

## METHOD IN ETHICS: A SCOTISTIC CONTRIBUTION

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**W**HEN VATICAN COUNCIL II noted that “the human race has passed from a rather static concept of reality to a more dynamic, evolutionary one,”<sup>1</sup> few may have appreciated the profound impact this would have on moral theology. For contained in this phrase is an implicit challenge to the tradition of moral theology, particularly as received through the manualist tradition of the last two centuries.

This tradition was founded on a vision of natural law derived from a cosmology that is static and fixed, a reality in which certain physical functions and acts have been assigned a role by the Creator. Morality consists in knowing these functions and conforming oneself to this order established by God. As Pope John Paul II himself stated in an early work: “The whole order of nature has its origin in God, since it rests directly on the essences (or natures) of existing creatures from which arise all dependencies, relationships and connections between them . . . Man is just towards God the Creator when he recognizes the order of nature and conforms to it in his actions.”<sup>2</sup>

In the manualist tradition, nature is an hierarchically structured order in which each being has its proper place assigned to it by the eternal law and discovered through reason which constitutes the norms of the moral law. That is, the norm of morality is the inbuilt order of nature manifested in fixed natures, designed and created by God. These fixed natures then serve as the foundation for establishing both the objectivity of moral norms and the claim that some acts are intrinsically good or evil.

To affirm, then, that reality is dynamic and evolutionary, as Vatican II did, is to challenge the received order and apparently to undermine the objective nature of morality. How could an act be intrinsically evil in an evolving world? Two trends emerged. One sought to maintain the tradition as received by continuing to locate the norms of morality in the order of nature, as for example in the Instruction *Donum vitae* which condemned various forms of artificial reproduction because they are against nature. The other, represented by proportionalism, sought to develop a new basis for moral norms.

<sup>1</sup> *Gaudium et spes* no. 5, cited in David J. O'Brien and Thomas A. Shannon, eds., *Catholic Social Thought: The Documentary Heritage* (Maryknoll, N.Y.: Orbis: 1992) 168.

<sup>2</sup> Karol Wojtyła, *Love and Responsibility*, trans. H. T. Willetts (New York: Farrar, Straus, Giroux, 1991) 246.

The theory of proportionalism attempts to ground the norms of morality within the new understanding of nature and history suggested by Vatican II. The core claim of the proportionalists is that to determine the morality of an act one must consider it in its total context, not only describing the act itself but also determining the agent's intention, and establishing a proportionate reason for the act.

There are two issues here, one referring to the substance of the theory and the other historical. With respect to the substantive issue, a critical distinction is made between premoral and moral values and disvalues. Following James J. Walter, the term "premoral" refers to values and disvalues that exist independently of the agent, e.g. health, killing, suffering, happiness. "Moral" refers to the relevance of these premoral values or disvalues for our moral activity. They cannot be discounted.<sup>3</sup> What constitutes the act as morally right is the presence of a proportionate reason: the premoral good the agent seeks to promote by establishing the proper relation between a premoral disvalue in the end or means and a premoral value in the end or further consequences of the act.<sup>4</sup> Imbedded in the discussion of premoral and moral values and disvalues and proportionate reason is the further debate over whether or not some acts by their nature are intrinsically evil, e.g. rape, murder, adultery.

Second is the historical dimension, the attempt to locate the distinction between premoral and moral values and disvalues in Aquinas's works. Louis Janssens is the author primarily responsible for this through a series of studies on the works of Aquinas.<sup>5</sup> Key to these studies—and the basis of their influence—is Janssens's conviction that the position that an act cannot be considered moral or immoral solely on the basis of the exterior act alone can be found in Aquinas, specifically in *Quodlibetum IX*.

Much has been made of Janssens's work, for it serves as an historical sanctioning or validation of the method of proportionalism. Given the status of Aquinas, being able to relate a quite hotly debated methodology to his thought would go a long way in removing various official suspicions about some contemporary moral theologians. But now there

<sup>3</sup> James J. Walter, "The Foundation and Formulation of Norms," in *Moral Theology: Challenges for the Future*, ed. Charles E. Curran (New York: Paulist, 1990) 125–54, at 129.

<sup>4</sup> For a further discussion of the concept of proportionate reason, see Walter, "The Foundation and Formulation of Norms" 132.

<sup>5</sup> See, e.g., Louis Janssens, "Ontic Evil and Moral Evil," in *Readings in Moral Theology 1: Moral Norms and Catholic Tradition*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist, 1979) 40–93; "Norms and Priorities in a Love Ethic," *Louvain Studies* 6 (1977) 207–38; and "A Moral Understanding of Some Arguments of St. Thomas," *Ephemerides Theologicae Lovanienses* 63 (1987) 354–60.

is a challenge to the legitimacy of Janssens's interpretation of Aquinas. Mark Johnson has developed an historical-interpretative argument that the text in question will not support Janssens's reading because it is mistranslated and, therefore, misinterpreted.<sup>6</sup> Johnson does not argue against proportionalism; but he does argue that the particular text from Aquinas which is cited does not and cannot bear the weight demanded of it and, therefore, cannot be used as a justification for key substantive claims of proportionalism.

The fact that proportionalism cannot be grounded in Aquinas does not mean that the theory of proportionalism is invalid. But it does mean that other foundations must be found for it. In this article I argue that we can discover in John Duns Scotus's ethical theory key insights which can help ground the distinction between premoral and moral evil, eliminate for all practical purposes the concept of intrinsic evil, and establish proportionalism's central concept that an act is not morally determined by the structure of the material act itself. In order to demonstrate this I will first present key elements in Scotus's thought and then show their compatibility with the claims of proportionalism. A critical difference between my use of Scotus and Janssens's use of Aquinas is that my argument does not rest on a single text of Scotus. Rather, Scotus develops a metaphysical system which has ethical implications, though those were not his central focus. His ethical ideas come from his understanding of the human will and freedom and of how right reason functions in relation to the will. Thus Scotus gives us a philosophical system from which ethical concepts are derived. These philosophical insights, I argue, provide a way of explaining and grounding several of the key substantive claims of proportionalism.

