

# Does Marriage Make People Good or Do Good People Marry?

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Professor Wilson's thoughtful and important paper, *Evaluating Marriage: Does Marriage Matter to the Nurturing of Children?* considers whether state support and encouragement of marriage is justified on the grounds that marriage is good for children.<sup>1</sup> Wilson seeks to answer this question by focusing on studies that look at the extent to which family structure generally, and marriage in particular, affects children's well-being. Wilson concludes that marriage is indeed good for children because it makes adults better parents and does, for that reason, warrant state support.<sup>2</sup> Yet underlying her conclusion is a fundamental tension over whether marriage is good for people or whether good people marry, and it is this tension which leads Wilson to policy conclusions that seem both ambivalent and at times contradictory.

Wilson begins by noting that "[i]n virtually every comparison done to date, children in two-biological parent, marital homes (the 'nuclear family') fare better than other children, along almost every index."<sup>3</sup> She notes, however, that because many such studies compare married and unmarried families that differ along a range of significant variables in addition to marital status, observing the impact of marriage per se in

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\* Professor of Law, Northwestern University School of Law. I thank Larry Alexander and Steve Smith for inviting me to the University of San Diego Institute for Law and Philosophy's Conference on the Meaning of Marriage, and I thank the conference participants for their engaging and challenging conversation. Finally, I thank Robin Wilson for a terrific paper on which to comment.

1. Robin Fretwell Wilson, *Evaluating Marriage: Does Marriage Matter to the Nurturing of Children?*, 42 SAN DIEGO L. REV. 847 (2005).

2. *Id.* at 851.

3. *Id.* at 852.

such studies is impossible.<sup>4</sup> Wilson then focuses her attention on two studies which she says “bring us as close as we have come to date to an apples-to-apples comparison” of the sort that is necessary to determine whether marriage itself has an impact on the well being of children.<sup>5</sup>

The first study Wilson focuses on is that by Wendy Manning and Kathleen Lamb, entitled *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*.<sup>6</sup> The study sought to isolate the importance of marriage and avoid the apples-to-oranges comparison problem by comparing the well being of children living with their mother and her nonmarital partner to that of children living in married stepfamilies, that is, with one biological parent and a nonbiological stepparent.<sup>7</sup> The study found that teens in stepfamilies were significantly less likely to be suspended or expelled from school than teens living in unmarried, cohabiting households.<sup>8</sup> However, these differences were largely erased when sociodemographic variables such as closeness to the mother and parental monitoring were taken into account.<sup>9</sup> The study also found that teens in stepfamilies were significantly less likely to be delinquent than teens living in unmarried, cohabiting households.<sup>10</sup> This marriage advantage remained significant even after taking into account the parent’s relationship with the child, family stability, and socioeconomic characteristics.<sup>11</sup> Finally, the study found that teens in stepfamilies scored higher on a vocabulary test than did teens in cohabiting families, though the difference was only marginally significant.<sup>12</sup> Wilson concludes that “[b]ecause differences in delinquency according to marital status . . . continued to exist for children even after taking into account the parent’s relationship with the child, family stability, and socioeconomic characteristics, it is more likely that marriage itself ‘create[s] the advantage experienced by children in married’ stepfamilies.”<sup>13</sup>

The second study Wilson focuses on is by Sandra Hofferth and Kermyt Anderson entitled, *Are All Dads Equal? Biology Versus Marriage as a*

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4. *Id.* at 852–55.

5. *Id.* at 856.

6. Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. MARRIAGE & FAM. 876 (2003).

7. *Id.* at 879–80.

8. *Id.* at 886.

9. *Id.*

10. *Id.* at 887–88.

11. *Id.* at 888.

12. *Id.*

13. Wilson, *supra* note 1, at 859 (citing Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. MARRIAGE & FAM. 876, 890 (2003)).

