

# Discoursing Divorce: Three Ethical Readings on the Subject of Divorce

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**Abstract:** This paper explores the ethical dimensions of divorce in the Philippines, where its prohibition is deeply rooted in Catholic doctrine and enshrined in legal frameworks. Drawing from three ethical theories—natural law, Kantian ethics, and Habermasian discourse ethics—the paper investigates divorce as not merely a legal issue but an ethical one. Natural law theory, with its emphasis on moral obligations derived from human nature, often opposes divorce due to its potential harm to the family unit. However, exceptions are considered in cases of abuse or harm. Kantian ethics views marriage as a contractual relationship, allowing for divorce when personal dignity and autonomy are compromised. Habermasian discourse ethics, grounded in rational deliberation and consensus-building, offers a framework for inclusive discussions on divorce, promoting fairness and representation for marginalized voices. The paper argues that the interplay of these ethical frameworks highlights the complexity of divorce in the Philippine context, advocating for more inclusive and critical dialogue to address its legal and moral implications.

**Keywords:** Divorce • Marriage • Divorce in the Philippines • Thomistic Natural Law • Marriage and Duty • Discourse Ethics

## Introduction: A Brief Introduction to Divorce

Notwithstanding the revival of discussions on its tenability, the discourse on divorce in the Philippine setting has always been contentious, considering the complex interplay of perspectives from the culture, the law, and religion, primarily Catholicism. In a predominantly Catholic country that sees the bond of marriage as sacred and God-sanctioned, discussions on divorce remain taboo, more or less. Many are content with remaining silent about the matter and in favor of accepting that it is starkly illegal and even immoral on

account of the sacrosanct binding that it presumably destroys.

Divorce, as defined broadly, signifies the legal dissolution of a marital relation which frees and permits individuals to marry again.<sup>1</sup> A clearer distinction also exists between its two kinds—*divortio a vinculo matrimonio* and *divortio a mensa et thoro*.<sup>2</sup> The latter pertains to a marriage that persists under relative divorce, while the former is the absolute kind that dissolves the bond of matrimony, the kind that most are familiar with when dealing with divorce as a concept.<sup>3</sup>

Defined as such, it was recognized before the Civil Code enactment in the Philippines in 1949.<sup>4</sup> At present, however, divorce is not recognized in the Philippines and, as such, remains prohibited under Philippine law, making it the last country in the world, alongside the Vatican City, without legal provisions for divorce.<sup>5</sup> The 1987 Philippine Constitution explicitly upholds marriage as “an inviolable social institution” upon which the family is founded, creating an injunction for the State to protect it.<sup>6</sup> For many, it goes beyond the mere legal recognition of a relationship; its binding is out of pure commitment

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<sup>1</sup> Jorge M. Juco. “Fault, consent and breakdown—the sociology of divorce legislation in the Philippines,” *Philippine Sociological Review* 14, no. 2 (1966), 67.

<sup>2</sup> See Jihan A. Jacob, “Reintroduction of divorce into Philippine law” (Doctoral dissertation, University of Toronto, 2013), 3.

<sup>3</sup> See Jacob, “Reintroduction of divorce,” 3.

<sup>4</sup> *Civil Code of the Philippines*, Republic Act No. 386, 1949. See Jacob, “Reintroduction of divorce,” 2.

<sup>5</sup> See Jeffrey B. Abalos, “Divorce and separation in the Philippines: Trends and correlates,” *Demographic Research* 36, no. 50 (2017), 1515.

