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Til Death (or Divorce) Do Us Part: A Defense of Divorce as a Morally Permissible Instance of Promise-Breaking

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TIL DEATH (OR DIVORCE) DO US PART: A DEFENSE OF DIVORCE AS A
MORALLY PERMISSABLE INSTANCE OF PROMISE-BREAKING

by

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Under the Direction of Christie Hartley, PhD

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ABSTRACT

Elizabeth Brake presents a plausible contradiction: Promise breaking is regarded as impermissible, and marital promises are regarded as legitimate promises, however we take divorce, which is a breaking of a marital promise, as generally permissible. Brake's response to the inconsistency of these beliefs is to assert that we misunderstand marital promises all together. She argues that marital vows misfire (that is they do not come to enforce promissory obligation) because they attempt to make promises about what one cannot control, one's emotions—namely love. My project will be in response to this view. First, I contend that Brake is wrong to think that marriage vows are illegitimate promises and second, I offer what I take to be a stronger resolution to the divorce inconsistency posed by Brake.

INDEX WORDS: Divorce, Marriage, Vows, Promises, Promise-breaking, Love

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TABLE OF CONTENTS

1	INTRODUCTION.....	1
2	BRAKE’S VIEW.....	2
3	PROMISES WE MAKE.....	5
3.1	What is a Vow?.....	5
3.2	Promise We Can Make	7
4	PROMISES WE BREAK.....	10
4.1	Promises Breaking in the Face of Harm	11
4.2	Brake’s Response	12
5	DAMAGE TO WELL-BEING AS A SIGNIFICANT HARM.....	13
5.1	What is Well-Being	13
5.2	Why Be Well.....	15
5.3	Significant Harms to Well-Being	16
6	CONCLUSION	18
	REFERENCES.....	20

1 INTRODUCTION

In her book *Minimizing Marriage*, Elizabeth Brake points out that when it comes to marriage and divorce, most people have contradictory beliefs. In particular, most people hold: Promise-breaking is generally impermissible; marriage vows are promises; and unilateral divorce is generally permissible (even though it breaks the marriage promise).¹ Brake's response to what I term *the divorce problem* is to assert that marriage vows should not be understood as promises. Brake thinks that when people exchange marriage vows, they fail to make a promise. The problem, she thinks, is that, when people exchange marriage vows, they attempt to make promises about what they cannot control, their emotions, which in the case of marriage is love. And she thinks that people fail to make promises when they attempt to make promises about that which is not fully in their control—such as emotions. In this thesis, I argue that the divorce problem is only apparent. First, I contend that Brake is mistaken to believe that marriage vows are not promises. More precisely, I argue that we *can* make promises about love, as love is not only a complex emotion, but further requires perpetual acts of respect and care toward another person. Second, I claim that, nonetheless, unilateral divorce is morally permissible when an individual's well-being will significantly suffer due to continuing in the marriage.

In Section 1, I explain the divorce problem in greater detail, as well as Brake's resolution. In Section 2, I refute Brake's response to the divorce problem—that marriage vows are not promise—by providing an argument in support of the belief that we can successfully make promises about love. After refuting Brake's response to the divorce problem, I posit my own resolution to the divorce problem in Section 3. I suggest that marriage vows can be permissibly

¹ This triad of inconsistent beliefs is hence force referred to as *the divorce problem*.

broken when the promiser's well-being will significantly suffer due to continuing in the marriage. This projects concerns what Brake calls hardship cases. This excludes cases like abuse, in which it is clear that it is permissible for one to exit a relationship, as well as cases of mere preference where one exits a relationship frivolously. Rather than these, this account is primarily concerned with cases of divorce for which the reasoning is based on a more moderate excuse.

2 BRAKE'S VIEW

Recall the divorce problem. There is an apparent contradiction between the three following claims: Promise-breaking is generally impermissible; marriage vows are promises; and unilateral divorce is generally permissible, even though it breaks the marriage promise. Brake asserts that there are three potential resolutions to the divorce problem. (1) One can simply reject the claim that unilateral divorce is permissible. Brake calls this the "hard-line" response, as it creates a high threshold for what constitutes a permissible reason for divorce. (2) One could assert that the types of circumstances that would allow for a morally permissible breaking of a vow do exist in failed relationships. She calls this the "Hardship" response as it suggests that there can exist sufficient hardships in a relationship to justify the breaking of wedding vows. Or one can (3) suggest that since marriage promises are contingent on love and happiness.

