

Policy Fosters Family: Examining Discourses of Biology and Care in Foster Care-Related Government Texts

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Foster care complicates understandings of family and kinship. The term family marks varied, ideology-couched relational systems, including assumptions of biological/legal family as (best) providing care, safety, and love. However, families do not always fulfill cultural expectations; in the U.S., social services exist to intervene when a child is unable to live safely with their family (of origin). Foster care policy and practice, including court decisions regarding children's placements, operate to both reify and resist assumptions that promoting/maintaining biological/legal family ties are (in the child's) best (interests). In this essay, we use Critical Discourse Analysis (CDA) to: (1) explain goals and policies underlying foster care; (2) demonstrate how federal policies and guidelines privilege biological families; and (3) reveal how laws are ideological such that state courts and other entities can interpret guidelines and laws in ways that ease tensions between promoting the best interest of the child and privileging biological ties.

Keywords: critical discourse analysis, discourse dependency, family ideology, family law, foster care

Family is often taken-for-granted; yet, “family” carries varied definitions and is saturated in ideology. Scholars such as Galvin (2006; 2014), for example, position family as a social construct reliant on communication for (de)construction, arguing that some forms of family are more readily explained and legitimated than other, more discourse dependent, families. Baxter (2014) posits that more readily understood, indeed, more culturally valued, forms of family are those created through heteronormative relationships, including shared biology via reproduction, legal ties (e.g., marriage and

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adoption), and shared residence of immediate family members. Scharp and Thomas (2016) further point to the ways that these normative, or typical/traditional, family relationship ties, especial biological ties, are not only culturally privileged but also often conflated with love and care; thus, biological, and, secondarily, legal, relationships are assumed to be not only good but best, in comparison with other possible ways of being and/or doing family. However, family is complicated, and as scholars such as Scharp & Thomas and Thomas, Jackl, & Crowley (2017) have pointed out, biological/legal ties often, but do not always, ensure stable, caring, supportive, and/or loving relationships.

In light of the reality that not all family ties/members perform as culturally expected, social services exist to intervene when a child is unable to live safely with their family (of origin). In the United States, departments of Child Welfare Services (CWS) in each state are charged with protecting children, including monitoring children's wellbeing and, if needed, removing them from the usually biological family of origin and placing them in foster care (United States Department of Health and Human Services, henceforth DHHS, 2005). For the more than 400,000 children in foster care, familial ties are complex: children become legal wards of the state and are placed in the care of individuals who are not immediate members of the family of origin, often in a residential home with at least one adult guardian figure. At the same time, these children are, at least upon entry, still legally and usually biologically bound to their family of origin (see DHHS, 2005). Indeed, foster care-related policy and practice, like many instances of law immersed in heteronormative ideology, operate to reify assumptions that biological/legal family ties (i.e., those of the family of origin) are best and deserving of maintenance (see Litowitz, 2000). At the same time, foster care policy and practice also resist such assumptions by recognizing shortcomings of the family of origin and opening space for others to provide the care that is expected of biological/legal relatives. Thus, foster care offers a site which complicates understandings of family and kinship, of biological ties as naturally and permanently binding (i.e., discourse of biology), and of care as a foundation of familial interactions (discourse of constitutive care). Relationships of biology and those of care hold potential to either work together in complex ways (e.g., when foster parents care for,

then adopt, a child while maintaining a relationship with the child's biological parent) or can be pitted against one another (e.g., when biological relatives and foster parents fight over custody of children).

Given these complexities, in this essay we first explain the goals and policies that underlie the foster care system. We then interrogate government texts by means of Critical Discourse Analysis (CDA) to demonstrate how federal policies and guidelines privilege biological families and neglect constitutive families in potentially damaging ways. Finally, we look to how legal precedent can be interpreted ideologically, allowing state courts and other entities to view laws in ways that ease tensions between promoting the best interest of the child and privileging biological ties as family.

Foster care development and guidelines

It is well established in Constitutional law that parents have a liberty interest in the care and raising of their children without state intrusion. In *Wisconsin v. Yoder*, for example, the Court found that the state's interest in a child's education was outweighed by the parents' right to choose a method of education that comports with their religious beliefs, even if that means removal from school at age 16. This interest is not absolute, however; the government has a duty to safeguard and protect citizens, including children. Specifically, they can use their *parens patriae* power to remove vulnerable children, and take legal responsibility of them, finding them an alternative place to live (*Prince v. Massachusetts*).

