must secure a placement quickly in the absence of adequate resources. For example, many agencies face a shortage of foster homes.[161] In order to implement an attitude

158. *See* Rosenthal et al., *supra* note 40, at 25.

159. *See* Herring, *supra* note 10, at 405-07.

160. *See* Park & Schaller, *supra* note 7, at 166-67.

161. *See* McFadden & Ryan, *supra* note 151, at 213; *see also* DePanfilis & Girvin, *supra* note 37.

matching strategy successfully, an agency would have to recruit a sufficient number of foster parents who possess a variety of attitudes.

The agency would also have to determine which children are capable of expressing attitudes on relevant items. Infants or very young children would be unlikely candidates for the attitude matching process. An agency would be well-advised to pursue the matching process with older children entering care, possibly those over the age of eight or nine. Depending on the attitude items used in the matching process, children of this age are more likely to respond effectively to assessment instruments.[162]

This last point raises the next challenge for the agency. It must develop an assessment instrument that its workers can use with foster parents and with children entering care. Agency personnel need to be able to use the instrument to assess foster parents during the recruitment and training process. In this way, the agency builds a reserve of foster parents with known attitude profiles. The agency also needs to be able to use the instrument to assess children entering care. Because agency personnel are often in emergency, time-constrained situations when placing children,[163] the instrument must allow for efficient administration. Agency personnel must also be able to assess the information quickly and make timely matches with available foster parents. A lengthy administration, assessment, and matching process would quickly doom the matching effort.

The attitude items used by behavioral biology researchers provide a starting point for the development of an appropriate assessment instrument. For example, Park and Schaller's study used ten attitude items that appeared to evoke prosocial behavior when participants' responses matched. Some of the items appear especially appropriate for children. For example, children would be able to respond intelligently about their attitudes concerning roller coaster rides, reading books, playing organized sports, loud music, and playing bingo.[164] In addition, many children, especially teenagers, could respond to items such as death penalty for murder, abortion on demand,

---

162. *See generally* NANCY WALKER PERRY & LAWRENCE S. WRIGHTSMAN, THE CHILD WITNESS: LEGAL ISSUES AND DILEMMAS 56-85 (1991).

163. *See* McFadden & Ryan, *supra* note 151, at 213.

164. *See generally* PERRY & WRIGHTSMAN, *supra* note 162.

separate roles for men and women, and being assertive.[165] The assessment instrument could also include some of the additional items used in the twin study discussed above,[166] especially those relatively high in heritability. Presumably, foster parents would be able to respond to all attitude items.

In implementing the matching process, foster parents would complete the assessment as part of the licensing process.[167] They would indicate their own attitudes by rating their level of agreement with statements concerning particular attitude items. The agency would then record the results of the foster parent assessments in a computer database. The child would complete the same assessment as part of the initial placement process. The agency could then enter the results for a particular child into a computer program that would match the child's attitudes with potential foster parents included in the agency database. By developing and using such technology, a child welfare agency could efficiently match foster parent and foster child attitudes.

If the agency has recruited a sufficient number of foster parents, it could use the attitude assessment process, along with other relevant considerations, to actually secure placements for children with foster parents who share their attitudes on relevant items. These placements are more likely to result in foster parents responding to a particular foster child as kin, thus enhancing the safety and adequacy of the placement.[168] However, if the agency does not have a sufficient pool of foster parents to place a child with a foster parent who shares the child's attitudes, or if the agency considers other placement factors to be more important, the agency would

---

165. *See generally id.*

166. *See generally* Olson, Vernon, Aitken Harris & Jang, *supra* note 92 and accompanying text.

167. Current foster care licensing procedures include family interviews, police clearances, health record reviews, and home inspections. *See* THEODORE J. STEIN, CHILD WELFARE AND THE LAW 100 (rev. ed. 1998); Benedict et al., *supra* note 39, at 583.