*Basis for Paternal Investment.*<sup>14</sup> Hofferth and Anderson used data from 2531 children and their parents to compare investments by residential fathers in children in four different types of families: (1) the nuclear family (married, biological parents), (2) the cohabiting family (unmarried, biological parents), (3) the stepfamily (married parents, one of whom is a nonbiological parent), and (4) families involving a biological parent cohabiting with a nonbiological partner.<sup>15</sup> Hofferth and Anderson found that unmarried biological fathers spent about four hours less per week with their biological children than married biological fathers after controlling for race, father's age, child's gender and age, number of children, percentage of months lived with the father, father's work hours per week and earnings, and whether the father paid child support for children outside the house.<sup>16</sup> Hofferth and Anderson found no differences in terms of the number of hours per week the father was around but not actively engaging with the child or in the number of activities the father participated in with the child in the previous week.<sup>17</sup> They did, however, find that unmarried biological fathers rated themselves as less warm toward their children than married biological fathers did.<sup>18</sup> Similarly, they found that not only did cohabitating fathers in blended families invest less time in their biological children and their partner's children than did married fathers, but that they also rated themselves as less warm toward their children than did married fathers.<sup>19</sup>

The authors of both studies conclude that there is something about marriage that confers advantages on children.<sup>20</sup> Marriage itself makes people better parents.<sup>21</sup>

Wilson encourages initial skepticism toward this conclusion.<sup>22</sup> She emphasizes that there may be explanations other than marriage itself for

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14. Sandra L. Hofferth & Kermyt G. Anderson, *Are All Dads Equal? Biology Versus Marriage as a Basis for Paternal Investment*, 65 J. MARRIAGE & FAM. 213 (2003).

15. *Id.* at 213 (study sample drawn from PANEL STUDY OF INCOME DYNAMICS, THE CHILD DEVELOPMENT SUPPLEMENT TO THE PANEL STUDY OF INCOME DYNAMICS (1997), <http://psidonline.isr.umich.edu/CDS/usergd1.html> (last visited Aug. 6, 2005)).

16. Hofferth & Anderson, *supra* note 14, at 224, 225 tbl. 5.

17. *Id.* at 225–26 & tbl. 5.

18. *Id.* at 225–27 & tbl. 5.

19. *Id.* at 226 tbl. 6, 228.

20. *Id.* at 230; Manning & Lamb, *supra* note 6, at 890.

21. Hofferth & Anderson, *supra* note 14, at 230; Manning & Lamb, *supra* note 6, at 890.

22. Wilson, *supra* note 1, at 851–53.

why children who are in married families fare better than those who are not.<sup>23</sup> Despite the studies' efforts to control for various social, economic and personal factors, there still may be systematic differences between the populations of people who do and do not marry. These differences may account for the differences in the well-being of children living in married and unmarried family units. Wilson discusses a few potentially important factors such as the increased likelihood that unmarried biological fathers have other children that they support, role ambiguity in cohabiting relationships, the shorter duration of many cohabiting relationships, and the greater prevalence of depression among cohabiting women.<sup>24</sup> She also suggests that "selection bias" may play a role in the diminished parenting success of nonmarried fathers, hypothesizing that "[t]he same dispositions and preferences that made a biological father allergic to the 'M word' may lead him to invest less in children of the union."<sup>25</sup>

Nonetheless, Wilson ultimately concurs with the studies' authors that there is something transformative about marriage itself that makes people better and more successful parents. "It may be," she says, "that marriage fosters characteristics in the adult relationship that have explanatory power for understanding the improvements in children's welfare."<sup>26</sup>

As the preceding quotation suggests, Wilson points to the social norms surrounding marriage as the mechanism by which marriage works its transformative power. Wilson emphasizes that marital norms like permanence, commitment, and sexual fidelity "redound to the benefit of children in the household."<sup>27</sup> Such norms of marriage, along with the institution's incumbent legal obligations, transform individuals in ways that lead to stronger relationships between adults and greater investments in children. "The permanence that marriage signifies," Wilson contends, "may improve the quality of the adult relationship" while also leading to increased parental involvement and commitment to children which results in "positive consequences for child well-being."<sup>28</sup>

Wilson's policy suggestions, however, present a different and more complicated view of marriage—one that imbues the institution with significantly less transformative power. In discussing whether the state should encourage people to marry, Wilson says that a "more worrisome problem" is not that marriage promotion efforts will fail, but that they

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23. *Id.*

24. *Id.* at 866.