The presumption that the government should safeguard children often goes unquestioned. The assumed, taken for granted notions that exist in culture are referred to, according to the Italian political philosopher Antonio Gramsci (1971), as "common sense." Presuming that children naturally need a father and a mother to raise them, instead of critically noting that a single-parent household or two fathers or two mothers are sufficient to raise a child, is a form of common sense. Presuming that one must have a child in order to "fit" into society is also a form of common sense. Thus, the fragmented and incoherent unquestioned assumptions of societal mores and expectations constitute common sense (Zompetti, 2012). As such, common sense hides

the ideological foundation of many beliefs and values. Without critically questioning those cultural sentiments, ideology is permitted to operate unchecked and even perpetuated as the common sense of those sentiments are reinforced through legal precedent and government agency actions.

Critical Discourse Analysis (CDA) is a method of textual criticism enabling us to excavate the hidden meanings that exist within common sense. As such, CDA seeks to uncover the relations of power in language. This approach is uniquely suited to interrogate the dominant discourse of power from governmental bodies, such as statutes and court decisions. As van Dijk (2001) explains,

The power of dominant groups may be integrated in laws, rules, norms, habits, and even a quite general consensus, and thus take the form of what Gramsci called "hegemony." ... For our analysis of the relations between discourse and power, thus, we first find that access to specific forms of discourse, e.g. those of politics, the media, or science, is itself a power resource. Secondly, as suggested earlier, action is controlled by our minds. So, if we are able to influence people's minds, e.g. their knowledge or opinions, we indirectly may control (some of) their actions, as we know from persuasion and manipulation. (p. 355)

More specifically, CDA problematizes how language is embedded in sociocultural practices by first, engaging in a linguistic description of the text, second, generating an interpretation regarding the text's connection to relations of power, and third, providing an explanation about the relationship between "discursive processes and the social processes" (Fairclough, 1995, p. 97). Given the ambiguous and subjective nature of this method, CDA does not pretend to offer generalizable or representative measures of meaning; but, instead, CDA proffers a close textual analysis to extract a possible interpretation based on how discursive meaning is constituted by ideological processes (Fairclough, 2001). Part of the first stage of CDA—the linguistic description of the text—requires a thorough historical and cultural examination of the discursive processes surrounding the text.

Along those lines, we need to explore the general relationship between the government and the protection of children concerning the sphere of adoption and foster care. The federal government's ability to directly take legal responsibility of

children is limited: the Constitution does not grant power in this area, and thus, the primary role in protection of vulnerable children falls to the states (Murray & Gesirich, 1996). The federal government can impose standards for foster care programs through funding power, creating guidelines that states are obligated to follow; this began under the Social Security Act of 1967, which required all states to institute foster care programs. Essentially, if states wanted federal money to help with Foster Care programs, they had to work with the federal government and follow Congressional provisions related to child welfare and safety. Congressional policy has varied over time, demonstrating varying underlying values of the system. For example, the Adoption Assistance and Child Welfare Act (AACWA) of 1980 focused on the importance of the biological family, particularly birth parents, and established a policy of reuniting families whenever possible. This value was reaffirmed, albeit implicitly, in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, which included a focus on family care, requiring that states must include in their consideration giving preference to relatives over non-relative caregivers. However, PRWORA modifies that with the wording from the Social Security Act “providing that the relative caregiver meets all relevant state child protection standards” (PRWORA, 1996, p. 2278).

The bipartisan Adoption and Safe Families Act (ASFA) of 1997 began to change this mentality. It held that while keeping families intact was a value, primary goals of foster care should be: (1) protect children from harm, (2) support families, and (3) promote permanency for children. The Act also regulated the amount of time a child can remain in the system; for those in foster care 15 of the last 22 months, the State must begin proceedings to terminate parental rights, unless there is compelling reason or the child is in a foster home of a biological relative.

Although the particulars of CWS are instituted and performed on a state-by-state rather than federal basis, the federal DHHS and CWS provide a multitude of resources for state-run departments and services, including offering standards of practice guidelines and information for all organizations and individuals involved with foster care systems throughout the United States, via the U.S. Children’s Bureau/Child

Welfare Information Gateway (CWIG). CWIG, too, suggests that “Child welfare professionals first focus on supporting and stabilizing a family to prevent an initial placement. Reunification with family is the preferred outcome for children removed from their homes and placed in foster care” (CWIG, NDa). Although placement prevention and reunification work for many children and families, they are not always possible: children cannot always live safely with their families of origin. In those cases, children are placed in out-of-home (foster) care (DHHS, 2005). The majority of foster children are removed from the care of at least one biological parent; however, children who were legally adopted by, rather than born to, their parents are not immune to abuse/neglect and are also sometimes placed in the foster care system.