168. *See* Park & Schaller, *supra* note 7, at 158-162; *see also* Herring, *supra* note 10, at 405-08. The agency may also want to administer the Faith in Intuition questionnaire to foster parents because those who rely more on their intuition are more likely to receive and activate kinship cues. *See* Park & Schaller, *supra* note 7, at 164. The agency may then want to place selected children (such as those with special needs) with foster parents who not only share a particular child's attitudes, but who also rely heavily on their own intuitive judgments.

likely recognize its failure to match attitudes. Consequently, the agency would recognize that the dissimilar-attitude placement likely exposes an affected child to a higher risk of maltreatment or inadequate care. The agency would need to be prepared to respond in a way that effectively addresses this increased risk. Namely, the agency could target scarce public resources in order to support and monitor more effectively a foster placement that presents an increased risk of harm to a foster child.[169]

Judges could also use attitude similarity assessments in approving and reviewing foster care placements. A judge could attempt to place a child with foster parents who share the child's attitude profile.[170] Judges may be reluctant to interfere with the public agency's determination concerning placement.[171] However, even if a judge does not use attitude information to make placement orders, she could use this information in fashioning court orders for appropriate support and monitoring services.[172] For example, if a child's attitudes depart significantly from those of the foster parents, the judge may want to consider ordering intensive in-home services that will support the foster parents in providing appropriate care for the child. Such a supportive approach may help ensure prosocial behavior in the absence of the kinship cue of attitude similarity.[173]

In addition, legislators and other child welfare policymakers may benefit from considering the ramifications of the attitude similarity kinship cue. First and foremost, this information may spur new initiatives and renewed efforts by state actors to recruit more foster parents. The system's capacity to match children with foster parents who share their attitudes depends on the existence of a large, diverse pool of foster parents. The system requires increased resources in

169. *See* Herring, *supra* note 10, at 405-07.

170. Judges in child dependency cases generally have authority to order specific placement conditions for children. *See, e.g.*, 42 PA. CONS. STAT. § 6351(a)(1) (2002). *See generally* Naomi R. Cahn, *Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189, 1219-21 (1999).

171. Judges regularly adopt the position of the public child welfare agency in entering orders that affect children in foster care. David J. Herring, *Legal Representation for the State Child Welfare Agency in Civil Child Protection Proceedings: A Comparative Study*, 24 TOLEDO L. REV. 603, 615 (1993).

172. *See, e.g.*, 42 PA. CONS. STAT. § 6351(a)(1).

173. *See id.*; Cahn, *supra* note 170, at 1221.

order to recruit and train the necessary pool of foster parents.[174] Legislators and policymakers would be well-advised to consider providing this increased support in order to enhance child safety.

These public actors should also recognize the need for enhanced support services in cases for which the agency is unable to match attitudes. The attitude similarity studies reveal the increased risk that children face in such placements. The public should not ignore this identified risk and should develop the capacity to provide targeted resources that will likely reduce the risk of harm.

In a more controversial move, legislators and policymakers may decide to reexamine current laws and policies in light of the new information. For example, Congress may want to reconsider the Multiethnic Placement Act (MEPA).[175] This statute prohibits child welfare agencies from taking race into account in making placement decisions. Prior to enactment of MEPA, agency caseworkers regularly took race into account in placing children in specific foster homes.[176] In practicing race matching, caseworkers sought to secure foster parents who could raise children with an appreciation of their race and culture, sometimes disrupting stable placements and blocking mixed-race adoptions in order to achieve this goal.[177] In enacting MEPA, Congress clearly expressed its priority for stable and permanent placements, a priority that prevailed over the possible cultural and developmental benefits of race matching.[178]

In previous work, I have used the studies surrounding the kinship cue of facial resemblance to call into question the MEPA prohibition on race matching.[179] As discussed briefly

174. *See* McFadden & Ryan, *supra* note 151, at 213.

175. Pub. L. 103-382, § 551, 108 Stat. 4056 (1994) (codified as amended at 42 U.S.C. § 1996b (2000)) and 42 U.S.C. § 5115a (1994) (repealed 1996)).