<sup>6</sup> *The 1987 Constitution of the Republic of the Philippines*, Article XXV, Section 2.

and love between two couples until the end of their lives.<sup>7</sup> Regardless, the Philippine law is clear on how it sees marriage as a fundamental social institution, so much so that in order to prevent its dissolution, the Family Code of the Philippines postulates possible remedies in the form of nullity, annulment, and legal separation.<sup>8</sup>

The problem is that on the one hand, despite these legal attempts to supplant the perceived need for divorce, many still deem it necessary to pursue its legalization for various reasons that elicit ethical responses: domestic abuse and violence, child/ren welfare, and even mental health, among others.<sup>9</sup> On the other hand, those who stand for marriage and against divorce see the matter not merely as a legal dispute but an ethical one. The prohibition on divorce in the Philippines is rooted primarily in Catholic doctrine, which holds marriage as indissoluble once contracted.<sup>10</sup> This religious influence

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<sup>7</sup> Dorothy Grace Agliam, et al., “A Comprehensive Literature Review of Marital Dissolution in the Philippines: Legal, Socio-Cultural, and Feasibility Perspectives,” *International Journal of Current Science Research and Review* 7, no. 5 (2024): [2596-2603], 2598.

<sup>8</sup> *Family Code of the Philippines*, Executive Order No. 209, 1987. See Jacob, “Reintroduction of divorce,” 3. The Family Code defines ‘marriage’ as a “special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life.” See Abalos, “Divorce and separation,” 1525.

<sup>9</sup> See Abalos, “Divorce and separation.” See also Rowalt Albudbud et al., “Reframing divorce as a mental health policy issue in the Philippines,” *The Lancet: Psychiatry* 11, no. 4 (2024): 241-2.

<sup>10</sup> Divorce is ‘anti-family’ and ‘anti-life,’ a ‘taboo’ and a ‘moral depravity.’ See Agliam, “Marital Dissolution in the Philippines,” 2598. More, “divorce is unconstitutional, that it is anathema to Filipino culture, that it is immoral, that it will destroy the Filipino family, that it will legalize promiscuity, that it will contribute to the increase in broken families, that it will be abused by spouses who find it easier to give up on their marriage rather than try to reconcile their differences,

permeates societal norms and legislative frameworks, contributing significantly to the staunch opposition against legalizing divorce. Despite efforts from various sectors advocating for divorce as a remedy for failed marriages and a means to empower individuals, legislative attempts have repeatedly failed in the face of religious and conservative opposition.

This paper aims to read divorce in the Philippine setting from the standpoint of three normative ethics—natural law theory, Kantian ethics, and Habermasian discourse ethics. This reading of divorce as an ethical issue through the aforementioned presents each theory’s merits that figure importantly in making sense of the divorce, not only as a legal matter but more so as an ethical one.

## Natural Law and Divorce

Let us begin with the Catholic purview that relies on the natural law, particularly as formulated by Thomas Aquinas, whose understanding of it is considered paradigmatic.<sup>11</sup> Thomas locates the natural law subsumed under the law itself. That the law pertains to reason as its principle insofar as it commands persons “to act or be restrained from acting,” and that this reason directs law both to the good of all (*bonum commune*) and the good of an individual (*bonum privatum unius*), imply its obligatory nature.<sup>12</sup> In the human person, the good is identified with “that to which befits [one’s] nature, that to which [one] has a natural inclination as a rational

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that it will lead to custody battles, and that it will be detrimental for the children” (See Abalos, “Divorce and separation,” 1525).

<sup>11</sup> See John Finnis, *Natural Law & Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011), 28.

<sup>12</sup> *Summa Theologica*, I-II, q.90, a.1-2. Hereafter ST.

being.”<sup>13</sup> In this account, reason is entangled with the good in how the human person is directed toward attaining this good.

However, this law does not stand apart from God’s divine order for Thomas. He situates the natural law within a hierarchy of laws where the eternal law serves as its foundation as it governs all of creation. The natural law is thus “the rational creature’s participation in the eternal law.”<sup>14</sup> By virtue of reason, humans discern their participation in the divine order through the inclinations that direct them toward their proper ends. The moral authority of the naturalists law therefore comes, not from human consensus but from human participation in the eternal law.<sup>15</sup>

This directedness obligated by reason makes it a law, and its implicitness in human nature makes it ‘natural.’ For Thomas, therefore, the natural law postulates that since it is the same in all humans, it prioritizes the attainment of those things that are necessary to them.<sup>16</sup> Four principles with intrinsic value govern the good-

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<sup>13</sup> Frederick Copleston SJ, *A History of Philosophy: Medieval Philosophy, Volume II* (New York: Image Books, 1993), 406-7.