And finally, response (4), the one Brake endorses, is to accept that marriage promises simply are not really promises at all, because the promise misfires from the start insofar as those promising are making a vow over something they can't control.²

² Brake 26

Her endorsement of (4) is informed by the belief that one cannot promise to do what one cannot do.³ For example, on Brake's account, if Jane promises to take John to his favorite seafood restaurant, only to find out that the restaurant shut down months ago, then Jane did not fail to deliver her promise, as she actually never made the promise at all. She tried to make the promise but failed because the content of the promise was not something she could possibly deliver on.

She acknowledges a possible objection to her view: we often make promises about things we cannot control. For example, we might promise to meet someone for lunch, but our ability to do so is contingent on other factors, namely the weather, traffic, and so on.⁴ However, Brake thinks these two instances fall under two different categories.⁵ In the lunch example, under normal circumstances it is reasonable that the promiser will be able to keep her promise—that is, the promise is reasonable outside of any unforeseeable extenuating circumstance. Conversely, in the seafood restaurant example, there is no way for Jane to take her husband to the restaurant, even under the best circumstances, as it is closed—it would be a promise that would be impossible to keep in any circumstance (assuming the restaurant is permanently closed for good). So, according to Brake, it was never a successful promise to start. Some other examples of this kind of impossible promise, Brake suggests for clarity, include things like promising not to shoot oneself during Russian roulette or promising to succeed in a difficult surgery—these kinds of promises would be “foolhardy.”⁶

³ Brake 32

⁴ Brake 34

⁵ Brake 33

⁶ Brake 35

Brake argues that marriage vows fall under this same category of foolhardy, intended but failed promises. This is because, as she argues, we have as much control over our emotions as we do the bullet during Russian roulette or the outcome of a dangerous surgery. While it may be a “conceptual possibility” to be able to control one’s emotions well enough to guarantee that one can love another forever, Brake contends this is not something we can guarantee in practice.⁷ This is not to say, as Brake points out, that it is an impossibility to love someone forever. For example, we might love our parents forever, an intimate partner, or our child. Rather, the issue is whether we can control our emotions and *guarantee* that one can love someone forever. Thus, Brake has attempted to show that promises about things out of one’s control are not promises at all and, moreover, that one’s emotions are out of one’s full control. Therefore, promises to love—like marriage vows—cannot be promises at all.

Brake entertains a number of important objections to her view. The first she addresses is that marriage vows might be a promise to behave. But she points out, I think rightly so, that this account is too shallow to gauge what is happening.⁸ It seems that couples are making some emotional commitment to one another, not just a behavioral one. The second plausible objection she addresses is that vows are some predictive type of vow, similar to how a parent might tell her child that he will get an A in course at school if he works hard.⁹ This has immediate problems; Brake thinks, in a marriage setting, marriage vows do not explicitly say they are predictive, thus it can be misleading to the promisee. Further, viewing the vow in such a way alienates the promiser from her own emotions--it seems to be suggesting that that the promiser is just making

⁷ Brake 35

⁸ Brake 36

⁹ Brake 36

predictions about her life, not making an active promise as an agent.¹⁰ Lastly, she counters the objection that marriage promises could work as promising as intention. She points out that this response is also flawed because promises cannot simply be statements of intention because promises create obligation, and a statement of intention to do something impossible cannot create an obligation.¹¹ Thus, Brake has seemingly defended against these objectors; however she fails to adequately address all plausible responses. I will address one such solution in the following section.

3 PROMISES WE MAKE

In this section, I will ultimately contend that, contrary to Brake, we can successfully make promises to love one another. This argument will be achieved over the course of a few steps. First, I consider how we should understand vows. Second, I posit that Brake's mistake consists in adopting a too simplistic notion of love and, moreover, that adopting a more complex—and what I take to be a more precise—understanding of love, leads to the dissolution of Brake's argument against promises of love.