From this section of the CWIG, we can clearly see the state’s preference to preserve a biological family unit. It often goes without saying – or without questioning – that one’s biological parents should *naturally* retain parental rights. By codifying this perspective into law, the state constructs the common sense belief that biological parents – even when a foster family might be more advantageous – should be given deference. This reinforces ideology, “In so far as conventions become *naturalized* and commonsensical, so too do these ideological presuppositions. *Naturalized* discourse conventions are a most effective mechanism for sustaining and reproducing cultural and ideological dimensions of hegemony” (Fairclough, 1995, p. 94, emphasis added). In other words, the more expected, common, and usual a policy action is, the more its ideological premise goes unquestioned.

The policies from CWS through CWIG do first and foremost focus on permanency for a child. Permanency is stressed because “youth who are emancipated from foster care without permanent family are at a high risk for many poor outcomes” (DHHS, 2005, p. 2). For example, one study found that former foster children who were emancipated early or who “aged out of the system” encountered a variety of negative outcomes: More than one in three were homeless, incarcerated, seriously physically victimized, and/or sexually assaulted at least once within 18 months after they exited foster care (Courtney et al., 2001). It is clear that permanent family placements are integral to achieving the overarching goal of foster care: Protecting children and,

therefore, providing children with ongoing care. Furthermore, the guidelines in CWIG demonstrate the assumption that the best way to accomplish the goals of protection, support, and permanency is through the child's family or origin. In so doing, it renders other understandings of family as lesser, possibly at the cost of the child's best interests.

Privileging the biological discourses of family

There are two dominant ideologies, or discourses, of what it means to be a family to consider it in the context of foster care (e.g., see Thomas et al., 2017). In privileging an understanding of family as biological or legal over more constitutive approaches to family, the Foster Care system is, at times, likely working at odds within itself. The ASFA clearly identifies the goals of the foster care system to create permanent families that care for children. However, while emphasizing the importance of permanency, foster care itself is simultaneously meant to be temporary; and, although concurrent planning (in which caseworkers ongoingly consider multiple potential case resolutions) is encouraged, the permanency goal at the outset of most cases is reunification with the (biological) family of origin (DHHS, 2005). The language used in federal guidelines as well as the promoted policies clearly demonstrates the use of biology in defining families, neglecting other types of families that can be constructed in multiple ways and which might at times provide better care for a foster child.

While family-as-biological often emerges as a dominant understanding of family, individuals who have lived in foster care also draw on an ideology of family-as-care, or constitutive family, when speaking of their foster care and family experiences (Thomas, Jackl, & Crowley, 2017). A constitutive discourse of family includes "ties of affection" (Baxter & Braithwaite, 2006), offers an alternative discourse, widening the understanding of family to be one that is based on *care*, not necessarily biology or even legal documentation. Butler (2004), for example, sets kinship apart as relationships that are *more than* traditional understandings of family as sexual (e.g., a heterosexual couple) and biological (e.g., a heterosexual couple's biological, nuclear family). Although the overarching goal of foster care is child protection and care, CWIG draws on a discourse of biology, advocating for achieving these goals through ties of biological

relatedness and initially closing down other non-biologically related permanency options. In other words, because the state places a preference for biological families that has become naturalized, even the lesser desirable foster families appropriate similar rhetorical tropes to justify their placement since the ideological basis for such discourse has already been accepted and continues to be unquestioned regarding biological families. Only as a secondary option are familial ties that are constituted primarily through care considered; this privilege is pervasive. For example, in deciding on placements for children, courts consider how to achieve the goals of keeping children safe and stable and protecting families. The problem is that, in so doing, the foster care system (through its guidelines) and the court system might be neglecting the best interests of the child because of their limited definition of family. Indeed, although the overarching goal is care, the undercurrent of the system pulls toward maintaining biological ties; the discourse of biology guides foster-centered policy. This can be seen in the language used in the guidelines and general policies underlying the system.

