SHOULD IT BE EASIER TO GET MARRIED?

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INTRODUCTION

Professors Adam Candeub and Mae Kuykendall ("C and K") propose that states do away with the requirement that marrying couples be physically present in the state to obtain a marriage license or conduct a wedding ceremony.[1] Three claims motivate this "distance marriage" proposal: (1) there should be greater access to marriage for those who want to marry but cannot due to geographic barriers; (2) the justifications for physical-presence requirements are weak to non-existent; and (3) allowing distance marriage would encourage greater experimentation in, and inter-jurisdictional competition among, the states with respect to marriage law, which would benefit from regulatory introspection and innovation.[2] I consider here the coherence and empirical defensibility of these claims and the specific reform proposals founded on these claims.

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1. *See* Adam Candeub & Mae Kuykendall, *Modernizing Marriage*, 44 U. MICH. J.L. REFORM 735 (2011).

2. *See id.* at 742-44. C and K suggest a variety of normative justifications for their proposal, some of which can be seen as classical liberal justifications for freedom of individual choice with respect to marital contracts, and some of which can be seen as consequentialist justifications aimed at improving aggregate social welfare or more narrowly the financial interests of state governments. C and K also make a number of empirical claims as they advance their proposal. I focus here on what I see as the most important normative goals and empirical claims animating C and K's proposal.

I. CANDEUB AND KUYKENDALL'S PROPOSAL IN GREATER DETAIL

Before addressing the normative and empirical assumptions behind the distance-marriage proposal, it will be helpful to have in mind the specifics of the proposal that C and K advance. At the broadest level, C and K argue against requiring any physical presence by either member of the marrying couple in the marriage-law state even for brief periods, either to obtain a marriage license or to solemnize the marriage through an official ceremony, and they argue that no state official need even personally interact with the marrying couple. Under C and K's proposal, the state's role in issuing a marriage license could be discharged fully via transactions over the internet, and any solemnization requirements should be relaxed to permit "virtual ceremonies" over the internet if the couple fancies such a ceremony, though couples marrying distantly could still engage in a traditional wedding ceremony in the locale of their choice.[3] C and K further argue that, once states authorize distance marriage, the states can (and should) more actively engage in interstate competition for marriage licensures and experiment with the effects of alternative marriage regulation regimes.[4]

Therefore, in C and K's view, authorizing distance marriage will benefit couples who would otherwise have had to travel to the marital state where a physical-presence requirement is still in place, and it will encourage couples who would not have chosen a particular state's marriage law to do so now that they can without the burden of traveling to the state. States that offer attractive marriage procedures should in turn prevail in the marriage-law competition and see their conception of a "good" marriage flourish, see their receipts from marriage licensures increase, and perhaps see the fortunes of family law practitioners in the state improve when they are consulted for advice on distant marriages and divorces (as Delaware's corporate bar has benefitted from the state being a corporate law leader).[5]

C and K offer more specific proposals as well to aid in the implementation of their broad proposal. To replace the anti-fraud effects that physical-presence requirements might have, C and K propose electronic identity verification via background checks or through private contractors hired to perform whatever fraud control is needed.[6] In addition, C and K argue for default prenuptial terms that would be binding on all distantly married couples unless those terms were altered to ensure that couples resolve prop-

3. *See id.* at 744, 784.

4. *Id.* at 776, 782, 785.

5. For a similar argument advanced in favor of different approaches to recognition of same-sex marriage, see Jennifer Gerarda Brown, *Competitive Federalism and the Legislative Incentives to Recognize Same-Sex Marriage*, 68 S. CALIF. L. REV. 745 (1995).

6. Candeub & Kuykendall, *supra* note 1, at 784-85.

erty matters by contract in the event other states fail to recognize the legality of the distance marriage.[7]

C and K also offer a list of regulatory goals that could be furthered by distance marriage.[8] Of particular note, they propose an array of disclosures that courts should consider to advance information exchange between marrying individuals (e.g., requiring an exchange of verified credit histories) and to encourage caution about entering into a marital contract (e.g., requiring completion of marital counseling via the internet).[9] These added disclosure and reflection requirements are seen as features of the law on which states can compete rather than essential elements of the distance marriage proposal. Nevertheless, C and K's openness to greater state control of marital decisions makes clear that, despite their references to providing greater convenience to those seeking to marry, the real concern of C and K is that states re-evaluate the goals that they hope to achieve through substantive and procedural marriage law and not that they necessarily make it easier to wed. In other words, C and K propose that states engage in good governance with respect to their marriage regulations and that marrying couples be given greater choices with regard to substantive and procedural marriage law. Some of those choices may be quite paternalistic and some more libertarian; C and K appear agnostic about the optimal level of government regulations, but there are indications that they see benefits from greater state regulation of the act of marriage formation.