3.1 What is a Vow?

Before arguing that marriage vows about love constitute a binding promise, it seems worthwhile to first define what we mean when we talk about vows and promises. For my purposes, I adopt an understanding of vows and promises as presented by Kyle Fruh.¹² He claims that what separates a promise from a firm intention is the binding nature of a promise.¹³ Whereas

¹⁰ Brake 37

¹¹ Brake 37

¹² Fruh 858–880

¹³ Fruh 859

with a firm intention a changing of mind would be permissible, this is no longer the case with a promise—one is bound to the promise. That is, when one makes a promise a moral obligation is generated. One could delve much more deeply into the metaphysics of promises, but here it is sufficient to recognize a promise is a moral obligation generating phenomena that results in morally-binding commitment.

Vows, in contrast to a single promise, require one to take on a breadth of obligations.¹⁴ Take, for instance, wedding vows. Wedding vows serve the main goal of obligating people to each other. However, it is clear there are a plethora of obligations that come with this—a couple makes a promise to stay with another until death, to support each other through sickness or health, to love. So, a vow is much more complex than a promise to, say, pick one's brother up from the airport. When one makes a vow, one is not entering into a single obligation, but rather one is promising that one will do a number of things related to one's relationship.

This also means that there can be much more at stake concerning a vow than a promise¹⁵ If one fails to pick up her brother from the airport after making a promise to do so, it is certainly the case that reparations and apologies are owed, but it does not appear to be as simple when considering the breaking of a vow. Vows are often much more intimate and involve the identity of the person themselves—that is, when making a vow a person seems to be “taking a stand” on the person that they are, to break the vow is to fail to be that person.¹⁶ Like promises, there is

¹⁴ *Fruh* 864

¹⁵ *Fruh* 865

¹⁶ *Fruh* 865

much more one could say about vows, however, it is sufficient for this project to suggest that vows are typically more complex than promises.

3.2 Promise We Can Make

Equipped with a working understanding of promises and vows, it is easier to see where Brake's analysis goes wrong. To reiterate, Brake's resolution to the divorce problem is to posit that marriage vows are not promises at all, and thus do not bind one to the kind of promissory obligation that is ostensibly broken in a divorce. The rationale is that one cannot make promises about what one cannot control, and one cannot control an emotion like love.

Brake seems to characterize love as something that happens to one without one willing it, and that it comes and goes on its own. I contend that love is not this fickle. Love is better understood as something much more active—not solely something that just happens to someone.¹⁷ Love is distinct from many other emotions because it requires some self-reflection and is responsive to reason (but not entirely so).¹⁸ It is different from, say, sadness, which we cannot control and doesn't seem to respond to reason. This means, regarding love, there is some level of agency present—you could ask another *why* they love someone, and that person could ostensibly give reason beyond just “it happened to me.”

This complexity tells us that we cannot quickly write off love as an emotion over which we have no control, even if we cannot control it entirely. Love is responsive to reason to some degree. However, it is not critical to my project to suggest that love is fully within our control.

¹⁷ Ebels-Duggan 1

¹⁸ Ebels-Duggan 4

Rather, in response to Brake, I posit that when we make vows about love, we are not making promises merely about our emotional states, rather we're making vows about the extent to which we are willing to go to foster feelings of love and to protect a loving relationship so that we can have a successful partnership.

At first, a view like this might seem to just be suggesting that a marriage vow is a promise about behavior, a view which Brake refutes.¹⁹ But this view, I contend, has more complexity than Brake allows. She suggests that couples who get married and partake in vows are not thinking about promising to undertake the actions that will lead to a loving relationship.²⁰

I think this is a crude view of vows and couple who make them. Spouses, who are sincere in their vows to each other, are not solely concerned with the emotional feelings they have for one another. Rather, they are entering into an intimate partnership. This means that they are promising each other certain behavior in connection with their emotional intimacy. It would seem shallow to suggest that a couple making vows to one another were merely promising to love one another, but not promising to participate in acts that facilitated that love-like caring for each other in sickness or in health and to avoid acts that would undermine it - like XXXXX.

Love is not infatuation. Love requires care, respect, and critical reflection on the well-being of another.²¹ All of these require particular behaviors; care means being tentative to another needs, respect means apologizing and talking after a fight, reflection requires active and

¹⁹ Brake 37

²⁰ Brake 38

²¹ Rorty 13

deliberate thought, and so on. Love goes further than just enjoying another person, it requires a constant and active deliberate effort to have a flourishing relationship with another person.²²

Brake suggests that those entering into marriage vows are not considering these behaviors and are rather solely focused on the emotion. I disagree, there is no love without action and behavior to facilitate it, and those entering into serious and committed loving relationships would have this, not just a promise to keep up a romantic feeling, at the forefront when making a vow to their partner.

