

## NOTE

### SCOTUS'S METHOD IN ETHICS: NOT TO PLAY GOD—A REPLY TO THOMAS SHANNON

Thomas Shannon's "Scotistic contribution" to ethical method in a recent issue of this journal<sup>1</sup> points out some apparently proportionalist thinking by Scotus on moral issues not directly concerned with God. But Shannon obscures the strongly theocentric spirit of the Subtle Doctor's ethics by a near-total neglect of the crucial role of divine precept and dispensation in the very questions which he cites. The present note will place these "proportionalist" passages back into their context of the infinitely good God who is love and who directs his finite creatures to union with himself according to his just will. Read in this light, they will be seen to form a part of a Christian theological ethics radically different from contemporary proportionalism.

#### *God Is Love*

Before examining the "proportionalist" elements in Scotus's teaching on marriage and bigamy, let us back up several steps, to the starting point of his sweeping theological vision. In the now of eternity, the triune God knows the divine essence (in Scripture, divine "wisdom" or "glory") and, as in a mirror, all finite possible essences. In that same now, the triune God infinitely loves the divine essence in the Trinity, both freely (deity, the infinite being and good, deserves to be loved for deity's own sake) and necessarily (since God, as infinite perfection cannot lack the perfection of loving God). Loving God for God's sake, that is to say, not as *himself*, God freely wills to have colovers in loving the beloved (God). "Deus est caritas"—"God is charity" quotes Scotus from St. John. By the same volition by which God necessarily and freely loves God for God's sake, he contingently predestines the angels and the human beings whom he chooses to love him perpetually, and wills the nonrational creation also for his own sake, as related to God.<sup>2</sup> "Contingently," said with respect to a will, means: willing A, it could

<sup>1</sup> Thomas Shannon, "Method in Ethics: A Scotistic Contribution," *TS* 54 (1993) 272–93.

<sup>2</sup> Cf. Rom 11:36: "For from him and through him and to him are all things. To him be glory for ever. Amen."

also have willed not-A; it contrasts with “necessarily,” which means that the will could not have willed otherwise than as it does.<sup>3</sup>

The predestination of the elect is God’s efficacious volition of their beatitude, that is, of their being related to the infinite ultimate end, God, by glory, which consists in perpetual intuitive knowledge (beatific vision) and fruition (love of God for God’s own sake). At the head of the elect by reason of the supreme degree of his supernatural charity for God and human beings is the soul of Christ the God-Man. The other elect are predestined to glory together with and under him. In view of their end of glory, God in orderly fashion dignifies the other elect by willing them to attain glory by cooperating with him in (existential) movement toward it; this establishes the order of supernatural merit

<sup>3</sup> God has willed creatures contingently since they are not necessary for the existence and perfection of the self-existing end, God, which in perfect justice (giving what is due) he loves necessarily. If God willed creatures necessarily, then they would be necessary for God to be God, which is a metaphysical absurdity. The contingency of God’s volition ad extra is not whimsy but a concomitant of what God is, of the divine aseity, infinity, and justice. Following Robert Sokolowski’s formulation of the difference between creator and creature, God is what could be all that there is. Some texts on divine knowledge, will, and predestination, *Ordinatio* 1, d. 36, d. 40–41, d. 46, are found in the critical Vatican edition, *Ioannis Duns Scoti Opera Omnia*, (Vatican City: Typis Polyglottis Vaticanis, 1950–) 6.271–98, 309–39, 377–80. Other texts, to be found in the Wadding-Vives edition: *Opus Oxoniense* [the older title used for Scotus’s *Ordinatio*] 3, d. 7, q. 3, 3–4, in *Opera Omnia* (Paris: Vives, 1892; and Westmead, Farnborough, Hants, England: Gregg International Publishers, 1969) 14.354–55; and d. 19, q. unica, n. 6, *ibid.* 14.713–14. (Wadding was the 17th-century printed edition of Scotus’s complete works, reprinted in 1892 and 1969; hereafter referred to as Wadding-Vives. Some parts of this edition are now known to be inauthentic.) Quodlibetal question 16, on the necessity and freedom of God’s loving God, can be found in Duns Scotus, *God and Creatures*, trans. and ed. Felix Alluntis and Allan Wolter (Princeton: Princeton University, 1975) 369–87. For a better edition of some key passages, see William Frank’s “John Duns Scotus’ Quodlibetal Teaching on the Will,” *diss.*, Catholic University of America, 1982. In the strictest sense, Scotus’s “necessity” is opposed to “contingency,” “naturally” to “freely.” A natural faculty or power tends to one side of a contradiction by reason of what it is, for it is aimed toward itself, either its own immanent perfection or a product similar to itself. The free is what is not determined to one: if we know the free agent and the possible object of its tending, we cannot predict how it will act, whereas with a nature we can—which is why we know oaks will produce acorns, not apples, and dogs will bark, not purr. Freedom as a pure perfection is the ability to tend toward the good as good in itself, regardless of self-advantage and thus free from nature’s determination to one. God’s will loves the infinitely lovable God for God’s sake, necessarily (cannot not), not because it is a will, but because it is the will of the necessarily perfect being. See *Op. Oxon.* 3, d. 17, n. 3, (Wadding-Vives 14.654); 4, d. 49, q. 10, n. 3 (Wadding-Vives 21.318); 1, d. 10, n. 10 and n. 3 (Wadding-Vives 9.806, 797); Book 9 of *Quaestiones Subtilissimae in Libros Metaphysicorum Aristotelis* (new critical edition forthcoming from Franciscan Institute, St. Bonaventure, N.Y.).