<sup>14</sup> ST I-II, a. 91, a. 2.

<sup>15</sup> See Copleston, *A History of Philosophy: Medieval Philosophy*, 214-217.

<sup>16</sup> “Wherefore the order of the precepts of the natural law is according to the order of natural inclinations. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all the substances, inasmuch as every substance seeks the preservation of its own being, according to its nature...and; secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals...and; thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God and to live in society.” See *Summa Theologica* I-II, q.94, a.2, resp.

directedness of human actions toward their attainment - life, procreation, knowledge and sociability.<sup>17</sup> Firstly, the principle of life is assured by the natural inclination to preserve one's being (*vita hominis conservator, et contrarium impeditur*).<sup>18</sup> Secondly, procreation is emphasized by inclinations that nature has instilled in us as animals such as intercourse and the education of offspring that results from it (*coniunctio maris et feminae, et educatio liberorum, et similia*).<sup>19</sup> Thirdly, surpassing our commonality with other animals, our capacity for knowledge, alongside the capacity to live with fellow humans, is explained by the inclination to know the truth, especially as it pertains to God, and to live socially (*ad hoc quod veritatem cognoscat de Deo, et ad hoc quod in societate vivat*).<sup>20</sup>

Since these principles, arrived at by rational reflection, are derived from the constitution of human nature, they are objective and universally valid. These inclinations though are not equal as they are hierarchically ordered toward beatitude, the final end of life.<sup>21</sup> The preservation of life is seen as the most fundamental good, procreation, the perfection of the species, and sociability and knowledge being oriented toward the communal good.

This reliance on the goods naturally inherent in humanity sets the foundation of rightness and wrongness in the general moral law: good is to be done and ensued, and evil is to be avoided (*bonum est faciendum et*

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<sup>17</sup> See Mark Timmons, *Moral Theory: An Introduction*, 3<sup>rd</sup> ed. (Lanham: Rowman & Littlefield, 2022), 63.

<sup>18</sup> ST I-II, q.94, a.2, c.2.

<sup>19</sup> ST I-II, q. 94, a.2, c.3.

<sup>20</sup> ST, I-II, q.94, a.2, c.3.

<sup>21</sup> See ST I-II, q.92, a.2.

*prosequendum, et malum vitandum*).<sup>22</sup> From this standpoint, it would make sense to favor marriage since it tends toward the good of procreation as obligated by reason based on human nature itself. It is simultaneously contrary to the natural law to enact against its dissolution since this indirectly hinders a married couple's natural obligation to procreation and the nurturing of offspring.<sup>23</sup> Divorce then becomes detrimental to human flourishing most obviously in relation to nature's mandate on the proliferation of species.

Situating the family as integral to the communal good orients the natural union of husband and wife toward the rearing and education of their children, which then contributes directly to social and moral order. If this is so, then the denigration of procreation consequentially leads to the disruption of the family, to which marriage is also supposed to lead. The success of divorce inevitably jeopardizes the upbringing of the children, which by extension, affects the balance of social cohesion, an expected upshot of our directedness to knowledge. At once, it is apparent that the principles of natural law starkly contrast the prospects of divorce.

A possible way through which a more amicable reading of the natural law might accommodate extreme marital situations is through Thomas' understanding of prudence in relation to how the natural law is applied in various contexts.<sup>24</sup> Although derived from the natural law, human laws allow the toleration of certain evils, if only to prevent greater, undesirable harms. To this effect,

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<sup>22</sup> ST I-II, q.94, a.2, resp.

<sup>23</sup> See Brendan M. Brown, "The Natural Law, the Marriage Bond and Divorce," *Jurist* 15, no. 1 (1955): 32-4.