C and K contend that existing marriage formation regulations are the product of historical accident rather than good, deliberate policy-making, and they encourage states to reconsider their existing laws. C and K are confident that, when state legislators engage in this reflective process they will recognize the indefensibility of physical-presence requirements, but presumably C and K would be satisfied with states keeping in place those physical-presence requirements so long as these and other requirements are now designed to serve some deliberate purpose.[10] By examining the arguments advanced by C and K in support of their distance marriage proposal, we may better understand why a state legislator should be persuaded to adopt or reject the proposal, or at least identify important open questions that a rational legislator would want answered.

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7. *Id.* at 787-88.
8. *Id.* at 792-95.
9. *Id.* at 744-45, 784-85, 793-94.
10. Indeed, if C and K are right that authorizing distance marriage will encourage out-of-state consumption of a state's marriage law, then state legislators who do not want to promote a particular conception of marriage outside their borders should reject C and K's proposal and legislators concerned about their state's residents importing undesirable marriage law into the state should act to bar such importation, as with mini-DOMA laws.

II. THE NEED FOR GREATER ACCESS TO MARRIAGE

C and K argue for the distance marriage proposal on grounds that couples need easier access to states' laws so that they can obtain the social status associated with a lawful marriage and obtain (at least some of) the legal and economic benefits that flow from a lawful marriage.[11] Easier access is needed because existing procedures are too restrictive (as when a member of the couple is on an extended leave for military purposes) and because a couple's resident state may offer some attractive feature that another state offers, such as recognition of marriage by same-sex couples.

The access argument is really an argument about unnecessary travel costs and geographic restrictions, not about access per se, because some jurisdictions already recognize same-sex marriage and permit what C and K call "Las Vegas weddings" (i.e., quick and easy marriages by outsiders who have traveled to the state to marry).[12] Thus, the access argument is an argument that it is unfair, inefficient, or irrational to require absent or foreign couples to travel to the state supplying the marriage law to obtain a license or solemnize the marriage, not that states should allow non-residents to partake of their marriage law because states already allow them to do so.

Further, the access argument seems to depend specifically on the travel costs imposed by physical-presence requirements and not the narrow transaction costs associated with obtaining a marriage license or official ceremony. The costs of identity verification, consideration of prenuptial requirements, and completion of even a virtual ceremony as required by an "E-marriage" may plausibly be equal to or greater than the costs associated with going down to the local county clerk's office to obtain a marriage license and solemnize the marriage (not to mention the transaction costs that may come with one of the more intrusive distance marriage regimes suggested by C and K).

It seems quite plausible that the costs of distance marriage will on average be less than the travel costs associated with a "Las Vegas wedding," and, in support of C and K's fairness argument for greater access, some

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11. As C and K recognize, same-sex couples living in states that do not recognize same-sex marriage may not receive the same legal and economic benefits in those states as different-sex married couples. *See* Candeub & Kuykendall, *supra* note 1, at 745-47.

12. For instance, Iowa allows non-resident same-sex couples to wed under its laws inside Iowa. *See* IOWA CODE ANN. §§ 595.1-.2 (West 2011) (marriage license requirements); Varnum v. Brien, 763 N.W.2d 862, 907 (Iowa 2009) (declaring unconstitutional provision in Iowa Code limiting issuance of marriage license to opposite-sex couples). The "Las Vegas wedding" label may, however, be a bit misleading as applied to Iowa, because Iowa requires a three-day wait before the marriage license becomes valid, with exceptions allowed for exigent circumstances. *See* IOWA CODE ANN. § 595.4. (West 2011). So outsiders can obtain fairly quick weddings in Iowa, but Iowa weddings do not quite match the prototype of a Las-Vegas-style impulsive wedding.

states have concluded that members of the military or others involuntarily out of the marital state should be accommodated for purposes of marriage procedures. A particular potential benefit that C and K do not emphasize is that their distance marriage proposal would allow couples to "export" their resident state's marriage law to another state when the couple would rather wed outside their resident state.[13] Thus, the many couples who travel to wed in states where their families are located would not have to satisfy the possibly cumbersome requirements of the foreign state's marriage procedures, and the resident state will supply the law that will indefinitely govern the marriage inside its borders.