and its foundation of natures and powers in a universe. According to this order, the elect are willed by God to merit glory by faith, by the remedy of Christ's passion on account of sin, by habitual grace (which for Scotus is infused charity), and by a good use of free will.<sup>4</sup> A good use of free will is in conformity to a judgment of right reason.

What does right reason, or any intellect, including the divine, see as that which is to be willed or done? In the first place, the primary precept of the natural law is that God, the infinitely good, is to be loved for his own sake. This is a practical principle whose truth is prior by nature to the act of any will. In the second place, human right reason is inclined to the happiness concretized in ends and actions conformed to human nature. What these actions are and are not is summarized in general norms called the secondary precepts of natural law. They are known and applied by right reason reflecting on the agent, the nature of the operative faculty, the object of the act, the circumstances, and the end intended. Shannon<sup>5</sup> stresses the statement in Scotus's treatment of Abraham's bigamy that in some circumstances right reason will dictate that a general precept concerned with an act does not apply, because following the precept in these particular circumstances would prevent attaining the primary end of the act in question. (This might be called proportionalism, but it is important to note that here Scotus speaks in terms of the more primary end, not quantitatively determined "greater good.") Once all these factors are taken into consideration, an act can be evaluated as morally good or bad.<sup>6</sup>

However one aspect of the nature of the agent is being a creature and therefore subject to the divine law. Thus no act can be morally good if it runs counter to a precept the observance of which is required by God for the agent's attainment of the end, which is God known and loved beatifically.<sup>7</sup> Any act not in accord with the divine law is inordinate, for the complete justice of any rule comes from the divine will

<sup>4</sup> For texts illustrating Scotus's Christocentrism as just outlined, see those assembled by Allan B. Wolter, "John Duns Scotus on the Primacy and Personality of Christ," in *Franciscan Christology*, ed. Damian McElrath (St. Bonaventure, N.Y.: Franciscan Institute, 1980) 146–82.

<sup>5</sup> "Method in Ethics" 284–85.

<sup>6</sup> See texts in *Duns Scotus on the Will and Morality*, trans. and ed. Allan B. Wolter (Washington: Catholic University of America, 1986) 239–55, 277, 211–19, 291–93; cited henceforth as Wolter. Scotus's example for his principle concerning the primary and secondary end of an act is eating food in a way which derogates from the secondary end of eating, pleasure, when this is necessary to fulfill the primary end of eating, nourishment.

<sup>7</sup> Quodlibetal question 18, in Duns Scotus, *God and Creatures* 415.

approving.<sup>8</sup> Thus, for a totally complete moral analysis of an act, “the agent” and “the end” must be understood in their relation to God and not only in view of their innerworldly goods and purposes.

Are the secondary precepts of natural law (or a reasonable judgment contrary to them in certain cases) true in the same way as the primary precept? That is, if morality has as its first principle the attainment of the ultimate end, are the secondary precepts as necessary for attaining the end as the primary? First of all, they can be seen immediately by any intellect to be “very consonant” with the primary and necessarily true precept that God is to be loved.<sup>9</sup> God has willed that they be observed—thus they form part of divine law—and at the beginning of the human race they were written in the human heart or perhaps taught exteriorly by God and handed down to successive generations.<sup>10</sup>

<sup>8</sup> *Ord.* 1, d. 44, q. 1: “[N]ulla lex est recta nisi quatenus a voluntate divina acceptante est statuta” (Wolter 256).

<sup>9</sup> One might ask why the secondary precepts, which St. Paul summarizes as “Love your neighbor as yourself,” are so consonant with the primary precept that God is to be loved for his own sake. The harmony is conceivable as an analogy: the neighbor is a Thou encountered as already existing and I am passive before the demand of the face of the Other (E. Levinas). The face of the human Other demands love from me because the Other is of human nature; human nature is being-on-the-way toward ends not attainable without my help, or at the very least, without my refraining from murder (the first ethical truth for Levinas is “Thou shalt not kill”). God is also Thou and Other, though not needy; the face of God before the human conscience demands simply love, the joyful willing that God be God, that God be happy, that God be; see *Ord.* 1, d. 1, pars 3, qq. 1–5, n. 183 (Vat. ed. 2.121; Wolter 472, 476), and *Ord.* 2, d. 6, q. 2 (Wolter 462–76). Compare St. Bonaventure: “[a blessed in heaven] will rejoice incomparably more over the happiness of God than over his own and that of all others with him” (*Breviloquium* 7, 7, in *S. Bonaventurae Opera Omnia* [Quaracchi, Italy: Typographia Collegii S. Bonaventurae, 1892–1902] 5.288–91).