Guideline language that ties family to biology

The clearest example of the privilege of biology is in considering placed children to be in *foster families* (rather than just *families*); others in the “foster family,” such as biological or legal children of the “foster parents,” are not considered related (i.e., not given legal familial distinction or relation, the way the “biological parent” would). Only if and when a child is legally, permanently adopted by their foster family are members identified as the child’s relatives. As such, the temporary implications of the term *foster* outweigh permanent inferences that are often made from use of the term *family*. Relatives are only those who are biologically/legally tied to the child; thus, the discourse of biology is privileged over the constitutive, care-based foster family.

In these ways, biological families and foster families are forms of categorization. The fact that a government statute codifies this categorization demonstrates the power of meaning-making by the state. This is what Fairclough (2003) implies when he writes that, “Texts as elements of social events have causal effects – i.e. they bring about changes. Most immediately, texts can bring about changes in our knowledge, ... our

beliefs, our attitudes, values and so forth” (p. 8). The influence, in this case, of a law, indicates the role of power in discourse. Furthermore, since the law weighs a biological family over a foster family and a foster family has virtually no value until it is legally sanctioned, we see that power of this discourse shapes what is deemed acceptable versus what is not. Indeed, Reisigl and Wodak (2001) highlight the rhetorical power of this type of discursive labeling:

... one constructs and represents social actors: for example, ingroups and outgroups. This is done in a number of ways, such as membership categorisation devices, including reference by tropes, biological, naturalising and depersonalising metaphors and metonymies, as well as by synecdoches in the form of a part standing for a whole. (p. 45)

In other words, by naming, labeling, and categorizing what constitutes a “legal” family, the government necessarily excludes other relationships from that ideological conception; and, “exclusion may be politically or socially significant” (Fairclough, 2003, p. 149).

In addition, federal CWS web pages frequently conflate “original family” with “biological family” or “their [implied *only*] families” and use the terms “biological family/parents” or “their families/parent(s)” interchangeably. In this language, it quickly becomes apparent that, although a child can live with other individuals or even a foster family, one’s *real* family is the biological family of origin. This is why Fairclough (2003) argues that “agents ... are textualized” (p. 13). Furthermore, even “out-of-home care” implies that one’s home is with one’s biological family; regardless of where a foster child resides, it is not their home because they are not residing with their (biological) family of origin.

The language in the guidelines also reinforces the biological understanding in how it conflates “kin” with biology in the legal definition of family. CWIG demonstrates that: “When children in out-of-home care cannot be safely returned home to their parents, child welfare professionals first look to relatives (also known as kin) to provide temporary care and, if needed, a permanent family for them” (NDb). The parenthetical addition of “also known as kin” demonstrates the limitation of kin from the possibility

of a constituted family to care provided to foster children by biological, and to a lesser extent legal, relatives to the family of origin.

Policies that privilege biological ties

In addition to language that conflates kin or family with a biological or legal tie rather than a more expansive definition that might provide better outcomes for some children, the policies laid out in the guidelines puts those definitional understandings into practice, particularly in the promotion of reunification, visitation, and adoption.

With few exceptions, case planning for children placed in foster care starts with steps that are meant to continue (biological) familial ties and facilitate reunification with the family of origin. For example, biological/legal relatives to the family of origin are often encouraged to become licensed as foster care providers in order to care for a “member of their family” (CWIG, ND). This is formal kinship care, in which children are fostered by relatives to their family of origin while still legally wards of the state.

The policies also emphasize the importance of reunification with the family of origin (DHHS, 2005). *Reunification* itself holds implications for expectations of biological ties: It is assumed, at least initially, that the best outcome is for children to return to the individual(s) from which they came, thus making the biological family whole, or unified, once again. “Child welfare professionals first focus on preserving families and preventing the need to place children outside of their homes. When children must be removed from their homes to ensure their safety, permanency planning efforts focus on returning them home as soon as is safely possible” (CWIG, NDa). In an effort to work toward reunification, the Foster Care system facilitates visitations to maintain that biological connection. Visitations are often arranged by CWS case workers and are frequently between a foster child and her/his parents, especially her/his mother, again demonstrating the values enshrined in the foster care policies.

When reunification with the (biological) family of origin cannot be achieved, regardless of whether the child has resided in kinship care, relatives to the child/family of origin are often first sought out as potential permanent, primary caregivers (CWIG,

ND). Adoption by a non-relative is a viable permanency option only once adoption by relatives has been ruled out (CWIG, 2006). Even when it has been determined that it is in a child's best interests to find them a permanent caretaker other than their original, biological/legal parent(s), foster policies promote the maintenance of contact with the family of origin.