I am not arguing that Scotus is the first proportionalist. Neither should we think of him as a knight in shining armor to save the day for contemporary Catholic moral theology (though there would be a sweet vindication in this). I am arguing that his teachings on freedom and contingency shape his theory of natural law, and that together these configure his ethical method in a way that is most congenial with what we call proportionalism. In particular his theory of natural law provides a significant grounding for the distinction between premoral and moral values/disvalues.

I shall begin by first presenting some key ideas of Scotus: his understanding of freedom, the will, natural law. Second, I shall offer an exposition of Scotus's ethical methodology which focuses on efficient causality, moral goodness, right reason, and an examination of the

<sup>6</sup> Mark Johnson, "Proportionalism and a Text of the Young Aquinas: *Quodlibetum IX*, Q. 7, A. 2.," *TS* 53 (1992) 683-99.

structure of the moral act. Then I will describe specific examples of Scotus's analysis of moral problems. Finally, I will use these insights to develop a constructive argument establishing the complementarity of several of Scotus's insights with those of proportionalism. Particularly important here are Scotus's insights into contingency, freedom, right reason, and the composition of the moral act. I believe this historical study will help us reconceptualize our theories and suggest directions for further exploration.

#### KEY CONCEPTS IN SCOTUS'S ETHICAL THOUGHT

##### *Freedom*

One core element in freedom is contingency. Whenever we will something, Scotus argues, we also know that we could just as well have not willed it. This analysis also extends to the goods or values we experience: we can be offered a good and know it is a good and yet refuse it. At the core of each of these acts is the experience that "at the very moment that it wills or causes something, it [the will] could equally well will the contrary. A decision of the will never takes away its potentiality to act in the opposite way."<sup>7</sup> And for those still not convinced of the contingency of our acts, Scotus suggests that "those who deny that some being is contingent should be exposed to torments until they concede that it is possible for them not to be tormented."<sup>8</sup>

A second dimension of freedom is an implication of God's love of himself. Scotus knew, as the other Schoolmen did, that God loves himself necessarily because there is no other possible being for God to love appropriately. Scotus preserves freedom in this situation through his doctrine of *firmitas*, "the will's ability to adhere to that in which consists its perfection."<sup>9</sup> This perspective comes from Augustine through Anselm, who declared: "Whoever has what is appropriate and advantageous in such a way that it cannot be lost is freer than he who has this in such a way that it can be lost."<sup>10</sup>

Thus infinite freedom is characterized as "the ability to *continually adhere* to the unlimited perfecting object."<sup>11</sup> Finite freedom, on the

<sup>7</sup> J. R. Creswell, "Duns Scotus on the Will," *Franciscan Studies* 13 (1953) 147–58, at 148–49.

<sup>8</sup> *Reportatio* I, prol. q. 3, a. 1 (quoted from *John Duns Scotus: Philosophical Writings*, trans. Allan B. Wolter, O.F.M. [Indianapolis: Hackett, 1987] 9).

<sup>9</sup> William A. Frank, "Duns Scotus' Concept of Willing Freely: What Divine Freedom Beyond Choice Teaches Us," *Franciscan Studies* 42 (1982) 68–89, at 80.

<sup>10</sup> Q. 16, a. 2, n. 8; quoted from John Duns Scotus, *God and Creatures: The Quodlibetal Questions*, trans. and ed. Felix Alluntis, O.F.M., and Alan B. Wolter, O.F.M. (Princeton, N.J.: Princeton Univ., 1975) 378.

<sup>11</sup> Frank, "Willing Freely" 82 (italics in the original).

other hand, is the ability "not to limit oneself to limitedly perfecting objects."<sup>12</sup> Thus Scotus's understanding of freedom, whether infinite or finite, shifts the ground for thinking about the significance of the fact of choice. To be sure there must be minimally one choice, but the more important reality is that the will "self-determinately possesses a willable object through its action and such that the resultant act possesses a degree of perfection."<sup>13</sup>

As finite humans, our choices are not infinitely perfect. This means that we will experience freedom primarily as choice. That is, we are aware that we could have chosen otherwise and that such a choice would have given us a different degree of perfection. Thus, "choice is simply basic freedom in inferior conditions."<sup>14</sup> In choosing, our will is never fully actual, for it is contingent. Yet for all that, we can approach our perfection through our steadfastness or constancy in cleaving to the object of our love. "The perfection of freedom connotes a perseverance and stability in the will's adherence to the good."<sup>15</sup>

### *The Will*

As a further elaboration of the notion of freedom, Scotus contrasts a nature to a will. A nature is a principle of activity by which an entity acts out or actualizes its reality and is the reason why an entity acts as it does. Or, as he says, "The potency of itself is determined to act, so that so far as itself is concerned, it cannot fail to act when not impeded from without."<sup>16</sup> A nature is essentially the reason why an entity acts as it does. A will, on the other hand, "is not of itself so determined, but can perform either this act or its opposite, or can either act or not act at all."<sup>17</sup> Thus the reason why this act was done as opposed to another is that the will is the will and can elicit an act in opposite ways.

Scotus, following Anselm, distinguishes two movements in the will: the *affectio commodi*, the inclination to seek what is advantageous or the good for one's self; and the *affectio iustitiae*, the inclination to seek the good in itself. The *affectio commodi* leads us to do what is to our advantage, perfection or welfare. It is a nature seeking its own fulfillment. For Scotus, the *affectio commodi* is not an elicited act. Rather it is a natural appetite necessarily seeking its own perfection:

<sup>12</sup> Ibid.

<sup>14</sup> Ibid. 87.

<sup>16</sup> *Quaestiones in Metaphysicam* 1, q. 15, a. 2 (quoted in Allan B. Wolter, O.F.M., *Duns Scotus on the Will and Morality* [Washington: Catholic Univ. of America, 1986] 151). This is the most accessible collection of Scotus's texts on morality; most citations will be from this work, which presents the text in both Latin and in English translation.

<sup>17</sup> *Quaestiones in Metaphysicam* 1, q. 15, a. 15 (Wolter, *Will and Morality* 151).

<sup>13</sup> Ibid. 85.

<sup>15</sup> Ibid. 78.