<sup>10</sup> See *Ord.* 3, suppl. d. 37 (Wolter 273–87). Divinely revealed precept helps human beings to obey the natural law written on their hearts: “[I]t would be expedient for this [marital indissolubility] to place a divine precept, since human beings obey the natural law by itself less than God commanding, because they fear and reverence their own consciences less than divine authority” (*Op. Oxon.* 4, d. 26, q. un., n. 9; Wadding-Vives 19.161). Since God is spirit, any scholastic would recognize the need to explicate the Old Testament images of God appearing in flame and cloud and speaking audible words. St. Thomas speaks (*ST* 2–2, qq. 171–74) about a light of prophecy, a divinely infused cognitive ability (similar to infused faith) whereby the prophet intuitively takes certain words and images welling up in his imagination as symbolizing divine truths or divine decisions for human beings (commandments). Scotus writes that “there was something sensible present to them in imagination,” and that God “can cause certain knowledge without any doubt, such that one having such knowledge revealed by God cannot doubt the truth of it, which knowledge it is believed the prophets and many other saints in Scripture had” (*Op. Oxon.* 1, d. 16, n. 2; Wadding-Vives 10.20); and see *Op. Oxon.* 3, d. 24, n. 17 (Wadding-Vives 15.47). The prophet “just knows” that “thus says the Lord.” St. Thomas’s teaching on the charismatic gifts has been retrieved in our own time by Hans

Nevertheless, they cannot be demonstrated (in Aristotle's rigorous sense of scientific knowledge) as necessary in order to attain the end of the primary precept, loving God; it would be possible, that is, not a logical contradiction, to love God *and* act contrary to a secondary precept such as "Do not murder." For Scotus, Abraham's willingness (at God's command) to kill the innocent Isaac was an example of this conjunct. Thus they are not necessary truths like the primary precept, despite their being "very much in harmony" with it. If precepts such as "Monogamy is to be practiced" do not derive their truth *per se*, that is, from the terms alone, why are they true? They are true because they have been willed, "commanded," by God. They obligate human beings in the final analysis because they are commanded by God. The God who is to be loved for his own sake, and his will, is the ultimate horizon structuring the whole of the moral landscape of the creature.

### *Dispensations from Secondary Precepts*

These principles will now be shown at work in Scotus's treatment of four particular moral issues.

First, the issue of bigamy. As we have already seen, God wills contingently whatever he wills outside himself. Thus if God wills a certain secondary precept, he could will otherwise instead. Scotus believed that he had willed otherwise for particular Old Testament situations, e.g. the marital life of Abraham. Scotus also believed that God's dispensation from the precept of monogamy was reasonable and just with respect to the nature of marriage as a contract subject to that justice which regulates interhuman exchange, given marriage's primary end of procreation of worshipers of the true God and the paucity of such worshipers in Abraham's time.

Now let us shift our focus from God's view of Abraham's situation to Abraham's own view. First of all the holy patriarch could also see that bigamy was reasonable and just with respect to the purely interhuman, contractual level. But was bigamy thereby "completely just" for Abraham? According to Duns Scotus, bigamy even when reasonable with respect to human justice is not completely just without a revocation of the divine precept of monogamy. An act can be reasonable with respect to an innerworldly end but not licit if contrary to a divine precept; it only becomes licit if the precept is revoked.

Here one must first see what is required for strict commutative justice in the

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Urs von Balthasar: *Thomas von Aquin; Besondere Gnadengaben und die zwei Wege menschlichen Lebens; Kommentar zu Summa Theologica II, 171–182* (Heidelberg: Kerle; Graz: Pustet, 1954).

matrimonial contract, and this on the part of the ones contracting; and what is added beyond this for complete justice in such a contract, and this on the part of the superior . . . I add that the completion of justice in this exchange is only from the superior instituting or approving such or such exchange, because although some things belong to inferiors as owners, nevertheless such or such a licit exchange of them is determined to be right by the legislator, and much more here concerning bodies to be mutually exchanged with reference to the legislator who is God; but he has established as a rule for both the state of innocence and the state of fallen nature that exchange of bodies must be made one for one; in this therefore is complete justice. . . .

[God] dispensed in fact, as it is presumed of Abraham and certain other patriarchs . . . . But in case through war or slaughter or pestilence a multitude of men were to fall and a multitude of women remain, bigamy could now be licit, considering only the justice on the part of the contract and those contracting . . . . Nor would there be then lacking anything but the completion of justice, which is from divine approbation, which would perhaps then occur and be specially revealed to the Church . . . . In a certain case [bigamy] might be licit . . . when right reason on account of necessity dictates . . . and divine precept is there . . . . As for Lamech however, it can be conceded absolutely that he sinned mortally, because against the law of nature, although in the second way [against a secondary precept]; he sinned, I say, by contracting with many but not in a case in which right reason would dictate that that law should be revoked, nor did the superior dispense . . . .

