

## A Most Mitigated Friar: Scotus on Natural Law and Divine Freedom

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*Abstract.* In his ethical writings, Duns Scotus emphasized both divine freedom and natural goodness, and these seem to conflict with each other in various ways. I offer an interpretation of Scotus which takes seriously these twin emphases and shows how they cohere. I argue that, for Scotus, all natural laws obtain just by the natures of actual things. Divine commands, such as the Ten Commandments, contingently track natural laws but do not make natural laws to be natural laws. I present textual evidence for this claim. I also show how this view of Scotus on the natural law is consistent with a number of troubling passages. Scotus's ethical theory implies that there are genuinely moral reasons for acting which are not absolutely binding (because subject to a divine command or permission otherwise) and also some moral reasons for acting which are absolutely binding (because not thus subject).

### I. The Problem of Scotus's Ethics

Blessed John Duns Scotus is committed to *natural goodness*. He expresses this commitment in various ways, as when he says that natural goodness is the sort of goodness a thing has when it has the features specified by the kind to which that thing belongs,<sup>1</sup> or that moral goodness is the goodness an action has when it has natural goodness and is a freely elicited action,<sup>2</sup> or that some sins are bad by their very nature and not because

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<sup>1</sup>*Ordinatio* II.40.un.7 (V 8.468–9), henceforth “*Ord.*” The convention for citing the *Ordinatio*, which I adopt, lists Book, Distinction, Part (if any), Question, Paragraph(s); “un.” abbreviates “unica” and is the standard convention for referring to a *Sentences* commentary question which is the only question in its distinction. All citations from Scotus's *Ordinatio* come from John Duns Scotus, *Opera omnia*, 21 vols., ed. The Scotistic Commission (Vatican City: Typis Vaticanis, 1950–), cited as “V,” followed by volume and page numbers.

<sup>2</sup>*Ord.*II.40.un.8–11 (V 8.469–70).

God has commanded us not to do them,<sup>3</sup> or argues for ethical propositions using premises about what is naturally good or bad for human beings,<sup>4</sup> or argues that God ought to be loved above all not because he commanded us but because God is the highest good.<sup>5</sup> Call this commitment the *naturalistic* theme in Scotus. He is also committed to *divine freedom*, conceived in a strong way as entailing that God can rightly will that creatures act against most obligations arising from natural goodness. Scotus expresses this commitment in various ways, as when he says that God can do whatever is logically possible and that whatever he can do he can do rightly,<sup>6</sup> or asserts that a creature has the degree of goodness it has because God has assigned that degree of goodness to that creature,<sup>7</sup> or claims that no law is right unless it is established by the divine will.<sup>8</sup> Call this commitment the *voluntaristic* theme. It is not obvious how the voluntaristic and naturalistic themes can hang together, consistently, and some have felt forced to conclude that Scotus's ethics is *in this respect* incoherent.<sup>9</sup> But I think Scotus might just have managed to hold these themes together consistently. In this essay I will show how.

Over the last three decades, no issue in Scotus scholarship has commanded as much attention as the Subtle Doctor's view about the relationship between morality and God's will. The primary dispute concerns Scotus's views about the range of God's freedom over ethical norms—can God make it, e.g., morally permissible for humans to do just about any action metaphysically possible for a human to do (even the ones we all take to be heinous), or is the range of God's power to determine moral matters restricted in some way, say, by God's goodness or the needs of creatures? All readers of Scotus on this topic *agree* that he builds *some* restrictions into his conception of God's freedom over morality. For example, all recognize that Scotus says that not even God could alter the moral truth that God alone must be loved above all. Scholarly *disagreement*

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<sup>3</sup>*Lectura* II.21–22.1–2.29 (V 19.206), henceforth “*Lect.*” This *Sentences* commentary is printed in the Vatican edition. See also *Reportatio* II.22.un.3 (Wadding-Vives 23.104), henceforth “*Rep.*” This *Sentences* commentary is printed in Wadding's edition of Scotus, *Opera Omnia*, 12 vols. (Lyon, 1639) and reprinted in Vives's edition, 26 vols. (Paris, 1891–1895)—hence “Wadding-Vives” is the standard way to refer to Vives's edition.

<sup>4</sup>Several such texts are discussed in section III, below.

<sup>5</sup>*Ord.*III.27.un.14 (V 10.52).

<sup>6</sup>*Ord.*IV.46.1.25 (V 14.204); *Ord.*I.44.un.7 (V 6.366).

<sup>7</sup>*Ord.*III.32.un.22 (V 10.137–8).

<sup>8</sup>*Ord.*I.44.un.8 (V 6.366).