With this more robust understanding of love, it is more clear how we can make promises about love. Not only is one making a promise about love when entering into a marriage vow but recall earlier how vows were defined. A vow is a suite of obligations one enters into that is tied to their identity as a person. A marriage vow is not a promise to maintain emotional love, as Brake suggests. It is a vow that is made between two people that obligates them to the suite of obligations that goes along with loving another person. This includes caring for, respecting, prioritizing the needs and well-being of one's partner. We can make promises about behavior and actions, so if one adopts this more robust, behavior-driven, notion of love, then it is possible to make successful promises about love.

In this section I posited what I take to be a plausible understanding of promises and vows. Moreover, I argued against Brake's belief that marriage vows are not promises by suggesting that her view of love is too simplistic, and that with a more robust understanding of love one can

²² *Rorty 2*

understand marriage vows as making a complex accumulation of promises, or a vow, about behavior.

This concludes the first step of my project which was aimed at arguing that we can make promises about love. The remainder of this paper will be aimed at the second step of my project—namely suggesting a stronger resolution to the divorce problem.

4 PROMISES WE BREAK

We want (and need) promises to be binding. If my friend promises to pick me up from the airport, I need to have confidence that my friend will be there when my plane lands. Our mundane day-to-day life requires people to make promises and commitments to one another—we rely on people keeping their word. This means large social problems would come about if we lessened the moral commitment that promises entail.

Societal reliance on promises makes the notion of morally permissible divorce seem too weak. If marriage vows can be unilaterally broken, and promises can be exited on a whim, what prevents my friend from not showing up to pick me up from the airport, what keeps the shop owner committed to giving me the goods I purchased. It is insufficient to simply say that marriage promises are different from other promises, such that we are okay with breaking them, but not others—in this event, it becomes a case of cherry-picking when it is, or is not, convenient to keep promises. A view like this diminishes what a promise is.

In this section, I tackle this issue. I explain how one can simultaneously hold, that promises are binding and critically important to uphold, while also maintaining that unilateral divorce is morally permissible. To do so, I rely on the assumption that one can permissibly break a promise in the face of significant harm—an assumption that I defend below.

4.1 Promises Breaking in the Face of Harm

Imagine Molly has an illness which requires her to stay in the hospital for an extensive period of time. Lizzie promised Molly that she will visit her each day to keep her company. Assume Molly accepts her promise and Lizzie has entered into a promissory obligation. Lizzie keeps her promise and continues to visit Molly in the hospital. At some point, however, the hospital changes their sanitation supplies—the disinfectant, Lizzie discovers, causes her to have severe allergic reaction that causes her an uncomfortable rash. She can no longer enter the hospital without having a reaction, so she stops visiting Molly.

It seems here that Lizzie *has* broken her promise—she no longer visits Molly as she said she would. However, a pressing moral issue is whether Lizzie can be held morally culpable for the breaking of the promise. Clearly, the answer here seems to be no. No one would expect or insist that Lizzie continue to go to the hospital despite the obvious damage it does to her.

This thought experiment suggests that there are circumstances in which one can be excused from keeping a promise.. Indeed, there are lots of cases in which we think that people can break their promises: if someone loses her job, she doesn't have to keep expensive dinner dates or if there is bad weather, one doesn't have to pick up friend at the airport. These are all

examples of cases in which a reasonable individual could break their promise without being considered morally culpable.

One could present a much longer view on particular cases in which one can permissibly break promises—however that extends further than what is necessary for this project. Rather, it is sufficient for my argument to show that it is plausible that one may break a promise en following through with that promise may cause significant harm to the promiser.

4.2 Brake's Response

Brake seems to anticipate this sort of view of promissory obligation and argues that morality requires promise-keeping—even if the cost is high for the promiser. For this, she gives the example of Marcel and Albertine.²³ Marcel has promised to purchase a yacht for Albertine. However, Marcel comes to realize that high expense of yachts and realizes that sacrificing his money to buy the yacht for Albertine will lead him to no longer achieve two of his desires—namely going to Venice and impressing his neighbors. Brakes thinks that if one concludes that Marcel still owes Albertine a yacht, then one must also accept that one owes it to their spouse to stay in the marriage.