Although it may be presumed of some holy patriarchs that in contracting bigamy they did not sin, because both reasons for contracting come together there, that is, necessity on account of which it was just to contract in that way, and divine authority approving and prescribing, nevertheless if some contracted without these causes, or without the second of them, it is no difficulty for me if they sinned mortally, since I do not consider them to have been confirmed in grace.<sup>11</sup>

An act contrary to a general secondary precept can be “reasonable” with respect to innerworldly goods, but still not licit if not revoked by the “superior,” the creating origin of all finite goods.

A similar pattern of thought is evident in Scotus’s treatment of divorce in the Mosaic law,<sup>12</sup> which he holds to represent a divine dispensation from the precept of indissolubility for the sake of avoiding a greater evil (uxoricide and its consequences). In the state of innocence it is reasonable that marriage be permanent, but after sin it would be

<sup>11</sup> *Ord.* 4, d. 33, q. 1 (Wolter 288–97). Translations are by the author; Wolter’s version has been followed on some phrases. The Latin (from Codex A) on 294 of Wolter mistakenly has *fore* instead of *forte* (“perhaps”) (private communication from Allan B. Wolter, October 5, 1993).

<sup>12</sup> *Ord.* 4, d. 33, q. 3 (Wolter 296–310).

reasonable for the lawgiver—notice that Scotus does not say “for the human agent”—to make divorce licit in order to avoid worse consequences. In either case the divine will is ultimately decisive for the rightness of human action. For marriage as it was instituted before sin, it is consonant with the first principles of natural law that the contract be indissoluble. But divorce would not be against the raising of offspring, for “God could have ordained otherwise concerning the raising of offspring but not as fittingly as in this way [indissolubility], nevertheless then against a certain good in harmony with the law of nature, that is, against indissolubility, and against such God can dispense to avoid a greater evil.” What Scotus is asserting, when we “translate” from this run-on style, is that God could have ordained otherwise, even though such a different ordinance would have been less fitting than what he did in fact establish. In any indissoluble marriage, the obligation to permanence arose (instrumentally) from the wills of the partners having made such a contract, but primarily from divine approbation of the contract; and when divorce occurred under the Mosaic law, it had to be with divine dispensation. Thus in originally decreeing indissolubility, God was under no obligation toward any proportionalist “greater good,” and in Jewish men’s practice of divorce, the proportionalist principle of avoiding the greater evil had to be supplemented by divine approbation for it to be licit.

Though God could have provided for the raising of children in some other way than marital indissolubility, he did will what is more fitting for marriage and consonant with natural law (strictly considered) in commanding indissolubility for the state of innocence and for the time of Christ’s gospel. Yet Scotus sees fit to add a Christological supplement here which is fully in accord with his historical, Christ-oriented vision of creation:

Since one good of matrimony is indissolubility and perpetual obligation, no marriage of the Jews was perfect, because always marriage contracts were conditional on account of the written decree of divorce; but in the marriage of the new law there is this good, namely, an indissoluble union, and beside these [sic] another, namely, the signifying of the communion of Christ and the Church, which is one to one.<sup>13</sup>

For Scotus, the fittingness of a precept of natural law ratified by divine command can apparently be constituted in part by mirroring the supernatural end of nature, the union of all with the incarnate Word.

Elsewhere Scotus also discussed the universal sinfulness of lying.<sup>14</sup>

<sup>13</sup> *Ord.* 4, d. 33, q. 3 (Wolter 304).

<sup>14</sup> *Ord.* 3, suppl. d. 38 (Wolter 480–500).

In that context he considers every Old Testament example which is brought forward against the universal sinfulness of lying, and he concludes that each example really is a sin, either mortal or venial, or else that it is not a lie at all. Lying is saying something while believing the opposite, thus intending to deceive. A pernicious lie is one which harms another. A good intention or humor do not justify officious and jocose lies; as long as they are intended to deceive, they remain lies, although only venially sinful. Scotus states only one way for a lie not to be sinful: if there is a divine command similar to the command given Abraham to kill the innocent Isaac:

It can become licit to kill such a human being [*innocentis et utilis reipublicae*] if God revokes that precept, "Do not kill"; . . . not only licit but meritorious, if God were to command to kill, as he commanded Abraham concerning Isaac. Therefore arguing *a simili* or *a minori* it can become licit to proffer speech one believes to be false, if the precept is revoked.<sup>15</sup>

There is a tension between this passage and Scotus's treatment of the object of the moral act in quodlibetal question 18,<sup>16</sup> but it can be harmonized. The tension consists in the fact that according to the tenor of quodlibet 18, an innocent human being would represent an unsuitable object of the act of killing for an agent of human nature, for Scotus here exemplifies his sense of "object" with stone as an inappropriate object of the act of eating for an agent of human nature. Since an act is good only if it has integral goodness, Abraham's act would be bad on account of its object.<sup>17</sup> Scotus's texts can be harmonized by recalling his statement that one may derogate from a secondary end if that is the only way to fulfill the primary end of an action: since God is the most primary end of any action of a rational creature, one may licitly derogate from a good of human nature if such derogation flows from

<sup>15</sup> *Ord.* 3, suppl. d. 38 (Wolter 484). Wolter's translation of "*materia occisionis hominis innocentis et utilis reipublicae*" as "the innocent killing of a human being for the benefit of the state" (quoted by Shannon, "Method in Ethics" 286) stretches the syntax of the Latin and does not fit the context of Abraham and Isaac.