That it does so *necessarily* is obvious, because a nature could not remain a nature without being inclined to its own perfection. Take away this inclination and you destroy the nature. But this natural appetite is nothing other than an inclination of this sort to its proper perfection; therefore the will as nature necessarily wills its perfection, which consists above all in happiness, and it desires such by its natural appetite.<sup>18</sup>

The *affectio justitiae*, on the other hand, is the source of true freedom or liberty of the will, as well as a restraint on the *affectio commodi*. The *affectio justitiae* allows us to transcend nature and go beyond ourselves and our individually defined good. The *affectio justitiae* is the capacity to see the value of another being. "To want an act to be perfect, so that by means of it one may better love some object for its own sake, is something that stems from the affection for justice, for when I love something good in itself, then I will something in itself."<sup>19</sup>

Allan B. Wolter, O.F.M., notes four characteristics of the *affectio justitiae*. First, it gives us the capacity to love a being in itself rather than for what it can do for us. Second, it enables us to love God for who God is rather than for the consequence of God's love on us. Third, the *affectio justitiae* allows us to love our neighbor as ourselves, thereby recognizing the equal value of each individual. Finally, seeking for the good in itself leads to a desire to have this good beloved by all, rather than being held to oneself.<sup>20</sup> This leads Wolter to the conclusion that the *affectio justitiae* amounts to a "freedom from nature and a freedom for values."<sup>21</sup> Or, as Scotus puts it: "From the fact that it is able to temper or control the inclination for what is advantageous, it follows that it is obligated to do so in accordance with the rule of justice that it has received from a higher will."<sup>22</sup>

Such an understanding of will as *affectio justitiae* frees the will from the necessity of a nature's act of self-realization or the seeking of its own good. Paradoxically then, if a free agent acts according to nature it acts "unnaturally," since to seek what is "*bonum in se* is not to seek something that 'realizes the potential of a rational nature.' It is somehow to transcend 'the natural' and thus to have a mode of operation that sets the rational agent apart from all other agencies."<sup>23</sup>

<sup>18</sup> *Ordinatio* 4, suppl., d. 49, qq. 9–10 (Wolter, *Will and Morality* 185).

<sup>19</sup> *Ordinatio* 4, suppl., d. 49, qq. 9–10 (477).

<sup>20</sup> Allan B. Wolter, O.F.M., "Native Freedom of the Will as a Key to the Ethics of Scotus," in his *The Philosophical Theology of John Duns Scotus*, ed. Marlyn McCord Adams (Ithaca, N.Y.: Cornell Univ., 1990) 151.

<sup>21</sup> Wolter, "Native Freedom" 152.

<sup>22</sup> *Reportatio Parisiensis* 2, d. 6, q. 2, n. 9 (quoted in Wolter, "Native Freedom" 152).

<sup>23</sup> John Bowler, "The Moral Psychology of Duns Scotus: Some Preliminary Questions," *Franciscan Studies*, forthcoming.

This understanding of will grounds our capacity to transcend our own self-interest. This is where Scotus's discounting of the fact of choice plays a critical role. In keeping with his mentors, Augustine and Anselm, Scotus views freedom as "a positive bias or inclination to love things objectively or as right reason dictates."<sup>24</sup> That is, the proper focus of moral analysis is not the individual act or choice, but the inclination as a whole. And such an inclination focuses on fidelity to the good in itself, not the specific act of choosing that good nor the necessary appreciation of what is good for the fulfillment of the nature of the agent. Moral analysis is not, therefore, centered on the individual act but on the good to which we wish to adhere and which is manifest in this particular act.

### *Natural Law*

Duns Scotus divides natural law into strict and extended. Natural law in the strict sense is: "one whose truth value can be ascertained from its terms (in which case it is a principle of natural law, even as in theoretical matters a principle is known from its terms) or else one that follows from the knowledge of such truth (in which case it is a demonstrated conclusion in the practical order)."<sup>25</sup>

These laws of nature in the strict sense possess "necessary truth. Therefore, God himself cannot make them false."<sup>26</sup> Thus in the strict sense such truths are either "first practical principles known from their terms or as conclusions necessarily entailed by them."<sup>27</sup>

A law of nature in the extended sense is "a practical truth recognized by all to be in accord with such a law."<sup>28</sup> Such truths are "not practical principles that are necessary in an unqualified sense, nor are they simply necessary conclusions from such."<sup>29</sup> Of critical importance is that the precepts of the natural law in the extended sense do not necessarily follow from the first practical principles of natural law strictly understood. They are, however, in harmony with such principles.

Following the customary practice of dividing the Decalogue into two tables—the first three commandments referring to God, and the final seven referring to our neighbor—and taking the Decalogue as a summary of the natural law, Scotus asks whether all the commandments of the Decalogue belong to the natural law? Using his distinction, Scotus argues in the following way.

<sup>24</sup> Wolter, "Native Freedom" 152.

<sup>25</sup> *Ordinatio* 3, d. 17 (Wolter, *Will and Morality* 263).

<sup>26</sup> *Ordinatio* 3, suppl. d. 37 (271).

<sup>27</sup> *Ibid.* (277).

<sup>28</sup> *Ibid.* (263).

<sup>29</sup> *Ibid.* (277).

With respect to the first table of the Decalogue, the practical principles known from it

belong to the natural law in the strictest sense, and there can be no dispensation in their regard. . . . It is to these that the canon of the *Decrees of Gratian* refers, where it is said that the "natural law begins from the very beginnings of rational creatures, nor does time change it, but it is immutably permanent"—and this I concede.<sup>30</sup>

Additionally the commands of the first table "regard God immediately as an object."<sup>31</sup> Therefore, since God alone is to be loved as God and since nothing else must be worshiped as God, it follows that "God could not dispense in regard to these so that someone could do the opposite of what this or that prohibits."<sup>32</sup>

Such indispensability or immutability does not apply to the second table, although these commandments are surely in harmony with the first table. Among the various arguments Scotus presents for this position, two are key. First, in addition to the fact that the second table contains no necessary conclusions from the principles of the first table, Scotus argues that the second table

contains no goodness such as is necessarily prescribable for attaining the goodness of the ultimate end, nor in what is forbidden is there such malice as would turn one away necessarily from the last end, for even if the good found in these maxims were not commanded, the last end [of man as union with God] could still be loved and attained, whereas if the evil proscribed by them were not forbidden, it would still be consistent with the acquisition of the ultimate end.<sup>33</sup>

Second, Scotus argues that a consideration of the divine will shows that the commandments of the second table do not pertain strictly to the natural law. Anything other than God is willed freely and contingently, for "that alone is necessarily willed without which that cannot stand which is willed with regard to an end."<sup>34</sup> Since God is the only necessary being, God exists even if nothing else exists. "Therefore, in His volition, He wills nothing other than Himself necessarily."<sup>35</sup> As for commands not referring to God as their immediate object, "by reason of the very nature of God's willing, a certain contingency must be present in these precepts."<sup>36</sup>

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Robert Prentice, O.F.M., "The Contingent Element Governing the Natural Law on the Last Seven Precepts of the Decalogue according to Duns Scotus," *Antoniaum* 42 (1967) 258-92, at 285.