Cultural understandings of biological familial ties

CWIG emphasizes permanency, and the primary goal is a continuation of a (biological) family of origin. This policy strongly reflects a cultural assumption that the family into which an individual is born is naturally and permanently one's family (Baxter et al., 2009); the original, biological/legal family is preserved, first by striving to not remove children and secondly, when children must be removed, by working toward returning them to the family of origin. Without critically questioning this logic, we assume the government has good reasons for this policy. This legitimizes and perpetuates the common sense of how the state constructs the meaning behind these ideological concepts (Mocanu, 2011).

Although it is difficult to dispute the perseverance of shared genetics that create biological similarity (i.e., biological relatedness cannot be undone), the meaning of this DNA-encoded, embodied connection extends beyond the point of conception and is constructed as much more than a genetic phenomenon. Instead, a biological link is assumed to be an enduring and sacred familial connection. For example, Andersen (1991) argues that dominant U.S. ideology constructs the ideal family as biologically related, with two heterosexual parents heading a nuclear family that loves and cares for one another. The sacredness of biology is also illuminated by the incomprehension that people report upon hearing about relatives, particularly biological parents and children, harming one another. The stigma that accompanies birth mothers who "willingly choose to give up their child" (Baxter et. al, 2012) is yet another example of how violations of the assumed permanent and sacred biological bond, or the discourse of biology, highlight expectations for biologically related individuals in the U.S. Even adoptive parents reproduce this cultural assumption of biological families as superior

and adoption as a second-best alternative, especially when constructed as an option for people who cannot have biological children (Bonds-Raacke, 2009). Likewise, some foster parents have expressed a discourse that foster care should only result in adoption if other biological options are no longer available, to ensure the child will be provided the best care (Baxter, Suter, Thomas, & Seurer, 2015).

The interaction of biology and care

The policies of the foster care system are not necessarily problematic, and there are specific benefits to maintaining biological ties. Yet, some policies that privilege biology and (re)unification can also, at times, be at odds with the goal of achieving the best interest of, and care for, the child. This is seen in the policies that promote kin care and those regarding adoption.

Kin(ship) care

Formal kinship care, in which children are fostered by relatives to their family of origin while still legally wards of the state, is one context in which the goals of providing care and maintaining biological ties might complement or compete with one another. Children in kinship care, despite being more likely to have been placed in care due to maltreatment and neglect in particular, often benefit from greater emotional and mental wellbeing than their peers in non-relative foster care (see Scannapieco, 1999 for early overview; Winokur et al., 2008). This might be partially attributed to stability; those in kinship care are less likely to have multiple placements and less pressure to reunite (Alexander, 2010). Additionally, foster caregivers who are relatives to the family of origin are more than seven times more likely to become legal guardians of the children for whom they care. Although children in kinship care are also half as likely to be reunified (i.e., be placed back in the permanent, full-time care) with their family of origin (Winokur et al., 2008), biology remains a privileged understanding of what constitutes a family, keeping children, even if not in their “reunified” family, with a biological relative nonetheless.

Family ties are further emphasized by the increased likelihood of being placed with siblings (Alexander, 2010). Children in kinship care are more likely to have regular

contact with parents, particularly with biological mothers (e.g., Metzger, 2008; Winokur, Crawford, Longobardi, & Valentine, 2006). Contact with biological parents is correlated with increased self-esteem and successful relational development (e.g., Finzi, Ram, Har-Even, Shnit, & Weizman, 2001; McCarthy & Taylor, 1999) and is positively associated with reunification with the family of origin (e.g., Davis et al., 1996). However, visitations and their associated effects on the child's wellbeing are often complex (see McWey et al., 2010, for overview).

Visitations sometimes have undesirable outcomes. Some children report that parental contact is unhelpful (Farmer & Pollock, 1998), and those who both build positive relationships with foster parents and maintain a strong relationship with their biological parent(s) sometimes describe feeling torn between loyalty to the family of origin and commitment to foster family relationships (Leathers, 2003). CWS programs seem to assume that, when possible, visitation is beneficial (McWey et al., 2010). At the same time, individuals who help to care for foster children on a regular basis recognize that visitations can be problematic when contact with a parent seems to hinder a child's wellbeing (e.g., Mennen & O'Keef, 2005; Moyers, Farmer, & Lipscombe, 2006).