The access argument, therefore, is on its own terms normatively defensible and empirically plausible, but the access argument is simply the flipside of what I am calling C and K's argument against physical-presence requirements as conditions of state-sanctioned marriage. In the next Part, I consider C and K's argument against physical presence as a part of the marriage procedure. If states have good reasons for their physical-presence requirements that C and K ignore or fail to accommodate, then their argument for improving access to marriage law by permitting marriage at a distance is not likely to persuade legislators.

III. THE INDEFENSIBILITY OF PHYSICAL PRESENCE REQUIREMENTS

C and K roundly condemn existing marriage regulations: "The current regime, so to speak, has little to recommend it other than a preference for status quo."[14] But what exactly is it about the current regime that C and K find so problematic? Given what are, by C and K's own account, fairly innocuous paperwork requirements: greatly reduced efforts at public health and criminal regulation by the states, vanishing waiting periods, smaller numbers of states with residency requirements, and the willingness of states to ignore procedural irregularities and differences in marriage prerequisites;[15] it appears that the displeasure of C and K flows from the requirement that couples be present in the state to obtain a marriage license or to conduct a ceremony solemnizing the marriage, from the relative uniformity of both procedural and substantive marriage law, and perhaps from a belief that it is now too easy for doomed couples to get married in many states or that marriage procedures have become too lax.

The last possibility is suggested by C and K's proposal that states compete over the level of paternalism imposed on distance marriages by requiring different levels of prenuptial disclosure, waiting periods, and other

13. *See* Candeub & Kuykendall, *supra* note 1, at 741 n.23.
14. *Id.* at 780.
15. *See id.* at 741, 750-60.

pre- and post-nuptial conditions,[16] and by their view that states can impose requirements that "help prevent unwise marriages of relative strangers."[17] At a minimum, C and K do not, in principle, oppose greater government regulation of the marital contract; they oppose what they see as irrational physical-presence requirements and missed opportunities by states to innovate in the domain of marriage law. Whether they actually favor a strong(er) state role in sorting "good" from "bad" marital decisions is not clear. In subsequent Parts, I take up C and K's argument against uniformity and for greater government regulation of marriage. Here I focus on C and K's objection to states conditioning marriage on physical presence in the law-giving state.

As discussed above, the physical-presence requirements may impose substantial travel costs on couples and may bar marriage by some couples who would otherwise qualify for marriage under the governing law. Thus, fairness and efficiency arguments can be made for abolishing the physical-presence requirements, particularly if it is possible to fashion a verification system that serves the anti-fraud and abuse purposes of in-person licensure and ceremonial requirements (i.e., to ensure that the couple satisfies the minimum requirements of the jurisdiction to be eligible for marriage and that the members of the couple are who they claim to be). Whether that is possible, as C and K believe it to be, will be an important question that any state legislator or regulator will want answered before adopting C and K's proposal.

The most worrisome aspect of the distance-marriage proposal from an anti-fraud and abuse perspective is C and K's advocacy of solemnization via the internet ("virtual ceremonies"), because the risk of coercion and abuse seems greater with virtual ceremonies where there may be no in-person check on conduct or sincerity by persons not directly involved in the ceremony, making special abuse protections necessary if virtual ceremonies are allowed.[18] Virtual ceremonies are not, however, an essential feature of the distance-marriage proposal; thus, concerns about virtual ceremonies should not be fatal to the proposal.[19] But are there other justifications beyond anti-fraud and abuse effects in favor of physical-presence requirements? I ad-

16. *See, e.g.*, *id.* at 783-84.

17. *Id.* at 794.

18. Of course, one determined to compel marriage or commit fraud might be able to dupe an official at a live ceremony or stage a fake proceeding with a duplicitous presiding official, but the risk of abuse seems greater where there are no officials directly interacting with the couple.