<sup>9</sup>Terence Irwin, *The Development of Ethics, Volume 1: From Socrates to the Reformation* (Oxford: Oxford University Press, 2007), 693–5. And, long before Irwin, C. R. S. Harris, *Duns Scotus*, vol. 2 (Oxford: Clarendon Press, 1927), 333–5, cited in *Duns Scotus on the Will & Morality*, trans. Allan B. Wolter, ed. William A. Frank (Washington, DC: The Catholic University of America Press, 1997), 5.

focuses instead on those moral truths which govern our relationships with *each other*, rather than our relationship with God. The best examples of such truths are those which concern the “second table” of the Decalogue, all of which have to do with how we ought or ought not to treat each other. The dispute is about whether God is free, or how free God is, to establish alternative moral truths in this domain. Allan Wolter and Thomas Williams are the most prominent participants in this dispute about the range of God’s freedom over ethical norms. It is an interesting and important dispute, but for my purposes *all parties to it are united* in holding roughly the following view, which I will call the Wolter/Williams Thesis [WW]:

[WW] According to Scotus, there are moral truths about how human beings ought to treat each other if and only if, in addition to creating human beings, God legislates or issues commands.

Wolter’s basic view is that God does not have a very diverse range of options about what the content of morality will be. Given God’s justice and given what is naturally good and bad for human beings, God must legislate only in ways that are consistent with this goodness.<sup>10</sup> Wolter endorses Copleston’s assertion that, for Scotus, “it is not the content of the moral law which is due to the divine will, but the obligation of the moral law, its *morally binding force*.”<sup>11</sup> So for Wolter, the *content* of the moral law is (more or less) determined by human nature, but the *morally binding force* of that law is due wholly to the divine will. As a thought experiment meant to clarify Wolter’s view, consider an act of creation the logical steps of which are described as far as the creation of human beings but no farther. Must more happen in order for there to be moral truths about how these humans ought to treat each other? And, if so, what more? Wolter’s Scotus is committed to the following answers: since the existence of humans does not make it the case that there are any moral truths about how they ought to treat each other, something more is required—namely, an act of divine legislation or commanding. Given a divine decision to make it the case

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<sup>10</sup>See especially the “General Remarks” chapter in Wolter, *Duns Scotus on the Will & Morality*, 1–30; also Wolter, “Native Freedom of the Will as a Key to the Ethics of Scotus,” and “The Unshredded Scotus,” both in Wolter, *The Philosophical Theology of John Duns Scotus*, ed. Marilyn McCord Adams (St. Bonaventure, NY: Franciscan Institute Publications, 2015), 173–89 and 241–90, respectively.

<sup>11</sup>F. A. Copleston, *History of Philosophy*, vol. 2 (Westminster, MD: Newman Press, 1950), 547, quoted in Wolter, *Duns Scotus on the Will & Morality*, 24 (italics mine). See also Wolter, “Native Freedom of the Will as a Key to the Ethics of Scotus,” 187: “For Scotus, as well as for Ockham who followed him, the substantive content of the natural law is basically the same as it was for the generality of the scholastics. It is only in their interpretation of why and how it binds that we discover a significant difference. It is a ‘law’ and to that extent ‘obliges’ inasmuch as it represents an expression of God’s will in man’s regard.”

that there are such truths, God's nature makes it the case that these moral truths must track in important ways what is good and bad for human beings: i.e., God must make it the case that any such truths promote human goodness and do not promote human badness.

Williams offers nearly as different a reading of Scotus's ethics as it is possible to offer, given a shared commitment to [WW].<sup>12</sup> He thinks that "right actions are right, not because of their relationship to human flourishing, but because God has commanded them."<sup>13</sup> Williams argues forcefully (and, to my mind, successfully) against Wolter's argument that Scotus conceives of God's justice in such a way that God must legislate only in ways that track the natural goodness of creatures.<sup>14</sup> Williams instead holds, "There is a good deal of truth in the charge that Scotus's God acts arbitrarily in some sense."<sup>15</sup> More precisely: "Some of the laws of morality [namely, all those which concern how humans ought to treat each other], Scotus says, are in force only because God willed them to be in force. [. . . Given two possible moral laws, *L* and not-*L* . . .] *there is nothing about either L or not-L that moves God's will to endorse one or the other.*"<sup>16</sup> So for Williams, both the content and the morally binding force of the moral law is due wholly to the divine will. Consider again our thought experiment of an act of creation the logical steps of which are described as far as the creation of human beings but no farther. Must more happen in order for there to be moral truths about how these humans ought to treat each other? And, if so, what more? Williams's Scotus, like Wolter's, answers that since the existence of humans does not make it the case that there are any moral truths about how they ought to treat each other, something more is required, namely, an act of divine legislation. But, *unlike* Wolter's, Williams's Scotus also answers that given a divine decision to make it the case that there are such truths, neither human goodness nor bad-