Finally, relying on extended biological family members to care for children who have been placed in foster care can create a situation that exacerbates existing problems. The majority of these caregivers are often single grandparents or older family members who are on a fixed income and less likely to be employed. Thus, kinship caregivers are more likely to be low-income than non-kin caregivers. (Alexander, 2010). Children residing in foster care are already “the most vulnerable to poor health compared with any other children in the United States” (Kools & Kennedy, 2003, p. 39; Kools, Paul, Norbeck, & Robbins, 2009, p. 221). Adding a second layer of vulnerability that comes with low income implications can further worsen the prospects of foster children, which is at odds with the purpose of the foster care system.

Adoption

A second site of competition between policy and purpose in the Foster Care system arises in the context of adoption. Because the foster care system privileges relatives to the family of origin, and specifically biological relationships, CWIG policies

require examination and evaluation of any relatives interested in adopting a child. Despite concurrent planning, adoption by a non-relative is a viable permanency option only once adoption by relatives has been ruled out (CWIG, 2006). Even if a non-biological caregiver has been caring for the child, that caregiver's interest in adopting is often secondary to that of a biological relative.

Biological ties are also still a consideration even when a child becomes available for non-relative adoption. For example, foster parents are considered better candidates when they desire to keep biological siblings together (e.g., children who biologically share at least one parent, sometimes even if the siblings have not been raised together in the family of origin) and when they support connections between the child and members of her/his family of origin (CWIG, 2006). Although legal, permanent protection of the adoptive parent-child relationship is cited as a benefit for adoptive parents, the ability to maintain connections with the (biological) family of origin is encouraged as a benefit for adopted foster children (CWIG, 2006).

Even when it has been determined that it is in a child's best interests to find them a caretaker other than their family members of origin, the discourse of biology is privileged, potentially to the detriment of a child's best interests. Kinship care demonstrates a strong assumption that maintaining contact with the family of origin is usually best for a child. Such underpinnings of the foster care system further illuminate the existence of tensions, between promoting permanent placement and care of children and privileging biology as a permanent tie to one's family of origin, which dwell under the overarching goal of child protection. Of course, we know that "Power relations are always relations of struggle" (Fairclough, 2001, p. 28), but the "effectiveness of ideology depends to a considerable degree on it being merged with this common-sense background to discourse and other forms of social action" (Fairclough, 2001, p. 64). And, as we have seen, the government reinforces its ideological premise underlying foster care and adoption by articulating the assumptions of common sense when caring for children.

Use of the courts to achieve foster care goals

As described, under the ASFA of 1997, there are three major goals for the foster care system: (1) protecting children from harm; (2) supporting families; and (3) promoting permanency for children. In addition, policies of the Federal DHHS and CWS emphasize the importance of biological family, sometimes even at the cost of programmatic goals. Certainly, there are biological family members who are well-suited to provide care and permanency for children. Nonetheless, the standard of privileging biological ties can also produce negative health and safety outcomes (e.g., regarding reunification and visitation). This standard also neglects to consider family as constituted kin, discounting people who are willing to or have provided care as foster parents, setting them behind others simply because of a lack of shared origin.

However, the discourse of biological family in CWIG can be tempered by individual states, which are responsible for the construction of their own foster care systems and the enactment of their own foster care-related policies. Each state reports to the federal government and must not violate federal policies, although each state also differs slightly from the next in legislative policy and implementation of procedures. Thus, the court system within each state has the opportunity to interpret the guidelines in a way that promotes the best interest of the child without rigid, unthinking interpretations of what constitutes family. Nevertheless, even without the rigidity of stern guidelines, an interpretation of the CWIG suggests a particular ideology of the state. This occurs because “meaning-making depends upon not only what is explicit in a text but also what is implicit - what is assumed” (Fairclough, 2003, p. 11). Given the authoritative power of the government coupled with an absence of an alternative logic, the state ideology that privileges the biological is sustained.