<sup>16</sup> See *God and Creatures* 399–417.

<sup>17</sup> *Ibid.* 400–5. Scotus here sees the "object" as a true source of moral, albeit generic, good or bad, prior to intended purpose and circumstances. Nevertheless Scotus is not speaking the same language as *Veritatis splendor* no. 78 (see below); Scotus uses "object" as a component within a material analysis of action, whereas the pope defines it within the intentionality analysis of acts as already named, that is, initially, if vaguely, understood as wholes: "By the object of a *given* moral act, then, one cannot mean a process or event of the merely physical order . . . [but] the proximate end of a deliberate decision which determines the act of willing on the part of the acting person."



the permission or command of God. In other words, all other levels of a human agent's nature are relativized by his relation to God who is to be attained by love and obedience. Thus for the agent's nature qua social with his fellows, the innocent is an inappropriate object of killing, but with respect to the human agent as standing before God the creator of all, who can direct his creatures to himself as he wills, through God's command the innocent human being is not an inappropriate object of the act of the human agent; the act becomes licit, as Scotus says. "I know now how devoted you are to God, since you did not withhold from me your own beloved son" (Gen 22:12).

Our fourth and final example to illustrate Scotus's spirit in ethics is his treatment of the seal of confession.<sup>18</sup> Scotus asks whether a confessor is bound in every case to conceal a sin made known to him in confession. His first conclusion is that the confessor is so obliged by the law of nature which prescribes love of neighbor who needs his good name to live in society. (He is also obliged by divine and ecclesiastical positive law.) But Scotus must inevitably deal with some "hard cases" brought up as objections to his and the Church's position that the sacramental seal represents an exceptionless norm. The penultimate case runs as follows: a monk is stationed outside the monastery in a pastoral assignment where a suspect relationship always leads him into sin. The abbot comes to know of this through the monk confessing the sin to him. If the abbot orders him to give up the exterior assignment and live in the monastery, it will be known that he has committed some crime because that is the usual reason why someone is recalled to the monastery in this community; ordering the monk back home would constitute breaking the seal of confession. And yet, left where he is, the monk is at risk for the salvation of his soul. In such a situation, would the abbot not be justified in ordering a return to the monastery, thus violating the seal, in order to save the lost sheep? Scotus replies:

I respond, let him consult within the forum of penance [with other priests, and without revealing the sinner's identity] as best he can, so that he [the monk] will leave that place which is dangerous to him. If he does not want to, let him not try to be God, but leave secret faults not corrigible by him according to justice, to the correction of God.<sup>19</sup>

Presumably eternal salvation is a greater good than the interhuman justice represented here by the monk's good reputation, and yet the abbot may not do something unjust for the sake of the greater good. A

<sup>18</sup> *Op. Oxon.* 4, d. 21, q. 2 (Wadding-Vives 18.730-61).

<sup>19</sup> *Op. Oxon.* 4, d. 21, q. 2, n. 2 and 23 (Wadding-Vives 18.730-31, 760-61).

human being should not try to be God, but act within the bounds of human justice.

The examples of bigamy, divorce, lying, and killing show that, for Scotus, the creaturehood of the human being and his innerworldly moral objects have decisive ethical significance in the final analysis for actions not directly related to God as their object. The fact that a proportionate and natural good can be attained by acting against a secondary precept of natural law does not suffice for the complete moral rectitude of such an act without dispensation from the divinely decreed precept. God is free to dispense from the precept or not; the "greater good" or "human flourishing" in abstraction from God is not the primary norm for any will. For God the norm is the good, and therefore, necessarily, the infinite good, God, to be loved for God's own sake. Anything else which he wills is willed in view of the divine goodness, and nothing other than God is necessary for divine goodness to be; thus any divine command whose object is not God himself will be contingent, not necessary. For creatures the norm is also the good, and therefore the infinite good, God, to be loved for God's own sake. Finite goods are also normative to creatures who must act to become what they have in themselves to be, but only when these goods are not considered against the backdrop of the divine will. When the will of God on a particular matter is taken into consideration, the ultimate norm is the infinite good and what the infinite good, the Creator, wills. The infinite God creates and conserves natures and leaves them as they are with their appeal of finite goodness to created wills, but divine infinity cannot but also relativize them as goods to be willed, loved, or chosen.