<sup>35</sup> Ibid. 285.

<sup>36</sup> Ibid. 286.



Scotus's argument is both logical and metaphysical. The logic of the argument says that the commands of the second table cannot be derived necessarily from those of the first table. Since they are not necessary, they are contingent. Metaphysically, since God could in fact have created another order of reality—and, therefore, the present order is contingent—the rules governing this present order are not necessary because the order itself is not necessary. Therefore, though the commands of the second table are congruent with the first table and are harmonious with the actual existing order, they are contingent and could change with a changing reality. Robert Prentice summarizes this position in a clear and powerful statement:

[T]hose precepts have been chosen by God's will from all the possibilities that are presented to it through the abundance of God's essence. By means of them He has freely chosen how to orient man towards his last end in this particular way. But from His abundance He could also have arranged such other means by which this could have been achieved. . . . If, therefore, there is an element of freedom in the very institution of the precepts, there cannot be any absolute, indispensable and inherent necessity in them.<sup>37</sup>

#### SCOTUS'S ETHICAL METHOD

##### *Efficient Causality*

Scotus argues that God's activities *ad extra* are free, and that therefore such acts and their consequences are contingent. He further argues that we can neither distinctly know our ultimate end from natural things nor are we capable of knowing those things which lead to our ultimate end. To argue such would suggest necessity in the order of creation. Thus, for Scotus there is no *necessary* connection between an act and our final end. While such an act may indeed be appropriate to our final end, such appropriateness is contingent.

Therefore if the end is the principle of action, then for Scotus, there is no such end that is naturally known that can constitute the necessary appropriateness of human actions. This further means, as Mary Elizabeth Ingham states, that "the end or object of the act appears within the will, as the reason or intention."<sup>38</sup> This Scotistic turn to efficient causality removes final causality as a key element in moral theory because it "appears to necessitate moral goodness and to remove self-determination from the will."<sup>39</sup>

<sup>37</sup> Ibid. 287–88.

<sup>38</sup> Mary Elizabeth Ingham, C.S.J., *Ethics and Freedom: An Historical-Critical Investigation of Scotist Ethical Thought* (Lanham: Md.: Univ. Press of America, 1989) 162.

<sup>39</sup> Ibid. 167.

### *Moral Goodness*

"Moral goodness is the integrity of all conditions and circumstances, under the direction of right reason."<sup>40</sup> This definition of moral goodness is yet another consequence of Scotus's turn to efficient causality. Moral goodness comes from the dictates of right reason, not from conformity to the final end or because the act is a means to a good end.

Scotus distinguishes three levels of goodness. The first is metaphysical or transcendental goodness. This is essentially a function of being, since only insofar as a being exists "could anything be an object of desire or love. Not to be in this uninteresting and trivial sense is simply not to be at all."<sup>41</sup>

Second is natural goodness. An act is "naturally good when it has all that becomes it insofar as these things are concerned that are suited by nature to concur in constituting it naturally."<sup>42</sup> Important here is Wolter's observation that natural goodness is related to the will as nature (the *affectio commodi*) and that this goodness is necessarily pursued in the fulfillment of the agent's nature.

Third is moral goodness or the moral goodness of an act, as defined above and further described by Scotus as "a combination of all that becomes the act, not in an absolute sense, as if it were constitutive of its very nature as an act, but in the sense that according to right reason it is becoming to the act."<sup>43</sup> Yet another way that Scotus describes the moral goodness of an act is to compare it to an aesthetic judgment.

One could say that just as beauty is not some absolute quality in a beautiful body, but a combination of all that is in harmony with such a body (such as size, figure, and color), and a combination of all aspects (that pertain to all that is agreeable to such a body and are in harmony with one another), so the moral goodness of an act is a kind of decoration it has, including a combination of due proportion of all to which it should be proportioned (such as potency, the object, the end, the time, the place, and the manner), and this especially as right reason dictates.<sup>44</sup>

### *Right Reason*

Ingham formulates the significance and centrality of right reason for Scotus: "Moral behavior is dependent upon the power of the agent to control his action through the operation of right reason, not upon the ultimate goal nor upon the agent's understanding of the deeper signif-

<sup>40</sup> Ibid. 155.

<sup>41</sup> Wolter, "Native Freedom" 154.

<sup>42</sup> *Ordinatio* 2, d. 40 (Wolter, *Will and Morality* 227).

<sup>43</sup> Ibid.

<sup>44</sup> *Ordinatio* 1, d. 17, no. 62, quoted in Ingham 154.

icance of the norms to be followed."<sup>45</sup> For Scotus, since his critique of natural knowledge implies an inability to know our final end, "right reason replaces objective finality as the measure of moral goodness."<sup>46</sup>

Right reason establishes a standard of behavior rather than identifies a goal in a teleological sense: "It is necessary for the moral goodness of the moral act that the complete dictate of right reason precede it, to which dictate it conforms as measured to measure."<sup>47</sup> Also right reason is the source of the "practical principle by which rational judgment is made and the act is accomplished."<sup>48</sup> Right reason's task, therefore, is to evaluate and judge appropriate circumstances. In the absence of any teleological goal which typically constituted objective moral goodness, Scotus identifies moral goodness "with the intention of the agent and not a real aspect of the act as such."<sup>49</sup>

The moral goodness of an act "consists in its having all that the agent's right reason declares must pertain to the act or the agent in acting."<sup>50</sup> At the outset, then, right reason is present as the judge of the appropriateness of the circumstances of an act. Additionally, the individual "must actually pass judgment upon the act and carry it out in accordance with that judgment."<sup>51</sup> Thus for the act to be morally good, there must be an act constituted by reason, an agent capable of acting, and the appropriateness or harmony of the circumstances.