<sup>24</sup> "...[Rulers decide] in determining particular points of the natural law: on which determinations the judgment of expert and prudent men is based as on its principles; in so far...as they see at once what is the best thing to decide" (See ST I-II, q.95, a.2).

while the natural law indisputably affirms the indissolubility of marriage, provisions by civil law such as legal separation can allow prudent ends that aim to protect persons from further abuse, without having to disregard or even violate the bond of marriage.

For instance, if a marriage becomes abusive or irreparably broken, the ethical responsibility shifts from upholding the marital bond to the individual welfare of the husband or the wife, in keeping with the good of protecting personal human dignity. In a similar way, if the marriage of a couple becomes utterly defunct to the point of risking the flourishing of the family, especially of the child/children of minor age, then in view of the latter's good, divorce appears to be the more permissible option. So even if it is not ideal, divorce can even be a moral choice to uphold the higher moral good of preserving personal dignity.

Regardless, it must be clarified that even if such practical judgments can be allowed, a distinction still exists between what may be legally permitted and what is deemed morally good from the standpoint of the natural law. So, even though prudence tells us to compassionately allow legal remedies for abuses within marriage, they do not necessarily constitute exceptions to the natural law's intrinsic valuation for marriage.

It is only that since the natural law recognizes the natural inclination guided by rationality (*naturalis inclinatio inest cuilibet homini ad hoc quod agat secundum rationem*) and those acts that are not prescribed by nature but are "conducive to well living" (*sed per rationis inquisitionem ea homines adinvenerunt, quasi utilia ad bene vivendum*),<sup>25</sup> then in cases where marriage hinders personal growth or leads to despair in cases of marital abuses, divorce may become, a necessary

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<sup>25</sup> ST I-II, q.94, a.3, resp.



step.<sup>26</sup> However, such thoughts should recognize a holistic reading of Thomistic natural law that demands both its grounding in the eternal law and its directedness toward human flourishing.

## Kantian Ethics on Divorce

Let us now turn to Kant whose ethics figures importantly in understanding marriage as a contract, if only to take into consideration civil marriages that the Catholic Church does not recognize as binding. Kant affirms marriage as a necessity, being one of those legal institutions that ensure the dutiful role of persons to one another.<sup>27</sup> Foremost among these roles is the assurance that the marital bond will not be denigrated by possible conflicts that ensue due to sexual relations.<sup>28</sup> Note how Kant emphasizes sex as a principal factor of the success or failure of a marriage. While from the standpoint of the natural law, sex is good only insofar as it leads to the creation of a new human life, for Kant, sex remains purposeful in maintaining the happiness of marriage, irrespective of the intent to procreate or not.<sup>29</sup>

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<sup>26</sup> See Aurelia Miller, “Until Death Do Us Part? A Proposal for the Philippines to Legalize Divorce,” *Connecticut Journal of International Law* 24, no. 1 (2008), 191.

<sup>27</sup> Charlotte Sabourin, *Kant on Marriage. Elements in the Philosophy of Immanuel Kant* (Cambridge: Cambridge University Press, 2025), 8.

<sup>28</sup> See Matthew C. Altman, “Kant on Sex and Marriage: The Implications for the Same-Sex Marriage Debate,” *Kant-Studien* 101 (2010): [309-330], 311. doi: 10.1515/KANT.2010.020.

<sup>29</sup> “The end of begetting and bringing up children may be an end of nature, for which it implanted the inclinations of the sexes for each other; but it is not *requisite* for human beings who marry to make this their end in order for their union to be compatible with rights, for otherwise marriage would be solved when procreation ceases” (*Metaphysics of Morals* 6:277). See Sabourin, *Kant on Marriage*. 10-1.