The texts we have examined offer three aspects under which the divine will can relativize a purely human moral judgment for the human agent. First, God is the Creator of the human agent and the objects of his actions; thus the human agent is morally subject to the divine will. It is human to act justly, to give what is due to the beloved infinitely good God by acting as he wills in his world. Second, God has revealed that the beatific vision, the ultimate end of human nature, will not be attained if the human being does not do the good and avoid the evil covered by the secondary precepts of the natural law.<sup>20</sup> Acting against such a precept in the absence of special circumstances and a dispensation therefore turns one away from the end and thus cannot be prudently willed. Special revelation of the divine will was made in such cases to Abraham and others in Old Testament times and might

<sup>20</sup> Cf. Gal 5:21: "I warn you, as I warned you before, that those who do such things shall not inherit the kingdom of God."

be made to the Church in the time of Christ's gospel. The texts we have examined give no indication that Scotus thought someone could simply presume a divine dispensation from an already revealed general precept if a hard case arises. Third, we might gather that the natural goods monogamy, marital indissolubility, and telling the truth might be exceptionless divine precepts in the time of the gospel because they reflect the concrete historical reality of Christ, the Church, grace, and the new law, which have united creation with its end, God.

### *Scotus Today*

The last point links Scotus thematically with those contemporary theologians who formulate a distinctively Christian ethics inclusive of but transcending natural law as thematized by the broad Aristotelian tradition represented by Aquinas. Hans Urs von Balthasar sketched out a moral theology in which the love and obedience of Christ to the Father would be the "concrete-universal" norm for every human being because every human being is related, knowingly or unknowingly, to the grace and to the judgment of Christ. Because the redeemer is the creator of natures, natural law would be a dimension, but only a dimension, within the inviolable faith-perceived whole which is crucified love. "Obedience is faith in God and thereby a valid response (Gen 15:6) which takes possession not only of the mind but also of the body (Gen 17:13). Obedience, therefore, requires that one must be prepared to return the freely given gift [Isaac] (Genesis 22)."<sup>21</sup> Scotus's ethics of the love of God (objective genitive) and the will of God (subjective genitive) is like a commentary on this passage of von Balthasar. Profoundly Franciscan in his vision of creation as owned by the "superior" Creator and not by us who but acknowledge the truth if we dispossess ourselves like Christ and St. Francis,<sup>22</sup> Scotus would say to von

<sup>21</sup> Hans Urs von Balthasar, "Nine Theses in Christian Ethics," in *The Distinctiveness of Christian Ethics*, ed. Charles E. Curran and Richard A. McCormick (New York: Paulist, 1980) 197.

<sup>22</sup> With respect to external goods, Scotus cites "The earth is the Lord's and the fullness thereof" (Ps 24:1) and believes that according to the law of nature or of God for the state of innocence, goods were common. Thus the nonpossessiveness of evangelical poverty represents a return to the paradise state. After the fall, just positive law divided external goods after the natural law of common ownership was reasonably revoked and permission (*licentia*) granted; see the critical text of *Ord.* 4, d. 15, q. 2, in Allan B. Wolter, *Duns Scotus' Political and Economic Philosophy* (Santa Barbara, Calif: Old Mission, 1989) 36. Scotus could easily have been imagining a revealed divine concession, for the language and context are juridical in tone: the same question later says that the natural law of obedience to parents was never "revoked" by any positive law, Mosaic or evangelical, but rather confirmed; *licentia* is used to describe a situation between abbot and monk. Scotus mentions Noah as likely to have been the one who divided the earth's goods; it must be

Balthasar that God could ask us to return a gift even to the extent of doing what is less fitting with respect to innerworldly goods. De facto, since the promulgation of the gospel, God wills us to follow the universal precepts of the decalogue confirmed by Christ and interpreted by the Church. A hard case is an opportunity for us not to attempt to be God, as we obey the will of God in the matter. In keeping God's law in hard cases we can rejoice that we are not going to act against a lesser good, because a lesser good, whether it is keeping the seal of confession, monogamy, indissolubility, or telling the truth, is still a good.

In the context of "second table of the decalogue" precepts, Pope John Paul II's encyclical *Veritatis splendor* states that there are acts which are intrinsically evil, "on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances."<sup>23</sup> But the pope has also pointed out that "to the extent that [the object] is in conformity with the order of reason, it is the cause of the goodness of the will. . . . By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order."<sup>24</sup>

Translated into the pope's language, Scotus's position is that the order of reason involves the conformity of an act's object not only to human innerworldly natural inclinations and ends, but also to the will of God who could will otherwise than he does with regard to acts not directly concerned with God. On the statement that "reason attests that there are objects of the human act which are by their nature 'incapable of being ordered' to God, because they radically contradict the good of the person made in his image,"<sup>25</sup> Scotus might have glossed as follows: these are objects which contradict innerworldly human goods much in harmony with the love of God,<sup>26</sup> and which are also not known to bear any divine permission or command; thus a decree of God could have prevented the evident obligation to act in accord with some

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remembered that for Scotus the primeval history narratives were simple fact and that they portray God as frequently speaking to the patriarchs. Recall too that Scotus considered it reasonable for God the lawgiver to revoke the precept of marital indissolubility after the fall. Scotus says that our bodies belong to their creator and the modality of their exchange is subject to divine command. See *Ord.* 4, d. 33, q. 1 (Wolter 290), and *Op. Oxon.* 4, d. 26, q. unica (Wadding-Vives 19.146–90, esp. 188: "The second precept, that is, indissoluble obligation, God instituted by his positive law, Genes. 2, 'He will cling to his wife,' . . . He also instituted it by imprinting the law of nature . . . and this second precept has the force of a negative, since it obliges *semper et ad semper*, unless a special dispensation is made by the legislator").