An example of this can be seen in *Minnesota In the Matter of the Petition of S.G. and L.G. to Adopt P.U.K. and D.F.K.*, 828 N.W.2d 118 (Minn.2013). In line with other organizations involved with U.S. foster care systems, Minnesota CWS strives to protect and care for children, acting in their “best interests” when making decisions regarding children’s residential arrangements. Simultaneously, Minnesota policy, like many foster-related state policies and federal guidelines, also seems to privilege the discourse of biology, particularly when reunification goals are determined unachievable

and a child becomes available for adoption. According to Minnesota Statute 259.57, subsection 2 (see Appendix), decisions surrounding adoption of a foster child are guided by several main points, including emphasizing acting in the child's best interests and dictating that decisions should be made in a timely manner and in accordance with related policies. The petition decision, however, centered on point (c), which details guidelines for considering adoption placements that provide legal permanency for children who cannot be reunified with their parent(s) of origin. Furthermore, given that it specifically states that (biological/legal) relatives to a child should be considered before all others, this statute can be read as privileging a discourse of biological family. The privileging of the biological reveals the ideological motivations of the state: "It is this conception of ideology as an implicit philosophy in the practical activities of social life, backgrounded and taken for granted, that connects it to 'common sense'" (Fairclough, 2001, p. 70).

The case was first brought by the biological grandparents of two sisters, P.U.K. and D. F. K., ages two and three years, who also read statute 259.57 as dictating that relatives such as grandparents should have the first opportunity to adopt. Both the girls' foster parents and the girls' biological grandparents petitioned the district court for adoption, after parental rights were terminated. Although the girls' grandparents had initially indicated interest in adopting their granddaughters when reunification was ruled out, they did not comply with part of the certification process. At the request of the state, the foster parents then submitted their petition to adopt. Meanwhile, the grandparents had completed, and were approved for, their adoption home study, and within one month after the foster parents, they went forth with certification and also submitted a petition to adopt. Although petitions can be submitted in any order, often the relatives to the foster child(ren) have the option to petition first, then, if it is declined, "special friends" (e.g., foster parents) have the option to submit a petition. However, in some cases, such as the case at hand, the court has simultaneous access to two petitions that can be considered in determining whether adoption by a petitioning party will promote the best interests of the child(ren).

Previous decisions in Minnesota case history have recognized that a relationship with a foster family is important. The court in *In Re Welfare of Children of M.J.K. and J.O., Parents*, 486 N.W.2d 375 (Minn. 1992) followed the statutory and common law approach of family preference in ultimately approving the adoption petition of grandparents over that of the foster parents, despite the potential trauma of separating the child from the only family he had known to that point – her foster family since birth. The court based its decision on what it saw as a “common sense notion that blood relatives are most likely to look out for one another’s interests, through good times and bad.” The court did acknowledge the importance of allowing courts to have discretion, because situations are all individualized, and recognized the value of the relationship a child builds with a foster family. At the same time, they held that “the fact that separation from her foster parents will be initially painful to D.L. is not good cause to defeat the family preference.” *Id.* at 380.

In the present case, the district court determined that the children’s history with their foster parents had to be taken into account in order to understand what permanent placement would best serve their interests, particularly because both girls have encountered developmental delays, likely due to maternal drug use during pregnancy. In other words, families of biology and constitutive care were both vying for permanent, legal relationships with the girls. In order to align their review process with Statute 259.57, the court considered each point of the grandparents’ petition, then it considered the same point on the foster parents’ petition. Upon point-by-point review of the petitions and the girls’ history prior to and during foster care, the court determined that adoption by the foster parents was in the children’s best interests.

The grandparents appealed this decision on the grounds that Minnesota Statute 259.57 (c) states that “...in determining appropriate adoption, the court shall consider placement, consistent with the child’s best interests *and in the following order, with (1) a relative...*”. The grandparents argued that, although foster parents might be “important friend(s)” and privy to early adoption placement consideration, the grandparents, as (biological) relatives, should be privileged and granted adoption placement before any other individuals.

Despite the grandparents' claim that they should first be offered the chance to adopt their granddaughters, the Court's decision centered on the word "consider." The Minnesota Supreme Court determined that, because the district court did *consider* placing the girls with their grandparents, then *considered* placing them with their long-term foster parents, the court was acting within its legal rights in favoring the foster parents' adoption petition in the best interests of the children (*Petition*, 2013). In other words, relatives must be given the opportunity to petition for adoption, and such petitions must be taken into consideration before a decision is made. Biological families should be recognized and, if possible, preserved. However, if another viable petition is presented, particularly that of someone who might be "an important friend with whom the child has resided or had significant contact," such as a foster parent, either potential adopting party may be determined to be the best permanency option for a child.