19. One solution might be to restrict who may officiate over a virtual ceremony and to require that the official separately interview the members of the marrying couple to ensure voluntariness. Such a requirement might minimize the proof problems presented by distance marriage. *See* NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION 28 (2000) (discussing the regulatory and evidentiary role of officiated ceremonies).

dress two possible justifications here, one of which seems to pose no real barrier to distance marriage, and one that is difficult to reconcile with the ideas behind the distance-marriage proposal.

First, in-person licensure and ceremony requirements may serve as checks on impulsive marital decisions. Indeed, with the reduction and elimination of waiting periods, the physical-presence requirements may be the only barrier, albeit indirect and slight, between a temporary infatuation and a lasting commitment. However, C and K advocate alternatives designed to guard against impulsive or ill-informed nuptials under a distance-marriage regime, such as compelled exchanges of background information that could serve as substitutes for the precautionary effects of the physical-presence requirements.[20]

A second benefit of the physical-presence requirement, but one that is directly at odds with the very idea of distance marriage, is that such a requirement helps states to confine their particular marriage regulations largely to in-state residents—as may be the case with states authoring same-sex marriage that fear reprisals from other states with respect to reciprocity on marital law and other matters—and may help to promote a particular vision of marriage within the state, either as approved or disapproved by voters or as conceived by elected officials. Permitting distance marriage undercuts this parochialism goal—indeed, C's & K's proposal is expressly designed to undermine efforts to restrict marriage to opposite-sex couples. C and K obviously recognize that distance marriage may allow for greater import of illegal forms of marriage into states that forbid same-sex marriage, but they see little justification for such embargoes.

C and K hypothesize that distance marriage will increase the rate of same-sex marriage exports to resistant states and, as a result, gradually reduce resistance to currently unpopular forms of marriage in those states (i.e., they contend their proposal will do so with less backlash than current litigation strategies with respect to same-sex marriage). It may be the case, however, that the current regime, under which same-sex couples who reside in the few states authorizing same-sex marriage can marry as well as non-resident same-sex couples willing to travel to those states, is a slower but better strategy for norm change in the long run as other states observe the effects of these innovations. That is, if distance marriage is as effective as C and K hope, it may prompt the very backlash they seek to avoid. Part of that backlash may result in more determined efforts to bar state benefits of marriage where the imported law conflicts with state public policy, and one casualty of distance marriage's success could be less development of civil partnership law aimed at giving the same benefits other than status to couples not seeking or not eligible for traditional marriage. If this happens,

20. *See, e.g.*, Candeub & Kuykendall, *supra* note 1, at 784-86, 793-94.

then distance marriage may not supply what many committed couples will care most about—getting the significant legal and economic benefits of marriage, whether through formal marriage or civil unions[21]—and a distance marriage may become a "second class" marriage from a status perspective.

In response to these speculative concerns, C and K can point to the number of couples who have sought same-sex marriages despite the prospect of those marriages carrying fewer benefits and lower status in their residency states (and even being deemed invalid), and they can emphasize that they do not argue for uniform approval of same-sex marriage across states. Rather, their distance marriage proposal is agnostic on the substantive law of marriage that any state may put in place; distance marriage is simply a vehicle to promote greater marital law federalism, and experimenting with the impact of same-sex marriage is just one example of the experiments that C and K argue would be promoted if distance marriage becomes more available.

IV. THE DESIRABILITY OF INTERSTATE COMPETITION AND PROCEDURAL INNOVATIONS

In addition to removing geographic barriers, C and K argue that distance marriage will promote competition among the states with respect to marital law and permit federalist-style experimentation.[22] This theoretical argument seems to ignore some important empirical facts and open questions. First, there is of course now inter-jurisdictional competition with respect to whether same-sex couples may wed, and some states are experimenting with covenant marriage, and this competition and experimentation has occurred without a concomitant abolition of physical-presence requirements. While the demand for same-sex marriage seems strong, covenant marriage appears to have had few takers.[23] Other than the example of same-sex marriage, it is unclear what marital demands are going unmet by the law market. Second, it is not clear that a high percentage of the opposite-sex couples who travel to a foreign state for marriage would choose not to do so were distance marriage allowed, because much of this travel is probably motivated by factors other than the choice of law or barriers imposed by

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21. Nussbaum provides some examples:

> Married people get a lot of government benefits that the unmarried usually do not get: favorable treatment in tax, inheritance, and insurance status; immigration rights; rights in adoption and custody; decisional and visitation rights in health care and burial; the spousal privilege exemption when giving testimony in court; and yet others.