176. *See* Suzanne Brannen Campbell, *Taking Race Out of the Equation: Transracial Adoption in 2000*, 53 SMU L. REV. 1599, 1605, 1611-12 (2000).

177. *Id.*

178. *Id.* at 1613. It should be noted that the practice of placing children with kin provides another example of the potential use of attitude similarity measures to examine child welfare law, policy, and practice. Because kin are likely to exhibit a higher degree of attitude similarity and prosocial behavior to a particular child, attempts to place children with kin may help a public agency in securing the public goal of child safety.

179. Herring, *supra* note 10, at 408-09.

above, a series of studies indicates that facial resemblance is an important kinship cue for adult males. Men are inclined to provide more benefits to children who resemble them. Therefore, a child welfare agency may be wise to consider this factor when placing children with a male foster parent, either by matching facial features or providing enhanced support services in the absence of facial resemblance.[180]

If the agency decides to pursue seriously the matching option, one could plausibly hypothesize that facial coloring, or race, is an important factor in men's assessment of their resemblance to a specific child. If researchers verify this hypothesis, their findings could add support for race matching because such a practice would likely enhance child safety and well-being. This practice would do more than secure a child's racial and cultural identity, a sometimes ambiguous and controversial public goal. Race matching may help achieve a public goal with a broad consensus—child safety. I concluded based on considerations of facial resemblance as a kinship cue, "Laws, such as MEPA, that completely prohibit considerations of race appear misguided, and Congress may be wise to consider adjustments in this area."[181]

Consideration of attitude similarity as a kinship cue may reinforce this conclusion. Children may tend to share many attitudes with adults of the same race.[182] They may share a common cultural and social perspective. For example, the dramatic differences between blacks and whites concerning their perceptions of the acquittal of O.J. Simpson and the slow response of the government to victims of Hurricane Katrina may indicate a racial divide in attitudes.[183]

As a result of this racial divide, attitude matching may resemble culture or race matching. Because of this resemblance, agency officials and judges may find that this

180. *Id.*

181. *Id.* at 409.

182. *See generally* Reid Hastie & Nancy Pennington, *The O.J. Simpson Stories: Behavioral Scientists' Reflections on the* People of the State of California v. Orenthal James Simpson, 67 U. COLO. L. REV. 957, 972-74 (1995); Reid Hastie, *Emotions in Jurors' Decisions*, 66 BROOK. L. REV. 991, 996-97 (2001).

183. *See* John M. Broder, *Amid Criticism of Federal Efforts, Charges of Racism Are Lodged*, N.Y. TIMES, Sept. 5, 2005, at A9; Todd S. Purdum & Marjorie Connelly, *Support for Bush Continues to Drop as More Question His Leadership Skills, Poll Shows*, N.Y. TIMES, Sept. 15, 2005, at A18.

practice offends MEPA.[184] Such a finding would potentially eliminate the use of a possibly effective practice to secure child safety and other developmental benefits.

Congress may want to consider adjustments to MEPA that allow agencies to engage in attitude matching in placing children with particular foster parents. Although this matching practice may result in a prevalence of same-race placements, it may significantly further the public goal of child safety and health. Again, Congress may be misguided in completely prohibiting considerations of race in the foster care placement process.[185] It should be noted that if an agency cannot achieve attitude-similar placements for children because of the common situation of a lack of minority foster parents, the agency could provide enhanced support and monitoring services to an attitude-dissimilar, mixed race placement. Thus, mixed race placements may become more open to public examination and control. This is a byproduct of the attitude matching process that policymakers may want to consider carefully.