In addition to what we have already uncovered regarding the government's ideology that articulates the discourse of biology, the Minnesota Supreme Court decision perpetuates hegemonic ideology in yet another way. Until the U.S. Supreme Court hears a similar case, the Minnesota Court's decision will serve as the exemplar; and, as a precedent, the decision reifies the state's preference for the biological. As Padden (1994) makes clear, "The doctrine of *stare decisis* is well established in American jurisprudence. The doctrine . . . represents the general proposition that a precedent must be followed unless there is a compelling reason to overrule it" (Padden, 1994, p. 1689; see also Rehnquist, 1986). Furthermore, as a matter of law, the ruling provides a template for subsequent decision-making in this area by making it conventional practice for courts and agencies to defer to biological families and parents. This also promulgates hegemonic common sense because such "discourse can become relatively conventionalised in social practices, and therefore, because they are conventional ways of using language, their implications can become opaque to people using them and to those studying them" (Farrelly, 2015, p. 41).

However, this decision illustrates a way of reconciling tensions between the goals of the ASFA (protecting children from harm, supporting families, and promoting permanency for children) and competing discourses of family. Privileging biology and

care are not mutually exclusive; indeed, placement with a caring relative with whom the child has a relationship might well be the best of both options in many cases.

Regardless, this case shows how it is possible for a family of constitutive care to be considered the “best” option for a child and thus preserved, rather than assuming that biological family is the most natural and worthy of preservation.

Conclusion

Foster care offers a unique site in which families based on care and families based on biology can co-exist, either working together to provide both care and ties to a child’s biological origins or privileging one type of family. Despite the opportunities for redefining family provided by foster care, traditionally, foster care systems in the United States have tended toward privileging the biological family, striving for preservation and reunification of the (biological) family of origin and offering (biological) relatives first opportunity to adopt children. Indeed, the language of foster care policy and practice guidelines reflect the privileging of the discourse of biological family, both closing down opportunities for new family forms to emerge and perhaps creating negative outcomes for foster children who do not acquire permanent placements. If, for example, *the family of origin, relatives, and kin* are all defined as biological and are thus considered *best*, then those children who cannot maintain biological ties are always byproducts of “failed” biology, framed as residing perhaps in a house but not a “home” and with a “second best” family, if they are even considered (by themselves, their guardians, and/or the state) to belong to a “family” at all. To counterbalance these concerns, state court decisions and interpretations can continue to consider legitimating constitutive, non-biological family forms. Because discourse “can be a site of struggle over changes in pre-existing social structures and practices through the actions of social agents in social events,” it is imperative that we analyze the operations of hegemony along the ideological terrain of law (Farrelly, 2015, p. 44). We contribute to this conversation by showing how government texts frame biology as an ideological preference. By using Critical Discourse Analysis, we reveal the latent ideological meanings that are crafted in both government statutes and court decisions. Since language facilitates relations of

power, it is important to understand how texts of the state constitute, sustain, and reify particular ideologies. In this case, we firmly believe that without questioning the way government statutes and court decisions perpetuate the ideology of biology in foster care and adoption, people will only continue to reinforce a common sense that maintains unequal power relations.

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APPENDIX

MINNESOTA STATUTE 259.57, SUBDIVISION 2

Subdivision 2: Protection of Child's Best Interests

(a) The policy of the state of Minnesota is to ensure that the best interests of children are met by requiring an individualized determination of the needs of the child and how the adoptive placement will serve the needs of the child.

(b) Among the factors the court shall consider in determining the needs of the child are those specified under section 260C.193, subdivision 3, paragraph (b).

Consistent with section 245C.33 and Public Law 109-248, a complete background study is required before the approval of an adoptive placement in a home.

(c) In reviewing adoptive placement and in determining appropriate adoption, the court shall consider placement, consistent with the child's best interests and in the following order, with (1) a relative or relatives of the child, or (2) an important friend with whom the child has resided or had significant contact. Placement of a child cannot be delayed or denied based on race, color, or national origin of the adoptive parent or the child. Whenever possible, siblings should be placed together unless it is determined not to be in the best interests of a sibling.

(d) If the child's birth parent or parents explicitly request that relatives and important friends not be considered, the court shall honor that request consistent with the best interests of the child.

If the child's birth parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the birth parent or parents, the court shall place the child with a family that also meets the birth parent's religious preference. Only if no family is available as described in paragraph (a) or (b) may the court give preference to a family described in paragraph (c) that meets the parent's religious preference.

(e) This subdivision does not affect the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835.