<sup>23</sup> *Veritatis splendor* no. 80; English translation in *Origins* 23 (1993) 297–334, at 321.

<sup>24</sup> *Ibid.* no. 78.

<sup>25</sup> *Ibid.* no. 80.

<sup>26</sup> See n. 9 above.

innerworldly good of human nature. An act in accord with such a divine permission or command would have been morally good because God is the creator of all finite goods, including human nature, and can therefore justly direct creation to himself as he pleases.

A contemporary Scotistic gloss on the pope's words might run: given the categorical, universal character of St. Paul's condemnation of certain acts falling under the second table of the decalogue, the closure of revelation with the death of the last apostle, and the obvious thrust of *Veritatis splendor*, it can be stated that it will never be licit to act against the divine precepts, "till heaven and earth pass away," regardless of how the Old Testament loci for dispensations from those precepts should be interpreted; nevertheless in the last analysis this is because God has graciously and contingently willed it so. Could this be part of what Scripture means by saying that the human being is the image of God? The human being, like any creature, has no claims on God, but God in sovereign freedom has willed to respect human nature, dignified by the surpassing perfection of the God-Man, as absolutely as if it had the absolute goodness of God; he will never permit or command anyone to act contrary to a human good, even for the sake of some greater good. This may be one aspect of the grace of the law given on Sinai.

We are still left with a statement by Scotus which might be a real precedent in the Catholic past for contemporary proportionalists, namely, that one may reasonably act in a way which detracts something from a secondary end, if that is the only way to achieve the primary end of that same act. It is important to note that Scotus says this *before* taking the contingent volition of God into account. But it is equally important to notice that both ends are integral to the same act; by "ends" Scotus is not referring to a desired purpose extrinsic to the act. Furthermore, for Scotus, even "reasonable" bigamy remains illicit without a divine dispensation from the precept of monogamy. How many proportionalists believe that the actions they justify by intention and circumstances also need a divine dispensation revealed to the Church?

I would disagree with that portion of the Subtle Doctor's ethics which led him to find bigamy sometimes reasonable within the horizon of purely human justice, and not only because his analysis of the ends of marriage was deficient in comparison with the teachings of Vatican II, Paul VI, and John Paul II. In general, one could hold that there are innerworldly ends (in addition to God himself) direct derogation from which no innerworldly end, intention, or circumstance can justify, but still ask about them with respect to God's will. Scotus's metaphysics of divine being and divine love drew the conclusion that God contingently

wills (or could have dispensed from) the secondary precepts of natural law for human beings because nothing other than God is needed by God for loving God. All of this presupposes that Scotus's position on the divine will and what God could have willed, long neglected by most theologians, does not enter the Pope's mind when he speaks about "immutable" moral norms and is therefore not touched by his encyclical. Is he speaking of the moral universe considered apart from the divine will as able to will otherwise?<sup>27</sup>

### *Concluding Remarks*

The ethics of Scotus represents a delicately balanced synthesis of Augustinian and Anselmian inspiration on the one hand, and of Aristotle on the other. From the Christian authorities Scotus derives the ethical significance of the free and sovereign God who reveals his will in history through successive epochs which have reached their culmination in that of Christ and his Church, which is authorized to interpret the revelation in Christ. From Aristotle Scotus receives the vision of time-transcending natures in their integrity, in the weight of their striving after their ends in a cosmos, which striving is their being what they are. Subhuman natures achieve themselves, their ends, unconsciously, automatically. Human beings can know the interrelation of agent, faculty, object, and end and direct themselves in accord with this knowledge.<sup>28</sup> Through his interpretation of the distinction and

<sup>27</sup> To reformulate Scotus's position: if an otherwise right (or wrong) action is explicitly seen against the horizon of the known will of God, it can show up to right reason as wrong (or right) in the *last* analysis depending on God's will as known. Might this be the ethical equivalent of the standard position of theistic metaphysics that things other than God are good because they are willed by God, not willed by God because they are good (*Op. Oxon.* 3, d. 34, n. 15 [Wadding-Vives 15.516])? An analogous comparison might be made to a contemporary controversy: when barrier or spermicidal measures are seen against the horizon of an otherwise life-giving conjugal act, they show up to right reason as "not to be done," but for some moralists they would show up as "to be done" (as legitimate self-defense) against the horizon of impending rape.