If sex is not bound to the sole purpose of procreating, then in this purview, the spouses can enjoy more liberty in relation to this conjugal act. It is for this reason that Kant stipulates how a couple that desires to enter into marriage must be willing to uphold a relationship characterized by an equal, mutual “possession of each other as persons.”<sup>30</sup> If this ought to be the default rapport between spouses in marriage, then a violation of it would come in the form of reducing one’s husband or wife into “a consumable thing,” or “an instrument for satisfying desires and inclinations.”<sup>31</sup> In this reduction, the marital relationship becomes one that merely treats the other as an object for obtaining pleasure and satisfying sexual desires, a means to an end. Kant’s second formulation of the categorical imperative requires that we *treat humanity, whether in our own person or in the person of any other, never merely as a means to an end but always at the same time as an end*,<sup>32</sup> and it is to this duty that the possibility of pursuing a divorce is allowed and even encouraged.<sup>33</sup>

If marriage is only “a contract between two people for the mutual use of their sexual capacities,” then from the Kantian standpoint, it is sensible to permit divorce in conditions when this contract is violated, as the case

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<sup>30</sup> *Metaphysics of Morals* 6: 278. See Sabourin, *Kant on Marriage*, 14.

<sup>31</sup> *Metaphysics of Morals* 6:360. See Altman, “Kant on Sex and Marriage,” 311.

<sup>32</sup> See Wood, *Kant’s Ethical Thought*, 111-5.

<sup>33</sup> “Unlike animals, we set our ends, or determine which desires we ought to pursue. Because the capacity to reason is a condition of all other goods, we have an incomparable value by virtue of our humanity. That is why persons have dignity and why we ought to respect people as ends in themselves.” See Altman, “Kant on Sex and Marriage,” 311.

adumbrated above may be.<sup>34</sup> Pairing Kant's contractual approach to marriage with the force of the second categorical imperative, one can surmise that divorce becomes not only an acceptable response but even a preferable resolution to sexual related abuses committed in the context of a married couple. It is so for the reason that the duty existing between spouses places more importance on their capability to engage in sexual relations without being violated.<sup>35</sup> It therefore suggests that while marriage is a moral contract, the duty to maintain it is not absolute and, in many instances where sexual abuses are present, can be overridden by the duty to preserve one's humanity and dignity. Simply put, the decision to pursue divorce for Kant is predicated primarily on the preservation of an individual's inherent dignity which must be maintained even in marriage, and only secondarily on the dissolution of this latter which nullifies the contract of this same marriage.

### **The Kantian Foundations of Discourse Ethics**

At this point, the Kantian foundations of Habermas' discourse ethics will be presented to show the concordance that exists between them. The fundamental principle of discourse ethics relies on universalization where the validity of norms, whether ethical or legal, derives from the acceptance and consent given by all who participate in it.<sup>36</sup> The very nature of this discourse, then, necessitates interpersonal recognition, as well as the mediation of the 'legal medium' that recognizes the

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<sup>34</sup> *Metaphysics of Morals* 6:277. See Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999), 257.

<sup>35</sup> See Wood, *Kant's Ethical Thought*, 257.

<sup>36</sup> See Jürgen Habermas, *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge: The MIT Press, 1995), 197-8.

participants as 'bearers of rights' who can take positions and arrive at a consensus on validity claims.<sup>37</sup> The recognition asked for in this discourse, however, is not presumed or given *prima facie*. The recognition that comes from a consensus is from justification provided by argumentation, which in turn springs forth from communicative rationality.

Therefore, it is sensible to think of a person proposing a norm for interpersonal validation to be thinking, at the same time, that what is proposed is implicitly claimed to be valid for everyone.<sup>38</sup> This approach aligns with Kant's emphasis on the universality of moral law which extends it into the realm of social interactions and democratic processes.<sup>39</sup> It is apparent that both Kant and Habermas place a strong emphasis on rationality as a cornerstone of ethical behavior. For Kant, the ability to reason is what allows individuals to discern moral duties and act accordingly. Habermas builds on this by asserting that rational discourse among individuals can lead to the collective understanding of moral norms.<sup>40</sup>

This communal aspect enriches the Kantian notion of autonomy, as it recognizes that individuals achieve moral understanding not in isolation, but through interaction

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<sup>37</sup> See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: Polity Press, 1997), 119.