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<sup>12</sup>Thomas Williams, "Reason, Morality, and Voluntarism in Duns Scotus: A Pseudo-Problem Dissolved," *The Modern Schoolman* 74 (1997): 73–94; Williams, "The Unmitigated Scotus," *Archiv für Geschichte der Philosophie* 80, no. 2 (1998): 162–81; Williams, "A Most Methodical Lover? On Scotus's Arbitrary Creator," *Journal of the History of Philosophy* 38, no. 2 (2000): 169–202. Williams has recently published his own anthology of Scotus's ethical writings: Thomas Williams, *John Duns Scotus: Selected Writings on Ethics* (Oxford: Oxford University Press, 2017).

<sup>13</sup>Thomas Williams, "From Metaethics to Action Theory," in *The Cambridge Companion to Duns Scotus*, ed. Thomas Williams (Cambridge: Cambridge University Press, 2003), 332–51, at 338.

<sup>14</sup>Williams, "A Most Methodical Lover?" Wolter had argued that the affection for justice is a pure perfection and therefore God has it, so commanding anything unjust would be contrary to his nature. See Wolter, *Duns Scotus on the Will and Morality*, 14. The problem is that Scotus never says God has such an affection, and where Scotus argues that justice is a divine attribute, he explicitly denies that God's justice demands that he give to creatures what their natures require: *Ord.IV.46.1.36* (V 14.207).

<sup>15</sup>Williams, "Most Methodical Lover?" 170.

<sup>16</sup>Williams, "Unmitigated Scotus," 172–3 (italics original).

ness nor any other fact about the created order determines God to legislate or command in any particular way. Moreover, Williams's Scotus thinks that nearly any action possible for a human to perform (including many of the actions we all know to be heinous) is fair game for God to make true practical propositions which permit, forbid, or require it.

Between the two poles of Williams and Wolter reside most other recent efforts to interpret Scotus's ethics, most of them inclining toward Wolter.<sup>17</sup> Opposed as Williams and Wolter are, here I want to emphasize their similarity, and in particular their common endorsement of [WW].

The view I develop here gives us good reason to deny [WW]. As I read the relevant texts, had God not made a world containing things like, say, humans, there would be no moral truths about how humans ought to act (there would be only possible moral truths about how they ought to act). For there to be actual moral truths about how humans ought to act, *all* God needs to do is make a world containing humans.<sup>18</sup> In fact, *every natural law*—in whichever of the

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<sup>17</sup>Richard Cross, "Natural Law, Moral Constructivism, and Duns Scotus's Metaethics: the Centrality of the Aesthetic Explanation," in *Reason, Religion, and Natural Law: From Plato to Spinoza*, ed. J. A. Jacobs (Oxford: Oxford University Press, 2012), 175–97; Oleg Bychkov, "In Harmony with Reason: John Duns Scotus's Theo-aesthetics," *Open Theology* 1 (2014): 45–55; John E. Hare, "Scotus on Morality and Nature," *Medieval Philosophy and Theology* 9 (2000): 15–38; Mary Beth Ingham, "Duns Scotus, Morality, and Happiness," *American Catholic Philosophical Quarterly* 74, no. 2 (2000): 173–195; Ingham, "Letting Scotus Speak for Himself," *Medieval Philosophy and Theology* 10 (2001): 173–216; and Tully Borland and T. Allan Hillman, "Scotus and God's Arbitrary Will: A Reassessment," *American Catholic Philosophical Quarterly* 91, no. 3 (2017): 399–429. In 2000 Williams was able to call his own interpretation "old-fashioned": Williams, "Most Methodical Lover?" 169. An important post-1986 Williamsian piece is Jeff Steele, "Duns Scotus, the Natural Law, and the Irrelevance of Aesthetic Interpretation," *Oxford Studies in Medieval Philosophy* 4 (2016): 78–99. Thomas M. Osborne strikes a Williamsian tone in *Human Action in Thomas Aquinas, John Duns Scotus, and William of Ockham* (Washington, DC: Catholic University of America Press, 2014), 85; but see his earlier, longer discussion in *Love of Self and Love of God in Thirteenth Century Ethics* (Notre Dame, IN: University of Notre Dame Press, 2005), 186–206, which is decidedly non-Williamsian.