<sup>28</sup> Shannon apparently assimilates Scotus's "classicism" to that of Newton. But Scotus stands within, although near the end of, the history of Aristotle's "nature." By Newton's time natures had come to be seen only as occult things present in physical substances, and the temporally stretched meaning that "nature" had for Aristotle was lost. A natural thing is a thing for which to be is to be going to be in its end-actualization (e.g. feeding or reproducing or seeing) if nothing impedes. Aristotelian natural law is thus not derived from a "static" universe and there is no "naturalistic fallacy" to fear, because "is" for natural things is "is going to be in the end." Descartes and Newton have a modern notion of being, shorn of final causality, and they replace the now barely understood "natures" with inert chunks of "matter" subject to "forces" and mathematical "laws." Scotus knows nothing of Newton's "classical" cosmos with its "forces" and "natural" "laws," although his doctrines of natural self-motion, action at a distance, and plurality

interrelation between primary and secondary precepts of the natural law, Scotus does justice to both traditions.

With regard to general moral rules which safeguard some inner-worldly human good, Scotus holds that for God there can be more than one reasonable way to direct human agents by his command to their end, himself, because no finite way is of itself necessary for loving the self-existent infinite good. The completely just way for the human being coincides in each case with the way the Creator freely and in orderly fashion wills. God would will reasonably in letting a precept stand in a hard case, because some good in the situation would thereby be preserved and willed by God for his glory. God would also will reasonably in revoking the precept because some greater good would thereby be achieved or greater evil avoided.

Because human nature is noetically before the transcendental horizon of being as such, it can see itself as not ultimate and as created by the infinite good. It can therefore see its moral judgments in areas not directly related to God as possibly countermanded by the source to whom those areas belong, for the Creator can legitimately direct his works according to his will.<sup>29</sup> The Christian knows by faith that God's will is before all else the beatific union of the elect with God in and through the incarnate Word. The human being's role is to follow God's reasonable ways toward attaining that end, even if they are not the

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of forms can accommodate much of what is valid in modern science. On self-motion see Roy Effler, *Duns Scotus on the Principle 'Omne quod movetur ab alio movetur'* (St. Bonaventure, N.Y.: Franciscan Institute, 1962). Given this cosmos crowned by human nature, some things will naturally be dictated by right (unimpeded) reason (in accord with circumstances), if God does not command otherwise, in which case right reason out of justice dictates in accord with God's will, if revealed. The human will is free to conform, or not, to reason.

<sup>29</sup> Cf. Rom 9:21: "Has the potter no right over the clay?" In addition to Scotus, one can cite saints and doctors of the Church who acknowledge divine power to dispense from one or another precept of the second table of the decalogue. See Bernard, *De Praecepto et Dispensatione* 3.6, in *Sancti Bernardi Opera* (Rome: Editiones Cistercienses, 1957-77) 3.257-58; Bonaventure *In 3 Sent.* d. 38, a. u., q. 2, concl., in *Opera Omnia* (Quaracchi, Italy: Typographia Collegii S. Bonaventurae, 1882-1902) 3.842-44; and Alphonsus Liguori, *Theologia Moralit* 3, tract 4, c. 1, dubium 1, nn. 366 and 393, cited by William E. May, "The Teaching of Theologians from St. Thomas Aquinas until Vatican Council II on the Existence of Moral Absolutes," *Faith and Reason* 18 (1992) 139-80. Aquinas's treatment of relevant Old Testament passages (*ST* 2-2 q. 100, a. 8, ad 3) which is beyond the scope of this note, is different and highly nuanced. It would be instructive to consider how one can avoid positing a divine dispensation from natural law when a Christian marriage dissolves a natural marriage (Pauline Privilege). With respect to the context of the hardening of Pharaoh's heart in Romans 9, Scotus's metaphysical (in contrast to his axiological) account of the co-operation of the divine potter and the human clay in the contingent actions (whether right or sinful) of free creatures is also beyond the scope of this note.

only or the most fitting ways to attain innerworldly human flourishing. Such a stance is paradoxically fulfilling, because in ethics to be endowed with intellect and will is to be not limited to oneself and one's own nature as the ultimate thing to be loved, but pointed to the good as existing in itself. In the final analysis, to be happy is to love and obey God, and not to play God.<sup>30</sup>

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<sup>30</sup> One textual loose end must be tied. The Assisi manuscript of *Ord.* 4, d. 33, q. 3, as transcribed by Wolter, reads: "quandocumque talis justitia potest inveniri in commutatione, rationabile est Deum eam *debere* ratificare—whenever such justice can be found in an exchange, it is reasonable that God *must* ratify it" (Wolter 302). In context, the word "must" would imply some obligation on God's part to dispense from the precept of indissolubility when divorce is reasonable with respect to interhuman justice. However the Wadding edition, which was based on collated manuscripts some of which have since been lost, lacks the "must." It is absent from Paris bibl. n. lat. 15, 854, which reads: "rationabile est Deum ratificare eam." Not only is the latter reading better style, but its weaker formulation is compatible with Scotus's *ex professo* treatment of divine justice in *Ord.* 4, d. 36 (Wolter 238–55), where he clearly holds that the divine will wills contingently, that is, could will the opposite, with respect to anything other than God; God can have no obligation to command or dispense from a secondary precept. Thanks to Timothy Noone of the Franciscan Institute, St. Bonaventure, N.Y., for indispensable text-critical assistance.