

# Marriage and the Well-Being of Children

**AUTHORS:** Jeremy R. Garrett, PhD,<sup>a,b,c</sup> and John D. Lantos, MD<sup>a,b</sup>

<sup>a</sup>Children's Mercy Bioethics Center, Children's Mercy Hospital, Kansas City, Missouri; <sup>b</sup>Department of Pediatrics, University of Missouri-Kansas City, Kansas City, Missouri; and <sup>c</sup>Department of Philosophy, University of Missouri-Kansas City, Kansas City, Missouri

**KEY WORDS**

child development, public policy, parenting, families, homosexuality

Dr Garrett conceptualized and designed the general outline of the article, drafted the initial manuscript, assisted with revising the manuscript, and approved the final manuscript as submitted; and Dr Lantos carried out the empirical analysis, reviewed and assisted with revising the entire manuscript, and approved the final manuscript as submitted.

[www.pediatrics.org/cgi/doi/10.1542/peds.2012-2665](http://www.pediatrics.org/cgi/doi/10.1542/peds.2012-2665)

doi:10.1542/peds.2012-2665

Accepted for publication Dec 21, 2012

Address correspondence to: Jeremy R. Garrett, PhD, Children's Mercy Bioethics Center, Children's Mercy Hospital, 2401 Gillham Rd, Kansas City, MO 64108. E-mail: [jgarrett@cmh.edu](mailto:jgarrett@cmh.edu)

PEDIATRICS (ISSN Numbers: Print, 0031-4005; Online, 1098-4275).

Copyright © 2013 by the American Academy of Pediatrics

**FINANCIAL DISCLOSURE:** *The authors have indicated they have no financial relationships relevant to this article to disclose.*

**FUNDING:** No external funding.

## abstract

FREE

Children's well-being has become the focal consideration in legal and public policy debates regarding same-sex marriage. In this article, we critically examine and rebut the central moral argument made by opponents of same-sex marriage: that the state should not license any domestic arrangement other than "traditional marriage" because doing so would be detrimental to children's well-being. Although many have challenged the empirical premise that children raised by same-sex couples fare worse than children in other arrangements, we focus primarily on the normative premises for exclusively licensing traditional (that is, monogamous, heterosexual) marriage. We argue that even if the empirical support for its claims was strong, the argument is morally insufficient for denying state recognition to other types of relationships. Importantly, we affirm the state's vital role in promoting children's well-being. We question, however, the approach of delegitimizing certain relationships as a means to that end. Instead, we argue, the state should encourage and support individuals who want to care for children, presume that any couple or individual is capable of adequate child-rearing, and ensure that all adults who are raising children (whether married or not) have the material resources and support necessary to be good parents. Such a policy would (1) set a reasonable minimal threshold for state recognition, (2) be vigilant in identifying cases falling below this threshold, and then (3) either assist or disqualify underperforming arrangements. It would also, appropriately, decouple arguments about legitimate and illegitimate types of relationships from arguments about what is best for children. *Pediatrics* 2013;131:559–563

The long-running debate about same-sex marriage has reached a pivotal moment, with the US Supreme Court set to rule on 2 cases that challenge state and federal definitions of marriage as exclusively between a man and a woman.<sup>1,2</sup> The pediatric medical community should take particular interest in this debate, because it is deeply intertwined with children's health and well-being. First, the Court's decisions may well turn on questions related to the best interests of children. As we argue, there has been a decided shift toward this being the focal consideration in legal cases involving same-sex marriage. Second, and regardless, the Court's decisions certainly will affect children going forward. The way in which the law and public policy for marriage ultimately are settled will establish the background conditions in which children are conceived, born, and raised, and, hence, in which patterns of pediatric health and well-being are profoundly shaped. For these reasons, debates about marriage and family policy are not simply matters of personal preference or opinion. Pediatric health care professionals have an obligation to carefully scrutinize the issues and to make judgments and political decisions about them based on the highest empirical and philosophical standards.