I contend that Brake's analogy here fails because the two situations are not as comparable as she might suggest. The difference being the extent to which each is facing harm. In Marcel's case, if the extent of the harm is that he can no longer go to Italy nor impressive his neighbors, it seems reasonable that one might conclude that this is not significant enough to excuse him from

²³ Brake 29

his promise. Contra, if buying the yacht would cause Marcel to go homeless and make it difficult for him obtain food and other basic necessities for the remainder of his life, one might view the situation differently—that is, a reasonable individual would be much more likely to be willing to excuse Marcel from his promise.

If we think of the circumstances around divorce as more akin to the latter than the former, then it becomes clearer how we might consistently hold that Marcel needs to keep his promise to purchase the yacht, whereas the spouse can be excused from her marriage if we assume that staying in the marriage will cause significant harm to the individual.

All to say, Brake does not seem to give charitable credit to the notion that one can exit a promise if she experiences significant harm. In this section, I have suggested that a reasonable person would not hold a promiser morally culpable for exiting a promise that was causing her harm. And moreover, I argued that Brake's attempt to defend a view that harm is insufficient for exiting a promise, fails. In the next section, I argue that a particular type of harm, namely harm to well-being, constitutes at least one way in which an individual can be morally excused from her marriage vows.

5 DAMAGE TO WELL-BEING AS A SIGNIFICANT HARM

5.1 What is Well-Being

Thus far, I have worked to support the view that facing a significant harm gives a promisee grounds to exit an obligation permissibly. I further this argument here by suggesting that damage to one's overall well-being constitutes this kind of significant harm. However,

before I do so, it is important to define what “well-being” means in this context as it can be a somewhat loaded term with many interpretations.

Before defining well-being, it is worthwhile to step back and to understand what one means by happiness. For my purposes, I adopt Daniel Haybron’s definition. He defines one being in a state of happiness when “one’s emotional condition [is] favorable on the whole,” generally speaking, it is the “opposite of anxiety and depression.”²⁴ Happiness then is the psychological component of well-being. However, to be happy is not, necessarily, to be well.

Well-being is a bit more difficult to define than happiness. One way to understand well-being is in terms of whether or not a life is *good*. One can evaluate whether a life is good with questions like, “is life *X* such a life which with the individual could be justifiably be satisfied.” Or perhaps, in simpler terms, whether a person giving a eulogy for person *X* could sincerely say that *X* lead a good life.²⁵ This is a quite rough way of understanding these notions, but it is sufficient enough for this project to understand well-being (roughly) as a combination of both being psychologically happy and leading a good life.

There is a plurality of views one could adopt in regard to what it takes to achieve well-being.²⁶ However, there is common ground which they all share. Namely, it seems generally agreed upon that it is plausibly such that well-being requires, at least, an individual to have

²⁴ Haybron 28

²⁵ Haybron 110

²⁶ Haybron succinctly describes each of these theories well in his book, 85

autonomy and to be able to make decisions for herself in regard to prioritizing and participating in activities and habits that are fulfilling to her.

To summarize the preceding discussion, to have well-being is to have both a generally positive emotional and psychological state, as well as to lead (or be leading) a life that is generally positive and favorable. And achieving (or at least striving toward) well-being consists in one being able to set aspirations for herself, as well as having the ability to achieve (or work toward) these aspirations in a way that is fulfilling to her.

5.2 Why Be Well

After understanding what well-being is, a further question might be in regard to why we ought to strive for well-being, and moreover why the lack of well-being is such a significant damage. It might seem like happiness is sufficient; however, I contend that individuals ought to be able to pursue well-being beyond just happiness. To illustrate what happiness without well-being looks like, I offer an example. Imagine Leah. Leah has a generally happy life free from stress, depression, and anxiety. She has enough money to take care of herself comfortably and works a job she enjoys. Overall, she has a happy life that would generally be perceived as positive. However, perhaps she deeply enjoys drawing extremely-detailed portraits, but she recently suffered an injury in her wrist that was severe enough that it hindered her ability to draw, not just temporarily but for the rest of her life. Despite this, she maintains a generally positive emotional and psychological attitude.

In Leah's case, we have no reason to say she is not happy. However, we can say that she has, to some extent, had her overall well-being hindered due to the circumstances as she is no longer able to do the activity she finds fulfilling. While this might not be the case of an extremely significant harm—Leah is still able to, all things considered, lead a good life—it does illustrate that a hindrance of well-being constitutes harm of some sort.