In summary, new information concerning attitude similarity as a kinship cue that evokes prosocial behavior may assist government actors in achieving a public goal of child safety in foster care. Public agency officials may find this information useful in developing and implementing foster care placement policies. Specifically, they may consider matching the attitudes of specific foster parents and children. If they cannot achieve such a match in a particular case, they may consider increased support and monitoring services. Judges can use the information in a similar manner when they consider and review particular foster care placements, fashioning court orders that secure child safety and health. In addition, legislators and other public policymakers can use this information to assess the resources provided to support foster parent recruitment and other aspects of the foster care system. They can also use this information to assess current child welfare legislation and policies.

---

184. The amendments to MEPA make clear that public agencies are not allowed to consider race in making placement decisions. Thus MEPA constitutes a very broad and strict prohibition. Pub. L. 103-382, § 551, 108 Stat. 4056 (1994) (codified as amended at 42 U.S.C. § 1996b (2000) and 42 U.S.C. § 5115a (1994) (repealed 1996)); Campbell, *supra* note 176, at 1616-17.

185. *See* Herring, *supra* note 10, at 408-09.

CONCLUSION

This article brings the findings of a series of studies on attitude similarity as a kinship cue to bear on the policies and practices surrounding the placement of children in foster care. Society has established a public goal of securing safe, nurturing environments for children in foster care without considering behavioral biology research. This article accepts this public goal as a given and then uses the research on a specific kinship cue as a way to provide insights that may facilitate the achievement of the public goal.

It should also be noted that this article does not claim that these studies provide a comprehensive approach to foster care placement policies and practices. The studies may provide one piece to the puzzle of securing child safety and health in foster care. Public actors can use the studies in an effort to incrementally construct, test, and improve policies and practices surrounding placement in foster care. For example, child welfare agencies can use this information to formulate and implement new approaches to foster care placement,[186] and then to rigorously monitor and measure the results and make appropriate adjustments.

The basic logic of this article relies on the power of kinship cues. Individuals perceive others as kin through various fallible mechanisms. Because these mechanisms are fallible, individuals may come to perceive unrelated persons as kin. Once a cue gives rise to the perception of kinship, the individual who acquires this perception about another person is more likely to treat that other person favorably, providing important benefits to this other person. This prosocial behavior could certainly benefit foster children, who frequently suffer serious maltreatment and significant developmental harm while in care. If their foster parents perceive them as kin, foster children may experience better care, likely diminishing incidents of maltreatment and developmental harm.

More specifically, attitude similarity serves as a kinship cue. Individuals who share attitudes on a variety of items are more likely to treat each other favorably. Public agencies may find this information useful in trying to achieve the public goal of child safety in foster care. The agency may be able to match children with foster parents who share their attitudes, thus

186. *See* Herring, *supra* note 10, at 405-08; *see also* Herring, *supra* note 50, at 1162-64.

creating a kinship cue that elicits prosocial behavior from foster parents as they provide care for particular children.

Observers of child welfare systems assert repeatedly that the state makes a bad parent.[187] This appears to be true when the state attempts to provide care for a group of children while dedicating inadequate public resources for this effort. Because of the lack of resources, state actors often find themselves providing protection and care for children in emergency situations with haphazard, stop-gap measures that frequently expose affected children to a significant risk of harm. However, insights from behavioral biology research may help the public take a more considered, careful, and effective approach to securing child safety and minimally adequate developmental environments. In other words, the state does not have to be a bad parent. It can play a beneficial role in constructing and supporting minimally adequate family associations for children—not by stepping into the role of parent, but by supporting individuals who will step into that role in a way that secures child safety and healthy development. Findings from behavioral biology hold promise for assisting state actors in achieving this modest, but important, public goal.

187. *See generally* IRA M. SCHWARTZ & GIDEON FISHMAN, KIDS RAISED BY THE GOVERNMENT (1999); Justine A. Dunlap, *Sometimes I Feel like a Motherless Child: The Error of Pursuing Battered Mothers for Failure to Protect*, 50 LOY. L. REV. 565, 591 n.162 (2004); Ana M. Novoa, *Count the Brown Faces: Where Is the "Family" in the Family Law of Child Protective Services*, 1 SCHOLAR 5, 21-22 (1999).