<sup>38</sup> See Ramon Reyes, "Discourse Ethics of Jürgen Habermas," in Soledad S. Reyes (ed.) *The Loyola Schools Review: School of Humanities* (Quezon City: Office of Research Publications - Ateneo de Manila University, 2004), 95.

<sup>39</sup> See Wood, *Kant's Ethical Thought*, 302.

<sup>40</sup> "In discourse ethics, conflicts of action are settled by consensus. The agreement reached is truly reflexive in nature and expresses a general interest or common will because it is brought about by a real process of argumentation where social agents concerned cooperate" (Manuel B. Dy, Jr., *Contemporary Social Philosophy*, Makati: Katha Publishing, 2013, 75).

with others. Discourse ethics, in this sense, embodies a practical method for assessing the universality of norms: if a norm cannot be universally endorsed through rational discourse, it fails to meet the criteria for moral legitimacy. Thus, Habermas' framework can be seen as an evolution of Kant's emphasis on universality, embedding it within the process of discourse.<sup>41</sup> Moral deliberation, therefore, must occur within avenues where participants engage in rational discussion free from coercion or manipulation; one such discussion we often see in the courts of law. This reflects Kant's idea of the moral community but underscores the necessity of discourse in achieving moral consensus.<sup>42</sup> The communicative aspect of Habermas' ethics allows for a more inclusive approach to morality, acknowledging diverse perspectives while striving for common ground.

At its core, discourse ethics posits that ethical norms emerge from reasoned discourse among free and equal individuals capable of justifying their norms to others.<sup>43</sup> This communicative rationality forms the basis for achieving consensus on moral principles in a pluralistic society. Central to discourse ethics is the notion of communicative action through which individuals engage in dialogue, free from coercion or manipulation, to reach mutual understanding and agreement.<sup>44</sup> This deliberative process aims to uncover universalizable moral principles that can guide individual and collective action.

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<sup>41</sup> See Reyes, "Discourse Ethics of Jürgen Habermas," 97.

<sup>42</sup> "For Kant it is crucial that human beings think of themselves as belonging to a moral community, of which all rational beings could regard themselves as members. This community is to be united through the concept of a single final end that its members consciously pursue *in common as a shared end*" (Wood, *Kant's Ethical Thought*, 313).

<sup>43</sup> See Reyes, "Discourse Ethics of Jürgen Habermas," 98.

<sup>44</sup> See Dy, *Contemporary Social Philosophy*, 72.

Unlike Kant's emphasis on the categorical imperative which focuses on rationally-derived duties, Habermas shifts the focus to communication and the conditions necessary for achieving consensus.

### **Discourse Ethics and the Natural Law**

Let us also consider some intersections between discourse ethics and the natural law. Jacques Maritain, foremost among Thomas' modern disciples, suggests that the natural law possesses a kind of rational universality that precedes and presupposes established norms.<sup>45</sup> However, he is also clear about the fact that even when aided by reason, our knowledge of such norms varies in degrees without precluding the possibility of erring in judging whether an act is in accord with its principles.<sup>46</sup> Due to this spectrum of reason's acquaintance with the natural law, rules and norms established to conform to it abound. In the case of Habermas' discourse ethics, universality is not conceived similarly to how the universality of natural law is presented.

It nevertheless parallels the openness of Thomism to the explication of the natural law according to how reason accounts for moral dictates that flow from our being human. This provides the space for Habermas' consideration of everyone's interests when speaking of moral norms. Everyone who wishes to participate in enacting valid moral norms admits one's responsible assent and acceptance of such norms. Such participants become "qualified in such a way that the various

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<sup>45</sup> "The precepts of the unwritten law are in themselves or in the nature of things...universal and invariable." Jacques Maritain, *The Rights of Man and Natural Law* (London: The Centenary Press, 1945), 65.