5.3 Significant Harms to Well-Being

Extrapolating this idea back into a marriage case, let us draw another example. Let us say that Sarah married her husband at a young age. They had a been married a few years when Sarah finds that she has a real love for theatre, so much in fact that it becomes something with which she begins to define her identity. Her husband has a job in Michigan (where there is little opportunity for participation in theatre) that he is deeply invested in and does not desire to leave. Further, he desires to have children in the near future.

If Sarah stays with her husband, she will sustain a harm to her well-being. She will not be able to work toward her theatre related goals due to both her location and the time she will need to spend with her children. It is quite plausible that this will damage her well-being so profoundly that her happiness is even reduced significantly.

The intuitive response to this might perhaps be that Sarah made a vow to her husband. That she chose to enter a relationship with him, and in turn forfeited her ability to participate in some activities, like participating in theatre in a large city. However, I refer back to the example of Lizzie visiting Molly in the hospital. When Lizzie promises to visit Molly, we do not intuit

that Lizzie has forfeited her rights to her well-being in the process—to think so would be to suggest that Lizzie ought to be required to attend the hospital, despite it causing her profound illness.

Sarah has the same right to her emotional well-being as Lizzie does to her physical well-being. If that is the case, as I contend it is, then it follows that Sarah has no more obligation to stay with her husband at the expense of her dreams and sincere desires than Lizzie has to visit Molly at the expense of her physical health.

Thus, I suggest that if Sarah instigates a unilateral divorce with her husband, and thus breaking the promise she made, she is doing so permissibly. This is not to say that Sarah has not hurt her husband to some extent, nor that it is the morally ideal situation. But it is to say that her breaking of her promise was done with sufficient justification to render it morally permissible.

The breaking of the promise can be permissible in any case in which one's well-being is sufficiently strained. This often occurs when an individual's life goal changes. As another example, suppose Marcel married his spouse, and at the time of their vows their life goals and desired aligned. It seems entirely plausible that over time Marcel could change with age and life experience—perhaps his desire for children has waned, or his priorities has realigned in such a way that they are no longer compatible with his partners. In this case, just like Sarah, Marcel's overall well-being is at risk if he becomes unable to fulfill his desires in a way he feels appropriate. It would be up to Marcel to weigh the potential harm to maintaining the relationship.

However, if he concludes that potential harm is too significant, then we should take his separation from the marriage to be permissible, just like Sarah's.

If we take overall well-being, as I have described here, as serious as physical well-being, as I contend, we should, then we are obligated to recognize that significant harm to overall well-being is grounds for permissible promise breaking is, just a significant harm to physical well-being is. Recall the divorce problem: Promise-breaking is generally impermissible; marriage vows are promises; and unilateral divorce is generally permissible (even though it breaks the marriage promise. One does not have to deny any of these premises, as Brake does, to fix the apparent contradiction. Rather, as I have shown, showing that promising breaking is morally permissible in particular cases—namely cases that involve significant harm to well-being—resolves the concern posed by Brake.

6 CONCLUSION

My project had two distinct goals. The first was to suggest that Brake's way of resolving the divorce problem—by suggesting that marriage vows are not promises at all—fails as it seems to misinterpret what kind of promises we make to one another when we make promises about Love. I argued that making promises regarding love does not equate to making a promise about our future emotional state. Rather than making a marriage vow actually requires committing to a suite of promises—some of which might be emotional, but many of which are based in our actions and efforts toward another person and a shared relationship. Thus, concluded that Brake was wrong to conclude that marriage vows are not promises.

My second goal in the project was to propose a new resolution to the divorce problem. I first suggested that we have sufficient grounds to permissibly exit a promise when fulfilling it harms us. Moreover, I showed that a harm to well-being suffices as this kind of harm. Thus, suggesting that a promiser can permissibly exit a promise when fulfilling it would cause harm. Finally, I extrapolated this notion back to marriage, and showed that, if we are committed to harms to overall well-being being significant harms, one can unilaterally choose to exit a marriage vow permissibly, if staying in the marriage would cause her to sustain significant harm to her well-being. Overall, I have both rebutted Brake's solution to the divorce problem, as well as offered my own, more plausible, solution.

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