Note particularly that the good now operates as an integral efficient cause with the consequence that the end "has no objective existence exterior to the will."<sup>52</sup> Ingham observes that Scotus has made an interesting parallel here, in that he "presents the rational, finite will as constitutive of moral goodness in a way similar to that of the divine will as creative of goodness."<sup>53</sup> Thus for Scotus, agents with intellectual knowledge are suited by nature to judge the appropriateness of their actions and thus have "an intrinsic rule of rectitude for their actions."<sup>54</sup>

### *Structure of the Moral Act*

In addition to the nature of the agent which makes it possible to adjudicate the appropriateness of the act, Scotus argues two more elements are necessary for a moral act. First we must determine *the object* of the act which brings it under the generic heading of moral.

<sup>45</sup> Ingham 163.

<sup>47</sup> *Ordinatio* 1, no. 92 (Ingham 157).

<sup>49</sup> *Ibid.* 162.

<sup>51</sup> *Quodlibet* 18, no. 4 (Ingham 159).

<sup>53</sup> *Ibid.*

<sup>54</sup> *Quodlibet*, q. 9 (Wolter, *Will and Morality* 211).

<sup>46</sup> *Ibid.*

<sup>48</sup> Ingham 160.

<sup>50</sup> *Quodlibet* 18, no. 3 (Ingham 158).

<sup>52</sup> Ingham 162.

This does not determine its moral species but rather opens the act "to further moral determination, for when an act has an appropriate object, it is capable of further moral specification in view of the circumstances in which it is performed."<sup>55</sup>

Second, the goodness of the act is further defined by *the circumstances*. First is the circumstance of the end, "for given the nature of the agent, of the action, and of the object, one immediately concludes that such an action ought to be performed by the agent for such an end, and that it ought to be chosen and wanted for the sake of such an end."<sup>56</sup> Second is the "manner in which the action is performed."<sup>57</sup> This is determined through prudence, right reason, and the suitability of that act in relation to the nature of the actor. Third is the circumstance of appropriate time. An act is appropriate "only when the act can be directed to or can attain such an end."<sup>58</sup> Thus the timing of the act which contributes to its moral success is critical in establishing its morality. Finally is the circumstance of place, which Scotus does not regard as significant for many acts. One can see, though, that an act which is morally appropriate in private may take on a different moral tone in public.

Scotus discusses how these circumstances morally qualify an act by arguing that some acts are "performed under circumstances that are not all they should be [to make the act good], yet neither are they so improper that they ought not to be there."<sup>59</sup> In this case the act is directed neither to an appropriate end nor to an inappropriate one. Such an act is bad "privately,"<sup>60</sup> presenting a lack of suitability, "the absence of what ought to be there."<sup>61</sup> Also an act can be bad "contrarily," when it "is performed for some unlawful purpose"<sup>62</sup> or is "the contrary of goodness."<sup>63</sup>

With the exception of two acts—the act of loving God which is the only act that is intrinsically good, and the act of hating God which is the only one that is intrinsically evil—all acts must be contextualized for them to receive their full moral status. While the object is significant in establishing the natural goodness of the act, one must still situate the act with respect to its end, manner, time, and place for it to be truly a moral act. Scotus summarizes his position:

This delimitation introduced by the object first brings the act under the generic heading of moral. Not that the nature of its object determines its moral

<sup>55</sup> Ibid. (213).

<sup>57</sup> Ibid.

<sup>59</sup> Ibid.

<sup>61</sup> Ibid. (219).

<sup>63</sup> Ibid. (219).

<sup>56</sup> Ibid. (215).

<sup>58</sup> Ibid. (217).

<sup>60</sup> Ibid.

<sup>62</sup> Ibid. (217).

species; rather it opens it to further moral determination, for when an act has an appropriate object, it is capable of further moral specification in view of the circumstances in which it is performed. That is why an act is said to receive its generic goodness from its object, for just as genus is potential with respect to differences, so the goodness derived from its object first puts it into the generic class of moral acts. Only goodness of nature is presupposed. And once it has generic goodness, the way is open to all the additional moral specifications.<sup>64</sup>

#### SCOTUS'S ANALYSIS OF SPECIFIC MORAL PROBLEMS

In this section I present examples of how Scotus reasons through several ethical problems. But two caveats are in order. First, these examples occur within the context of a different mode of reading biblical texts than we use. Second, the discussion of marriage does not reflect the coequality of the two ends of marriage. Yet given these critical differences between Scotus's time and ours, his mode of analysis is both interesting and illuminating. For he demonstrates clearly the implications of the contingency of the second table of the Decalogue as well as the necessity of contextualizing an act. Thus although the content of his argument may be dated, his method is extremely relevant to the concerns of the proportionalists, particularly the distinction between premoral and moral values and disvalues and the debate over whether some acts are intrinsically evil.

#### *Bigamy and Polygamy*

Scotus discusses this question as one of commutative justice within the ends of the marriage contract.

In the case of the matrimonial contract, there are two reasons for the exchange: one, the procreation of offspring; the other, a remedy against fornication. As regards the first purpose, the male body is of more value than the female, for the same could fecundate several women during the time it takes for the same woman to conceive through men. . . . As for the second purpose, which only held good for the state of fallen nature, namely, to avoid fornication, the bodies of man and woman are of equal value.<sup>65</sup>

Given this assumption of the primacy of reproduction, Scotus argues that one man might, at a time when there were few humans, share his body with many women, either in order to increase the number of humans or to increase the number available to participate in the worship of God.<sup>66</sup> Since at the time he was writing, the population was of ample size and children received a religious education and participated

<sup>64</sup> *Ibid.* (215).

<sup>65</sup> *Ordinatio* 4, d. 33, q. 1, a. 2 (Wolter, *Will and Morality* 291).