In this article, we critically examine and rebut a central moral argument made by opponents of same-sex marriage: that the state should not recognize or license any other domestic arrangement other than "traditional marriage" because doing so would be detrimental to children's well-being. Considerations of children's well-being, we argue, do not provide the state with compelling reasons to deny marriage equality to same-sex couples (and thereby delegitimize and disadvantage them and the children they raise). In fact, the opposite is true. To the extent that the

well-being of children is the primary consideration, public laws and policies regarding child-rearing will promote the interests of children more widely and effectively when they encourage and support individuals who want to care for children, presume that any couple or individual is capable of adequate child-rearing, and ensure that all adults who are raising children (whether married or not) have the material resources and support necessary to be good parents. Such laws and policies would (1) set a reasonable minimal threshold for state recognition, (2) be vigilant in identifying cases falling below this threshold, and then (3) either assist or disqualify underperforming arrangements.

### **CHILDREN'S WELL-BEING AND OPPOSITION TO SAME-SEX MARRIAGE**

It is surprising that children's well-being has become the focal consideration in legal and public policy debates regarding same-sex marriage. Early arguments against same-sex marriage explicitly invoked natural law and religious considerations, affirming that heterosexual marriage is rooted in human nature or divine will while also asserting that same-sex marriage is either conceptually/ontologically impossible or inherently immoral. Those arguments have largely fallen by the wayside before compelling legal arguments about equal protection, the liberty rights of consenting adults to choose their own values and life preferences, and the separation of church and state.

Instead, the focus has shifted to concerns about the effects that same-sex marriage has on children. For example, in 1996, Hawaii argued that, "...all things being equal, it is best for a child that it be raised in a single home by its parents, or at least by a married male and female..."<sup>3</sup> Eight years later, in the lead-up to the 2004 election, the

Institute for Marriage and Public Policy sought to reenergize this argument in a policy brief concluding that, "...the family structure that is most protective of child well-being is the intact, biological, married family."<sup>4</sup> More recently, important court rulings regarding same-sex marriage in Iowa<sup>5</sup> and California<sup>6</sup> (the latter of which is now being considered by the Supreme Court) were decided primarily on the merits of arguments about the best interests of children. In both cases, the courts effectively dismissed all other arguments made by opponents of same-sex marriage as inadequate, but considered arguments about the well-being of children seriously. These examples illustrate how legal opposition to same-sex marriage has increasingly crystallized around a seemingly simple and straightforward claim; namely, that the state should only recognize as "marriages" those relationships composed of 1 man and 1 woman because the children born to and raised in those relationships fare so much better than do children in other family structures.

In philosophical terms, this is an argument based on categories rather than cases. It proposes that special legal status should be awarded to monogamous heterosexual marriages not in virtue of the actual value of any particular such marriage, but rather because they are the "category of relationship" that, on average and overall, tends to promote children's well-being. So even if particular traditional relationships actually fail to promote children's well-being, they nonetheless remain eligible for the status of marriage because they are of the right category. Conversely, even if particular nontraditional relationships actually do promote children's well-being, they nonetheless remain ineligible for the status of marriage because they are of the wrong category.

The category-based moral argument for traditional marriage is structured

straightforwardly and logically. Its conceptual premise is that the category of “traditional marriage” is easily defined. A marriage is “traditional” if and only if it is composed of 1 man and 1 woman who profess a prospective commitment to lifelong heterosexual monogamy. This is followed by the empirical claim that, because of intrinsic and ineradicable differences between traditional marriages and their nontraditional counterparts, only traditional marriages promote a satisfactory level of well-being for children. From this, defenders of traditional marriage conclude that, if the state seeks to promote the well-being of children, it should confer the status and benefits of civil marriage only to traditional marriages.

### **A MULTIFACETED CRITIQUE OF THE CHILDREN’S WELL-BEING ARGUMENT AGAINST SAME-SEX MARRIAGE**

This argument against same-sex marriage requires careful scrutiny on 3 levels: conceptual, empirical, and normative.

The conceptual premise is unobjectionable in itself, at least if its description of the category of traditional marriage is understood as a definitional stipulation rather than as a claim that fully and accurately depicts a historical institution. (The actual history of marital practices in the world is, of course, amazingly rich and complex; there is no single “tradition” of marriage. At different times and in different places, many of the specified criteria were not required [such as the monogamy requirement], while many other criteria were required [such as requirements that spouses be of the same race or religion].) So long as the claim is purely conceptual (ie, not attaching any empirical or normative significance to the adjective, traditional), it is perfectly adequate to

define the boundaries of the category of marriage for which state sanction is exclusively sought.