25. *Id.*

26. *Id.* at 867.

27. *Id.*

28. *Id.* at 874.

will succeed.<sup>29</sup> Wilson explains that we should be wary of inducements for couples to marry because such encouragement may diminish and weaken the marital institution. “To the extent that bonuses or other ‘deal-sweeteners’ induce less committed couples to simply take the leap,” Wilson cautions, “the benefits they would receive will have come at a price: weakening the institution of marriage.”<sup>30</sup> What is important, Wilson emphasizes, is not getting people to marry but “somehow transform[ing] their behavior in the relationship to approximate marital norms.”<sup>31</sup> Earlier in her paper, Wilson expresses doubt as to whether the state can foster stability in family relationships in some way other than through marriage, yet in her discussion here she makes clear that such extramarital norm promotion is not only possible, but essential to the preservation of the institution itself.<sup>32</sup>

Under this view, marriage itself is not transformative, norms are transformative. It is the norms of stability, fidelity, and commitment that are responsible for strong adult relationships and positive parenting effects rather than marriage itself. Indeed, rather than being strong and transforming, the marital institution portrayed is fragile and vulnerable. Marriage does not transform the ill-equipped into good spouses and good parents. Instead, such individuals must themselves be transformed before entering the institution in order to avoid degrading and destroying the institution itself.

If, however, it is social norms, rather than marriage, doing the work that is benefiting children, then it makes sense to focus society’s attention and resources on norms, not marriage. In other words, rather than using marriage as the mediator by which to support positive parental norms, it might be more wise, effective, and fair to simply bolster the norms of parental commitment and responsibility directly, and for all parents, regardless of individuals’ marital status. This is particularly true given that homosexual parents continue to be widely

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29. *Id.* at 878.

30. *Id.*

31. *Id.*

32. Wilson expresses doubt about the state’s ability to promote pro-family norms except through the institution of marriage when she says: “The only reason we would parse the effect of marriage from stability is if the State could reliably foster stability in family relationships in some other way. To my knowledge, there is no such way.” *Id.* at 877.

excluded from the institution of marriage, and meaningful access to marriage varies considerably across social class.<sup>33</sup>

Indeed, state support for marriage seems to simply heap benefit on those who are already the most advantaged. If marriage is good for children only because people predisposed to be good parents marry, and not because marriage itself makes people good parents, state support for marriage acts as another reward for those who are already virtuous and least in need of state support. If, in fact, the good marry but marriage does not make people good, would it not be a better use of state resources to direct subsidies and support to the less well-off and less capable unmarrieds? Such people might be so transformed by the support that they could then enter the marital institution without degrading it. Even if they chose not to marry, however, the support would improve their parenting capabilities—and better parenting is, after all, the real goal.

At root, Wilson's instrumentally-driven advocacy of marriage seems more a matter of hope than conviction. She recognizes the complex ways in which individuals and institutions interact with and affect each other.<sup>34</sup> Nevertheless, she is hopeful that the state can use marriage as a vessel for spreading the social norms and values that seem to benefit children, and she thinks it is appropriate for the state to load the vessel with goodies for those who come aboard.<sup>35</sup> Her goal, of course, is to improve the life chances of children. Yet if this vessel continues to exclude—or simply cannot hold—large segments of the population, then it cannot be used as an effective tool to improve the well-being of all of society's children. Wilson's evidence makes a strong case that norms of parental stability, commitment, and responsibility benefit children. Perhaps then it is time to reinforce these norms and share the state's goodies among all parents, regardless of whether they manage to make it onto the marriage boat or not.

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33. See Laura S. Adams, *Privileging the Privileged? Child Well-Being as a Justification for State Support of Marriage*, 42 SAN DIEGO L. REV. 881 (2005).

34. Wilson, *supra* note 1, at 876.

35. *Id.* at 876–77.