<sup>66</sup> *Ibid.* (293).

in worship, Scotus argued that bigamy would be prohibited because "the principal end [of marriage] does not require it at present."<sup>67</sup>

However, Scotus continues to argue that "when it is extremely necessary that the primary end be attained, this must be done, in which case the secondary end should be neglected, as it were."<sup>68</sup> Scotus argues that one can favor the primary end even if this qualifies the secondary end without doing injustice to the marriage contract.

And so it is clear how there is justice for both parties in the marital contract, because each ought to be willing, according to right reason, to surrender something he or she has a right to as regards the less important end in view of the fact that each receives an equal good as regards the more important end—an end that should be desired more, even if one party should have to sacrifice something in exchange to obtain it. And at times it would be necessary to do so, namely, when one is obligated to make such a sacrifice.<sup>69</sup>

Scotus provides several examples of circumstances in which such obligations might arise. One might be commanded by God, as Abraham and Hagar were. Or many men might be lost through war, the sword, or pestilence; in such circumstances, there being few men and many women, bigamy would be licit. For the good of the species, justice in marriage would be served by having the primary end take precedence over the secondary end, one male impregnating many women. "According to right reason, a woman should be willing that her man be joined to another woman that childbearing may occur."<sup>70</sup> Again, Scotus argues that the present circumstances do not warrant such a conclusion but that "it does not follow that in a special case the opposite could not be licit, or even in some cases necessary."<sup>71</sup>

### *Divorce*

The issue is whether, under Mosaic law or the natural law, a man could licitly divorce his wife. Scotus does not address divorce with respect to marriage as a sacrament. Rather his argument refers to the natural law. And it reflects standard male bias, insofar as it considers a wife's displeasing her husband as an adequate basis for divorce.

To avoid an evil which outweighs the good of wedlock's indissolubility, God can dispense from it so that the marriage holds good until such a time as the woman may come to displease her husband. And in such a contract justice is preserved to some extent. For not only to obtain a greater good, but also to avoid a greater evil, the parties marrying may want to give themselves to each

<sup>67</sup> *Ibid.* (295).

<sup>69</sup> *Ibid.*

<sup>71</sup> *Ibid.* (297).

<sup>68</sup> *Ibid.* (293).

<sup>70</sup> *Ibid.* (295).

other in this fashion. Now, uxoricide is a greater evil than indissolubility is a good because it includes not only the serious evil suffered by the woman killed but also the grave evil of the guilty killer. Uxoricide would also be a serious evil for the whole country, because it would be an occasion for continual discord and fighting by reason of the ire of the wife's parents toward her murderer and this would tend to break down the family, because if the man were killed by his adversaries or by the law, it would destroy his family and the education of his child.<sup>72</sup>

Scotus explicitly does not use this argument to support the wife's divorcing of the husband because he thinks "the sex difference prevents the woman from taking such vengeance as a man is wont to do."<sup>73</sup> One can assume that, exposed to our contemporary experience, Scotus would reverse his position.

However, his larger point is that divorce is not against the law of nature in the strict sense, is not against any self-evident principle of natural law or the education of children. "For God could have arranged another plan for the education of children, but one not as convenient as this is, and then even though one of the goods of marriage is in harmony with the law of nature, namely indissolubility, God could have dispensed with this in order to avoid a greater evil."<sup>74</sup>

### *Lying*

Lying is a particularly interesting example because, in discussing it, Scotus argues that circumstances can remove the badness which an act has *per se* by reason of its object.<sup>75</sup> He gives several arguments.

First, "false beliefs are not more inappropriate or illicit matter for speech than is the innocent killing of a human being for the benefit of the state."<sup>76</sup> Given the correct conditions, Scotus argues, killing can become licit or even meritorious should the command be revoked; similarly with lying. Second, since what holds good for a lesser excusing reason also holds good for a greater, the precept of not deceiving our neighbor is not more binding than the precept of not killing: "Indeed one's neighbor loses less if occasionally given a false view or if deprived

<sup>72</sup> *Ordinatio* 4, d. 33, q. 1, a. 4 (303-4). <sup>73</sup> *Ibid.* (311).

<sup>74</sup> *Ordinatio* 4, d. 33, q. 3, ad argumenta principalia (309).

<sup>75</sup> Thus Scotus would differ here from Johnson's presentation of Thomas in *Quodlibetum* 9 where Thomas says there are acts that have a deformity inseparably linked to them and, therefore, can never be done well. The examples Thomas gives are fornication and adultery. Lying was typically included in this category. These are examples of acts considered intrinsically evil. It is interesting to compare Scotus's analysis to Johnson's presentation of Aquinas ("Proportionalism and Aquinas" 691).

<sup>76</sup> *Ordinatio* 3, suppl., d. 38, a. 1 (Wolter, *Will and Morality* 485).

of our true opinion than he would if deprived of bodily life; in fact there is no comparison here."<sup>77</sup> Third, and critical in relation to the other two examples, lying "does not immediately remove one from God, just as the opposite action [i.e. telling the truth] about some indifferent matter does not have to do with God as its immediate object."<sup>78</sup> Thus the prohibition on lying is a natural law only in the extended sense and is, therefore, contingent.

But Scotus provides another argument which is extremely interesting, first, in that it describes the structure of the moral act, and second, because it provides an intriguing description of the act in relation to the actor's intentions.

Although the positive act and its malice do not represent anything that is one *per se*, a name can still be imposed which signifies not just the act or its deformity, but the whole combination at once. The name "adultery" is imposed to signify not just the undertaking of this thing, but also the illegal appropriation of what belongs to another against his will or that of any higher owner. It does not seem that the sort of combination signified by such names could possibly be good, though it is possible for the underlying act to exist without the deformity, for instance, the act of intercourse or that of appropriating such a thing. Such is the case here. Although the utterance of such and such words with or without such significance could be sinless, nevertheless, to utter them knowing the opposite to be the case, and hence with the intention of deceiving, could not occur without sin, because it implies that in addition to the underlying act there are such circumstances as necessarily deform it.<sup>79</sup>

Scotus's argument is that in addition to the act itself, further specification is needed to ascertain its moral status. That is, the act needs to be specified or measured by intention and circumstances through the use of right reason to determine how the act is to be morally categorized. Words or speech do not constitute a lie, therefore, until they are further specified by intention and circumstance.