In another sense, however, it is curious to use this definition of marriage in arguments that focus on the well-being of children, because it is a categorical definition that has no necessary connection to the bearing or rearing of children. Many monogamous heterosexual couples do not actually bear or raise children. Many children, today, are raised in households in which the adults are not in monogamous heterosexual marriages. This raises important questions, but they are beyond the scope of our argument in this article. Instead, we seek only to evaluate the category-based argument against same-sex marriage on its own explicit terms and, in particular, on the strength of its empirical and normative claims.

This brings us to the empirical claim that the intrinsic properties of traditional marriages make them uniquely efficacious in promoting the well-being of children. If true, this claim would be a powerful reason why it might make sense to grant exclusive state sanction for traditional marriage.

The type of empirical evidence that should be garnered to evaluate the claim is straightforward. Those who defend traditional marriage on the basis of children’s well-being need to provide strong empirical evidence supporting an association between traditional marriage itself (and not some contingent extrinsic factor) and higher levels of children’s well-being. They must also provide evidence to support the claim that nontraditional relationships are predictably inadequate in promoting this value.

Existing data regarding the relationship between traditional marriage and children’s well-being are, at best, inconclusive. Contrary to the selective interpretation of such data made by some,<sup>7</sup> most evidence on children’s

well-being shows that children are better off, generally, living in households with more than 1 adult than with a single parent.<sup>8</sup> The multiple adults can be a married man and woman, adults of the same age and sex (whether they are in an intimate relationship), or a parent and a grandparent. In these studies, it is difficult to tease out the confounding effects of single parenting and economic status, as single parents tend to have lower household income than households in which 2 adults share income. It is particularly difficult to account for the effect of the fact that, under current law, heterosexual marriages are sanctioned and supported in ways that other domestic arrangements are not. Such slanted laws and policies not only deny children of same-sex couples equal access to many unique legal rights and benefits, but also contribute to a climate in which such children face significant social barriers and threats to their well-being.<sup>9</sup>

We would like to go beyond arguments about the validity or shortcomings of the empirical data. Let us assume, instead, that the data show, conclusively, that, in the past, in the United States, children living with their married, heterosexual, biological parents fare better on average than children living with their unmarried same-sex parents. We would still question whether such data would justify policies prohibiting same-sex marriage in the future. We would raise 2 sorts of questions.

First, we would want to know whether those children are better off because (1) their parents are heterosexual; (2) both parents raising them are also biologically related to them; or (3) their parents are (unlike same-sex parents) permitted to be married. Kimberly Yuracko articulates the problem:

[M]arriage 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 ... 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.<sup>10</sup>

If the social norms surrounding marriage are themselves crucially important to children's well-being, and if their link to traditional marriage is attributable to distinctive cultural history rather than to any intrinsic properties of lifelong heterosexual monogamy, then we ought to harness the power of those social norms to make life better for all children, including those living with same-sex parents.

Second, even if the data conclusively showed that children raised in homes organized around heterosexual marriages fared better than those in other arrangements, we would ask whether the proper remedy for this disparity is to prohibit same-sex marriages. An alternative conclusion (and one supported by the family stress model of family functioning<sup>11</sup>) might be that same-sex relationships need the legitimacy and support of civil marriage to better promote the well-being of children. Indeed, it is likely that non-traditional relationships historically have produced less value than they are intrinsically capable of producing precisely because they have been denied equal access to the social support and benefits of civil marriage.<sup>12</sup> Thus, opponents of same-sex marriage must show not only that nontraditional relationships have not previously promoted children's well-being or any other state interest; they must also show that such relationships are unlikely to do so even if they had the advantages that come with being accepted and supported by society and the state. The alternative would be not to exclude gay and lesbian citizens from marrying, but to prohibit them

from procreating or adopting children, to protect the children from the less-than-optimal environment they provide. Policies that allow gay and lesbian couples to raise children but that do not grant them the advantages of marriage create the worst of all possible worlds for the children.