Martha C. Nussbaum, *A Right to Marry?*, 98 CALIF. L. REV. 667, 669 (2010).

22. *See* Candeub & Kuykendall, *supra* note 1, at 783-85.

23. *See* NAOMI CAHN & JUNE CARBONE, RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE 125 (2010).

physical-presence requirements (e.g., desires for destination weddings or to wed where one of the couples' relatives reside). Third, C and K ignore the remarkable evolution in marital dissolution laws across the nation in a fairly short time period (legally speaking) even with residency requirements in place.[24] That evolution was toward greater uniformity (in favor of no-fault divorce), suggesting there may be a value in uniformity that C and K overlook.[25] So it is not so clear that marital law is as archaic and calcified as C and K contend, nor is it so clear that distance marriage is needed to spur competition and change in this area of the law. The lesson of covenant marriage may well be that interest groups and influential politicians can supply new laws but cannot create demand for those laws, especially with respect to such personal and important decisions about whom and how to wed.

But are there *procedural* innovations that states have overlooked, which, if put in place, would enhance the prospects of successful marriage and reduce the social welfare costs associated with failed marriages?[26] This question is really not central to C and K's main proposal, but it comes up throughout their paper. C and K make a good case for distance marriage if one accepts the key assumptions that state borders should play little role in the definition and regulation of marriage, that distance marriages will not be subject to greater abuse than localized marriages, and that distance marriage will further marital law federalism, but in the process they make provocative claims about marriage regulations that states should put in place. They seem to suggest that states could, *at the point of marriage*, help couples sort themselves into groups of better and worse candidates for marriage. In particular, C and K's proposal emphasizes reliable compelled information exchange in the form of credit history and criminal background exchanges,[27] and they argue for confronting couples with default prenuptial terms that they might otherwise ignore (i.e., if couples were forced to make active choices about dissolution and inheritance issues pre-marriage, those choices

24. *See id.* at 123; COTT, *supra* note 19, at 205.

25. There has likewise been considerable development of the law on premarital agreements. For example, twenty-seven states have now adopted the Uniform Premarital Agreement Act. *See A Few Facts About the . . . Uniform Premarital Agreement Act*, UNIFORM LAW COMMISSIONERS (2002), http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upaa.asp (last visited Jan. 19, 2011).

26. Given the big changes in marriage formation procedures that C and K document, it is not obvious to me that such procedures suffer from a status quo bias, as C and K claim, nor is it obvious to me why evolutions altering substantive law would leave procedural law intact if the procedures were as burdensome and unnecessary as C and K suggest. Nevertheless, C and K raise the important question whether states could do a better job up-front in regulating the marriage decision.

27. Candeub & Kuykendall, *supra* note 1, at 745.

should be better informed than simply accepting state-chosen default rules[28]).

Surely there are some fraudulent or less-than-candid courtships that could be prevented by the information exchanges C and K suggest, and perhaps some couples would make better prenuptial arrangements if forced to confront future contingencies and actively set defaults. But these ideas do not get at the marital distress and inequitable bargaining issues that arise after vows have been exchanged and that, most importantly, are difficult to predict. The consensus view among those who analyze the factors contributing to divorce seems to be that there is no "average divorce:"

> Despite the efforts of theorists to organize our knowledge of divorce, there is no simple explanation for why people divorce: divorce is not caused by a single factor; it cannot be predicted on the day the couple ties the knot. Many causes on multiple levels—social, historical, cultural, demographic, and individual—interact to bring about the demise of a family.[29]

We do know risk factors associated with divorce—youthfulness at the time of marriage, lack of college degrees, lower income and unemployment, prior unwanted children, a history of anxiety disorders, alcohol abuse[30]—but states are unlikely to regulate who can enter marriage on the basis of these factors. And because many persons falling into one of these risk categories go on to have positive marriages, forced premarital disclosures may thwart many marriages that would otherwise have been successful. In other words, a state considering compelled informational disclosures needs to consider whether the disclosures may do more harm than good.