<sup>46</sup> See Jacques Maritain, *On the Use of Philosophy: Three Essays* (Princeton: Princeton University Press, 1961), 26-7.

generalizable interests of those involved interlock or harmonize—or are curtailed in a manner acceptable to all, if the case is especially dilemmatic.”<sup>47</sup> Just as how for Thomas, the erring human nature admits for the nigh-impossibility of perfect rectitude in relation to the natural law, so too, in Habermas’ thought, discourses that ensue in dilemmas allow even the imperfect concurrences for the sake of agreed-upon moral norms.

### Discourse Ethics on Divorce

Having presented possible points for intersections between Kant, Habermas, and Thomas, some key points will be emphasized to suggest how Habermas’ discourse ethics proves itself to be relevant to the issue of divorce in the Philippines. Firstly, discourse ethics emphasizes the importance of inclusive deliberative processes where all affected parties have the opportunity to voice their perspectives.<sup>48</sup> In the Philippine context, this requires sufficient engagement not only with the legal realm and in religious chambers, but more with citizens, specifically with individuals who are directly impacted by the absence of divorce laws. Secondly, discourse ethics encourages participants to critically examine underlying norms and values that inform their positions on divorce. This critical reflection is crucial in a society deeply influenced by religious doctrines, where moral judgments are often conflated with theological beliefs, as mentioned above.

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<sup>47</sup> William Rehg, *Insight and Solidarity: A Study in the Discourse Ethics of Jürgen Habermas* (Berkeley: University of California Press, 1994), 195.

<sup>48</sup> See Jürgen Habermas, “Reflections and Hypotheses on a Further Structural Transformation of the Political Public Sphere,” *Theory, Culture & Society* 39, no. 4 (2022), 167-8. doi: 10.1177/0263276422111234.

By fostering openness to dialoguing with opposing viewpoints and challenging taken-for-granted assumptions, discourse ethics facilitates a more profound understanding of the implications of maintaining the current legislations related to marriage and divorce as opposed to when such legislations are relaxed to cater to more practical needs that directly address abuse-related issues, for instance. It assumes a space where all participants are equally empowered to engage in rational discourse.<sup>49</sup> Foremost among these participants will come from marginalized groups such as women trapped in abusive relationships, or underprivileged individuals who lack the resources and support to adequately participate in deliberative processes. Moreover, discourse ethics underscores the need for procedural fairness in decision-making processes related to divorce legislation.<sup>50</sup> It critiques existing power imbalances that marginalize voices advocating for divorce rights and emphasizes the ethical imperative of ensuring equal participation and representation in public discourse.

In the Philippine context where legislative discussions have turned into either polarization of parties or moralistic and legalistic rhetoric, discourse ethics offers a normative framework for promoting genuine dialogue and consensus-building.

### **Recapitulation**

This paper briefly presented a reading of divorce in the Philippine setting from the standpoint of three ethical frameworks—the natural law, Kantian ethics,

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<sup>49</sup> Such as what exists in the public sphere which is “an inclusive space for a possible discursive clarification of competing claims to truth and a general equal consideration of interests” (Habermas, “Reflections and Hypotheses,” 166).

<sup>50</sup> See Dy, *Contemporary Social Philosophy*, 76.



and Habermasian discourse ethics. This reading of divorce allows the natural law and Kantian ethics to intersect with the salient points latent in discourse ethics, if only to show how this principle's premium for inclusivity, rationality, and consensus building provides more consideration for discussing the matter of divorce, not only as a legal subject but more so an ethical one. The application of Habermasian discourse ethics to discussions on the subject of divorce offers a potential framework for navigating the aspects of this debate that go beyond the realm of ethics. By emphasizing the importance of inclusive deliberative processes and critical rational reflection on presupposed norms, discourse ethics is capable of providing guidelines that allow ethical dialogue and decision-making in a pluralistic society such as the Philippines.

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