These questions suggest how arguments about state sanction or prohibition of certain types of marriages that are based on the effects of those marriages on children inevitably lead to deeper questions of political philosophy. They require a compelling normative principle that will help us understand how the state should organize civil marriage or should support child-rearing. Specifically, should the state confer the benefits and status of civil marriage only to relationships that promote a satisfactory level of well-being for children? We have 2 main objections to such public policy.

Most fundamentally, this premise, by including the qualifier, "only," implicitly assumes that the sole value that should guide civil marriage policy is children's well-being. But why should that be the only value that states consider when designing civil marriage policy? Marriage is a multipurpose institution that serves a wide variety of important human ends. As such, the state could have multiple kinds of reasons for conferring the status and benefits of civil marriage to a particular couple. Some relationships might merit state recognition because they promote children's well-being, whereas others (such as childless marriages) merit it because they foster general happiness or social stability. Thus, absent a good argument to the contrary, it seems justified to reject the qualifier, "only." A tendency to promote children's well-being may be 1 good reason for conferring civil marriage status on a particular relationship. That does not mean that it is the only reason for doing so. Policy

makers should consider things other than children's well-being as they develop policies regarding state recognition (or lack of recognition) for particular types of relationships

However, even granting the dubious assumption that children's well-being is the only value relevant to civil marriage policy, serious problems remain. Why should state sanction of marriage be based on categories rather than individual cases? To see how inappropriate this is, consider the implications if similar logic were applied to the criminal justice system. The criterion for imposing legal punishment is simple and compelling: people who actually have broken the law should be punished, whereas people who did not break the law should be released. This is uncontroversial. Imagine, though, that the state began issuing legal verdicts based on categories rather than cases. Rather than assessing whether a person charged with a crime actually committed it, the state would instead determine if he or she is the kind of person who commits crimes of this sort (using statistical analysis). Even assuming that any given person is a member of only 1 category of persons, the state would fail to give people what they are owed as a matter of justice if it were to ignore the particular facts of specific cases and instead focus only on categories. A similar logic should govern marriage policy. Decisions about permissible marriage should be not be categorical, they should be individualized.

An objection to this approach is that it would require an unacceptable level of state scrutiny of people's private relationships and lives to determine on a case-by-case basis which relationships meet the threshold level of child well-being necessary to secure state recognition. An alternative, then, would be a presumption in favor of adequacy, rather than against, for any type of

marriage in which people are willing to make a commitment to one another. This is what we do now with traditional heterosexual marriage. Then, state scrutiny should focus on finding evidence that a particular marriage is failing to fulfill its functions to promote the well-being of children. Awarding state sanction and benefits to one category of relationships and not others threatens the state's ability to fulfill its ethical obligation of justice and fairness to citizens and its ability to best promote the well-being of children.

### RETHINKING THE STATE'S APPROACH TO CHILDREN'S WELL-BEING

Our primary goal in this article has been to provoke or reinforce skepticism about the conceptual, empirical, and normative adequacy of opposition to same-sex marriage on the basis of claims that such marriages are detrimental to the well-being of children. This critique highlights 3 important principles that might guide a more effective approach to promoting children's well-being: an approach that, appropriately, decouples arguments about legitimate and illegitimate types of relationships from arguments about what is best for children.

The state clearly has a role in promoting the well-being of children. The state

should identify those welfare interests of children that it has a duty to promote and then pursue laws and policies that fulfill this duty effectively. With regard to interests related to child-rearing, however, we believe that there are better policies than ones that focus on the exclusive protection of traditional marriage.

State resources and public policies should be used to ensure that adults who are raising children (whether married or not) have the material resources and support necessary to be good parents. This would mean improving the quality of schools, neighborhoods, and communities; protecting the environment for children's future habitation; increasing children's access to quality health care; encouraging additional research on childhood diseases; and so on. Any serious commitment to the well-being of children would prioritize these more direct and far-reaching strategies, rather than efforts to support a particular type of relationship between some adults in the hope that unique and otherwise unavailable benefits will trickle down to children as a result.

In evaluating the actual value of specific child-rearing arrangements, the state should be guided by a second principle: the welfare interests of children should be defined by a reasonable minimal

threshold, rather than a maximally optimal ideal. The state is not obligated to ensure that the very best interests of children are secured in every domestic arrangement. Instead, the state's role is to ensure that children are raised in an environment that provides them with a reasonable chance at a decent human life.