### *Summary*

Although monogamy, indissolubility and truth telling are congruent with the extended sense of the natural law and in the present dispensation are to be observed, nonetheless specific circumstances can

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.* (487). Here Scotus clearly joins the issue raised by Aquinas and commented on by Johnson with respect to the nature of certain acts, i.e. those with a certain deformity inseparably linked with them. In Aquinas's words: "Quaedam enim sunt quae habent deformitatem inseparabiliter annexam, ut fornicatio, adulterium, et alia huiusmodi, quae nullo modo bene fieri possunt" (Johnson, "Proportionalism and Aquinas" 691, n. 22). For Scotus, one also needs intention and circumstances in addition to the act to specify it morally.



qualify such laws and morally mandate another set of behaviors. And right reason is sufficient to discern when these circumstances are altered so as to change the binding nature of natural law. Finally, and most importantly, for Scotus it is necessary to look beyond the act itself to categorize it morally. That is, one needs to consider the circumstances and intention before an act can be morally evaluated in its totality. As Scotus noted, the underlying act can be considered without deformity; it is the circumstances and intentions, not its physical structure, that constitute its moral status.

#### SCOTUS AND PROPORTIONALISM

By way of conclusion, I shall highlight what I take to be the critical contributions of Scotus to contemporary debates on method in moral theology, grouping these contributions under four general headings.

##### *Classical Natural Law*

The point at issue here is the static, Newtonian cosmos in which the classical theory of natural law came to be expressed, particularly in the manual tradition, and the manner in which such a framework sets up the problem of the naturalistic fallacy. In this classical framework, ethical obligations are derived from the ontological structure of the universe, in that natural law is the human perception of the eternal law in the mind of God expressed in creation. This order grounds the ontological foundation for objective moral norms, in that they are reflections of the given order of the cosmos. One derives one's "ought" from the "is" of the cosmos, which in turn justifies the objectivity of the "ought."

Given the loss of this classical, Newtonian view of the world and given a new cosmos constructed on evolution, quantum physics, and historical consciousness, new questions are posed for theology and moral theology in particular. The Scotistic emphasis on contingency is of particular help in responding to this paradigm shift.

Since Scotus himself is a citizen of the classical world, one cannot bootleg a theory of evolution into his metaphysics or cosmology. But one can argue from Scotus's perspective of contingency that the present cosmos is *a* cosmos, not *the* cosmos, much less the best of all possible ones. That is, even though this cosmos exists, even though it is created by God, and even though what is present in this cosmos is appropriate, physically and morally, for human existence, nonetheless one cannot derive a logical, necessary ethical "ought" from such a world, because this world, actual though it is, is neither a necessary world nor the only possible world. For Scotus, values will be drawn from an ontology, but, given the radical contingency of any ontology,

one cannot argue that these values lead to an ethical conclusion that is necessary.

Scotus's contribution is that of a metaphysical openness to a myriad of ontologies as well as scientific theories to articulate the world in which we live. Thus while Scotus himself assumed the classical cosmos, his affirmation of the radical contingency of all that is, other than God, renders his thought uniquely open to a variety of understandings of the cosmos. This philosophical position gives us an epistemological way to understand that a different cosmos is possible and to construct a new method of ethics to respond to this new paradigm.

A second contribution derivative from the contingency of created reality is that no act, other than love of God, is intrinsically good and no act, other than hatred of God, is intrinsically evil. Love of God is intrinsically good because such an act of necessity relates us to our final end. But between any other act and one's final end there is no such necessary connection because all such relations are contingent. To argue otherwise, for Scotus, would introduce necessity into the act of creation. While Scotus does not argue that acts commanded or prohibited by the second table of the Decalogue are not to be obeyed or are inappropriate for this time and place, he does argue that such commanded or prohibited acts, because of their inherent contingency, are not and cannot be either good or evil intrinsically.

### *The Locus of Moral Judgment*

One feature of traditional moral theology is its focus on the individual act as the locus of moral judgment. While it is clear that many of the examples cited from Scotus also look to individual acts, nonetheless his perspective discerns the moral meaning of the act in its context or through a consistent manner of acting.

While neither denying nor denigrating choice or the significance of the act as a consequence of a choice, Scotus's emphasis on steadfastness or *firmitas* highlights what we would term developmental continuity. This leads to an emphasis on the inherent, though contingent, value of the beloved and the ensuing perfection that comes from continued adherence to it. Scotus's concept of *firmitas* gives us a way of affirming the moral significance of the act, but more importantly of appreciating the transformative possibilities that emerge from the continual adherence to the particular good.

Freedom understood as *firmitas* leads us beyond the individual act to a deeper examination of the good at stake and to an evaluation of the individual act in relation to the whole of one's life. That is, the individual act receives its meaning and significance from its relation to the project of one's life which is characterized by steadfast adherence to the

good. The Scotistic concept of *firmitas* gives moral priority to the constancy of the commitment to the good, not the isolated act apart from the totality of one's commitment. One's moral intention comes from one's steadfastness in the good (*firmitas*) rather than from an individual, isolated act.

### *Anthropological Perspectives*

Scotus's thought also presents an interesting grounding for the experience of self-transcendence. This is based on his distinction between the *affectio commodi*, the inclination to do what is to my advantage, and the *affectio iustitiae*, the inclination to do justice to the intrinsic reality of a particular being or situation. In the former, we have nature seeking its self-perfection, whether in the individual or the species. Seeking what is to one's advantage is seeking to actualize the potential instilled in it by virtue of what the being is. Seen from the viewpoint of a nature, this quest for perfection is a good because it fulfills the nature by enabling it to become what it is.

The affection for justice is the capacity to love something or someone for their own selves, regardless of whether this happens to be a good for me or not. As Wolter phrases it, this is a "freedom *from* nature and a freedom *for* values."<sup>80</sup> This leads to the paradox that

what differentiates the will's perfection as nature from the perfection of all other natural agents is that it can never be attained if it be sought primarily or exclusively: only by using its freedom to transcend the demands of its nature, as it were, can the will satisfy completely its natural inclination.<sup>81</sup>

Scotus here affirms that we have the capacity to value an entity for its own sake, independent of its personal or social utility. As Scotus would phrase it, we have the ability to transcend the capacity to do justice to ourselves by doing justice to the good itself. The strong claim is that we are capable of recognizing the good and choosing it, even though such a choice may run counter to our personal self-interest or what does justice to my own nature.