But even if we assume that a disclosure regime targets the right information, will the disclosure regime be effective? C and K entertain the pos-

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28. In this respect, C and K's proposal regarding mandatory pre-nuptial agreements for distance marriages has a "libertarian paternalist" feel to it, though Sunstein and Thaler originally advocated a central planner picking the "best" defaults rather than encouraging active selection of contract terms by the parties. *See* Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. CHI. L. REV. 1159, 1196 (2003). In their popular book NUDGE, Thaler and Sunstein argue for getting the state out of marriage endorsement and leaving marriage per se to religious and private organizations; the state would be left to authorize and regulate civil unions, setting default contract terms and supplying information that would anchor and inform dissolution negotiations. *See* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 217-26 (2008).

29. ALISON CLARKE-STEWART & CORNELIA BRENTANO, DIVORCE: CAUSES AND CONSEQUENCES 29 (2006). Elizabeth Scott offers a series of possible reforms to marriage law aimed at preserving marital commitments in the face of unpredictable but often temporary stressors to a marriage, such as lengthy mandatory waiting periods before allowing a divorce. *See* Elizabeth S. Scott, *Marital Commitment and the Legal Regulation of Divorce*, *in* THE LAW AND ECONOMICS OF MARRIAGE AND DIVORCE 35, 49-52 (Antony W. Dnes & Robert Rowthorn eds., 2002).

30. *See* CLARKE-STEWART & BRENTANO, *supra* note 29, at 29-51.

sibility of a race to the bottom should states adopt their distance marriage proposal (i.e., a race to make marriage as quick and easy as possible, with minimal state intrusion), but they do not worry about this possibility because they claim we are already at the bottom in terms of too-lax marital procedures.[31] If we are at the bottom, then C and K overlook the real barrier to implementing what they see as "better" (i.e., stricter) marriage regulation in the form of the adverse selection problem: the people these stricter regulations target are the very people who will be motivated to avoid such regulations. Persons seeking to fraudulently entice another into marriage or actively hiding personal and background information from a potential spouse will surely be sensitive to the disclosures required by a particular state's marriage laws.[32] Unless there are uniformly strict disclosure requirements across jurisdictions, distance marriage will actually make it easier for individuals to evade stricter regulations and harder for states to enforce them. But we need not posit evil intent: persons worried that required disclosures will be misleading to a loved one and unnecessarily threaten the proposed union should avoid the disclosures as well.

CONCLUSION

First appearances can be deceiving. The idea of "E-marriage" and allowing couples to take advantage remotely of another state's marriage law seems designed to make marriage "modern" by making marriage easier. But convenience, in the straightforward sense of quick and easy, is not really what C and K have in mind with their distance marriage proposal. As C and K's review of existing marriage regulations makes clear, getting married can be quick and easy, at least for opposite-sex couples in most states. The greater convenience that C and K have in mind is greater ease to shop around for marital law that suits a couple, but distance marriage is also meant to encourage states to experiment with alternative means of marriage regulation. Behavioral law and economics scholars, who have shown relatively little interest in marital contracts as compared to consumer contracts notwithstanding the tremendous effect marital arrangements can have on the lives of those who wed, should find C and K's distance marriage proposal attractive: it presents a means to experiment with different disclosure or reflective-decision-making prerequisites to marriage and with substantive changes aimed at promoting marriage or making its dissolution easier and less costly.

But should legislators also find the proposal attractive? In this brief essay, I asked a few of the questions that open-minded legislators may want

31. Candeub & Kuykendall, *supra* note 1, at 784.

32. If C and K's proposal is embraced, all the information one needs to avoid a particular regime should be available over the internet.

answered when considering the proposal. It seems to me that the toughest questions for Candeub and Kuykendall require (1) specifying demands other than that for same-sex marriage as the impetus for greater marital law federalism, and (2) explaining how to avoid adverse selection problems and unnecessary deterrence of marriage in more paternalistic distance-marriage regimes. If the distance-marriage proposal is simply a Trojan horse for expansion of same-sex marriage and there are not other demands or needs served by the proposal, then the proposal's appeal is likely to be quite limited. If the response to the demand question is that distance marriage can ensure better information exchange through marriage prerequisites, then the proposal runs up against the adverse selection/deterrence problem and the very flexibility promoted by the distance marriage proposal becomes a problem rather than an attractive feature.