By this approach, any couple (or single adult) should be presumed initially to be capable of securing a reasonable minimal threshold of child well-being. The burden of proof should be placed on those who would deny this capacity in a given case. The most practical approach for the state to take, and the one with the fewest upfront costs, is to (1) set the bar for state recognition fairly low, and then to (2) be vigilant in identifying cases falling below the reasonable minimal threshold and (3) either assist or disqualify these underperforming arrangements.

Taken together, these 3 principles offer a more effective approach to promoting children's well-being than do approaches that sanction or prohibit certain types of relationships. This basic blueprint, rather than an ill conceived favoritism toward traditional heterosexual marriage, should guide judicial and legislative decision-making regarding marriage and family policy.

### REFERENCES

1. *Hollingsworth v Perry*, No. 12-144
2. *United States v Windsor*, No. 12-307
3. *Baehr v Miike*, No. 91-1394. 1996 WL 694235, at \*3 (Haw. Cir. Ct. Dec. 3, 1996)
4. Gallagher M, Baker JK. Do mothers and fathers matter? The social science evidence on marriage and child well-being. *IMaPP Policy Brief*, February 27, 2004. Available at: [www.marriagedebate.com/pdf/Do%20Mothers%20and%20Fathers%20Matter.pdf](http://www.marriagedebate.com/pdf/Do%20Mothers%20and%20Fathers%20Matter.pdf). Accessed July 19, 2012
5. *Varnum v Brien*, 763 N.W.2d 862 (Iowa 2009)
6. *Perry v Brown*, 671 F.3d 1052
7. Patterson CJ. Children of lesbian and gay parents: psychology, law, and policy. *Am Psychol*. 2009;64(8):727-736
8. Curtis LJ, Dooley MD, Lipman EL, Feeny DH. The role of permanent income and family structure in the determination of child health in Canada. *Health Econ*. 2001;10(4):287-302
9. Pawelski JG, Perrin EC, Foy JM, et al. The effects of marriage, civil union, and domestic partnership laws on the health and well-being of children. *Pediatrics*. 2006;118(1):349-364
10. Yuracko KA. Does marriage make people good or do good people marry? *San Diego Law Rev*. 2005;42(3):893
11. American Academy of Pediatrics. Family pediatrics: report of the Task Force on the Family. *Pediatrics*. 2003;111(6):1542
12. Pennings G. Evaluating the welfare of the child in same-sex families. *Hum Reprod*. 2011;26(7):1609-1615

## Marriage and the Well-Being of Children

Jeremy R. Garrett and John D. Lantos

*Pediatrics* 2013;131;559

DOI: 10.1542/peds.2012-2665 originally published online February 25, 2013;

### Updated Information & Services

including high resolution figures, can be found at:  
<http://pediatrics.aappublications.org/content/131/3/559>

### References

This article cites 6 articles, 1 of which you can access for free at:  
<http://pediatrics.aappublications.org/content/131/3/559#BIBL>

### Permissions & Licensing

Information about reproducing this article in parts (figures, tables) or in its entirety can be found online at:  
<http://www.aappublications.org/site/misc/Permissions.xhtml>

### Reprints

Information about ordering reprints can be found online:  
<http://www.aappublications.org/site/misc/reprints.xhtml>

# American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN®



# PEDIATRICS®

OFFICIAL JOURNAL OF THE AMERICAN ACADEMY OF PEDIATRICS

## **Marriage and the Well-Being of Children**

Jeremy R. Garrett and John D. Lantos

*Pediatrics* 2013;131;559

DOI: 10.1542/peds.2012-2665 originally published online February 25, 2013;

The online version of this article, along with updated information and services, is located on the World Wide Web at:

<http://pediatrics.aappublications.org/content/131/3/559>

Pediatrics is the official journal of the American Academy of Pediatrics. A monthly publication, it has been published continuously since 1948. Pediatrics is owned, published, and trademarked by the American Academy of Pediatrics, 345 Park Avenue, Itasca, Illinois, 60143. Copyright © 2013 by the American Academy of Pediatrics. All rights reserved. Print ISSN: 1073-0397.

## American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN®