The will by freely moderating these natural and necessary tendencies to happiness and self-perfection is able to transcend its nature and choose Being and Goodness for their own sake. . . . Thus the free will is not confined to objects or goods that perfect self, but is capable of an act of love. . . . [L]ove is the most free of all acts and the one that most perfectly expresses the will's freedom to determine itself as it pleases.<sup>82</sup>

<sup>80</sup> Wolter, "Native Freedom" 152.

<sup>81</sup> *Ibid.* 184.

<sup>82</sup> Valerius Messerich, O.F.M., "The Awareness of Causal Initiative and Existential Responsibility in the Thought of Duns Scotus," in *De Doctrina Ioannis Duns Scoti 2: Problematologica Philosophica* (Rome: Acta Congressus Scotistici Internat., 1968) 629-44, at 630-31.

The conclusion is that one can distinguish at least a good and a better in human life. What is good in human life is a life that perfects us, that brings our being to a greater actualization. This is the realization of the *affectio commodi*. But what is better is the transcendence of self, either to appreciate what is good or even to curb our legitimate interest in self-perfection in order to seek the good of others for their own sakes. This is the realization of the *affectio iustitiae*. Put existentially:

A free choice then is the meaning of existence and the total initiative is left to man to rightly moderate his natural tendencies in the pursuit of being for his own sake. And in this sense one's existence is one's own responsibility and depends on one's causal initiative as an ultimate response to Being or Nothingness.<sup>83</sup>

Put ethically:

Right reason also recognizes that our self-perfection, even through union with God in love, is not of supreme value. It enables man, in short, to recognize that the drive for self-perfection paradoxically must not go unbridled if it is to achieve its goal, but must be channeled lest it destroy the harmony of the universe intended by God.<sup>84</sup>

What is most helpful about this perspective is that, while it affirms self-perfection, such perfection is not ultimately an end in itself. To really "be all that we can be," we must step beyond the confines of self and actualize that most free of all acts, an act of love. Only then do we find ourself open to the depths of reality. And in the steadfast adherence to that beloved, we realize the fullness of freedom.

### *Ethical Method*

Scotus's ethical method, as described, contains several elements that are of particular significance for contemporary discussions of methodology. The critical features of Scotus's method are open to modern consciousness and allow access to and conversation with contemporary debates. Additionally these elements give us a way to escape the constraints of the traditional natural-law discussions. That is, Scotus's method helps us redefine the terms of the debate and avoid the problems the principle of proportionalism encounters in attempting to translate itself, e.g., into the framework of the magisterium.

First, Scotus's affirmation of the contingency of the second table of the Decalogue makes a critical argument that the physical structure of

<sup>83</sup> Messerich, "Causal Initiative" 631.    <sup>84</sup> Wolter, "Native Freedom" 153.

an act is not sufficient to determine its morality. Since Scotus argues that the love of God is the only act morally good under all circumstances (and conversely the hatred of God the only act morally evil under all circumstances), he also argues that an act has to be contextualized before a judgment can be made about its morality. To put this in a contemporary idiom, the premoral goods or evils of an act are neither exclusively nor normatively determinative of the act's morality but require further determination in terms of intention and circumstances to determine the specific moral dimension of the act.

Second, given his turn to efficient causality, objective morality is constituted not by the act's defining the intention but by *the intention's defining the act*. This is so because it is not the case that "the nature of its object determines its moral species: rather it opens it to further moral determination."<sup>85</sup> As Scotus argues, while one would think that the type of act signified by the terms adultery and theft could not possibly be good, "it is possible for the underlying act to exist without the deformity, for instance, the act of intercourse or that of appropriating such a thing."<sup>86</sup> Thus from Scotus's perspective, a statement about or a description of the physical act as such is not sufficient to establish the morality of the act.

Third, three elements are needed to determine the moral suitability of a specific act for a specific agent: (1) the nature of the agent "to act by virtue of intellectual knowledge, which alone is able to pass judgment, properly speaking, upon the appropriateness of the action";<sup>87</sup> (2) the nature of the agent which is the ability actually to "pass judgment upon the act and carry it out in accord with that judgment";<sup>88</sup> (3) the essential notion of the act itself which comes from a consideration of the circumstances of end, manner, time, and place.

Scotus says that the "moral goodness of an act consists in its having all that the agent's right reason declares must pertain to the act or the agent in acting."<sup>89</sup> This is fulfilled when "these three notions are given [since] no other knowledge is needed to judge whether or not this particular act is suited to this agent and this faculty."<sup>90</sup>

<sup>85</sup> *Quodlibet*, q. 18 (Wolter, *Will and Morality* 215).

<sup>86</sup> *Ordinatio* 3, suppl., d. 38, a. 2 (Wolter, *Will and Morality* 487). Again note the critical difference between this text of Scotus and that of Aquinas in *Quodlibetum* 9: "Quaedam enim sunt quae habent deformitatem inseparabiliter annexam, ut fornicatio, adulterium, at alia huiusmodi, quae nullo modo bene fieri possunt" (Johnson, "Proportionalism and Aquinas" 691, n. 22).

<sup>87</sup> *Ordinatio* 1, q. 18 (Wolter, *Will and Morality* 213).

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.* (211).

<sup>90</sup> *Ibid.* (213).

Those seeking a grounding for the moral theory of proportionality would do well to study carefully these and other elements in Scotus's thought. His ethical method, derived from his metaphysics, offers a way to address current methodological problems in moral theology that avoids the problems of trying to harmonize contemporary insights with specific historical texts. His thought also provides a way to break through the logjam created by the debate over intrinsically evil acts and the analysis of individual acts. Finally Scotus's analogy between a moral judgment and an aesthetic judgment opens a fresh way to appreciate both the structure of the moral act and its many nuances as well as the types of skills necessary to make good moral judgments. If we follow the Franciscan's lead here we will also see that there is variation and development as well as continuity with respect to both personal moral growth and methodology in moral theology.

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