<sup>18</sup>This is a view anticipated by Richard Cross in a quick aside in Cross, *Duns Scotus* (Oxford: Oxford University Press, 1999), 91–2: "No moral principles concerning actions whose objects are creatures are necessarily true. This does not mean that there are not many such moral principles that are contingently true, true unless God decides to command otherwise." I take this to assert the view that, for Scotus, there is a default morality arising just from the natures of things, but that this default morality is such that God could rightly issue commands contrary to it. Unfortunately, Cross never developed this view or cited texts in favor of it, and later seems to have rejected this reading of Scotus. See Richard Cross, *The Medieval Christian Philosophers: An Introduction* (London and New York: I. B. Tauris, 2014), 182, quoted in Borland and Hillman, "Scotus and God's Arbitrary Will," 400. C. P. Ragland developed a view, inspired by Scotus, on which human nature makes it the case that some very general moral propositions are true, and that God's freedom over the moral law consists in his prerogative to determine the general moral law into more specific moral laws. C. P. Ragland, "Scotus on the Decalogue: What Sort of Voluntarism," *Vivarium* 36, no. 1

two senses (strict and loose) Scotus distinguishes<sup>19</sup>—is true just by virtue of the relevant sort of persons existing. That God alone must be loved above all and for his own sake is true just because God exists. Similarly, that adultery and lying are wrong is true just because humans exist. So the mere existence of human beings entails that there are the very moral truths there are about how we ought to treat each other. Famously, Scotus thinks that some parts of the natural law are contingently true.<sup>20</sup> The view I advance preserves the contingency of such truths, because God need not have created human beings. Moreover, the natural law's being what it is does not in every way circumscribe God's ability to issue morally binding commands. God is free to command us to follow the natural law (as he does through the Decalogue), not to follow some parts of the natural law (as he did to Abraham when he told him to kill Isaac), to perform some action which the natural law neither obliges nor forbids us to perform (as he did when he told Adam and Eve not to eat the fruit of a certain tree), and so on.

In this essay, I will pursue the following path to reconcile the naturalistic theme in Scotus's ethics with the voluntaristic. In section II I will argue that Scotus thinks the natural law is prior to divine commands. We do not need divine commands to get natural laws. In section III I will present a series of texts which show Scotus making arguments for conclusions about the natural law which are "secular" arguments, i.e., arguments which appeal to natural facts about what is good and bad for human beings. In section IV I will consider two texts which seem to say that we do not get laws without the divine will. Keeping in mind the whole of what Scotus has to say about natural law, we ought to read one of these texts as asserting merely that there would not be some natural laws if God had never created, or had created a very different world; and we ought to read the other text as assuming a restricted domain of laws—all laws *of a certain kind*, perhaps divine positive laws, are what they are for no other reason than that it pleases God to legislate them. In section V I will consider a text which seems to say that things are good only because God wills them to be good. I think this text shows that *one sort* of goodness obtains just because God gives it to things, and this sort of goodness is compatible with the natural goodness things have by being what they are and acting in accordance with their natures. In section VI I discuss divine dispensations from divine commands and draw my conclusion that the naturalistic and voluntaristic themes in Scotus's ethics hang together consistently.

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(1998): 67–81, at 78. Ragland's view is elegant; in the present context, the only criticism I wish to register is that I simply cannot find this view in Scotus, though the spirit of the view is Scotistic.

<sup>19</sup>These two senses of natural law are discussed in section II, below.

<sup>20</sup>The contingency of some of the natural law is discussed in sections II and IV, below.

## II. The Priority of Natural Law

Scotus understands natural law, in its strict sense, in such a way that if some proposition  $p$  is part of the natural law then  $p$  is necessary in a very strong sense: God could not make  $p$  false.<sup>21</sup> His favorite example of a (strict sense) natural law is that God must be loved.<sup>22</sup> God cannot make this false, which is to say that God cannot make it true either that God must not be loved or that God need not be loved. Since Scotus thinks that God can do anything which is logically possible,<sup>23</sup> it is reasonable to attribute to Scotus the view that  $p$  is logically necessary. So a natural law, in this strict sense, is logically necessary and therefore has its truth and modal status simply from the meanings of the relevant terms (or from the natures picked out by the relevant terms). Therefore it is what it is independent of divine legislation—God does not make the logically necessary to be logically necessary. Yes, indeed, God in fact issues commands, in the first table of the Decalogue, which track or replicate the (strict sense) natural law. But whatever purpose these commands serve, it is not to make (strict sense) natural laws, laws, and therefore it is not to give them their morally binding force.<sup>24</sup>

<sup>21</sup>Scotus discusses natural law in *Ord.III.37.un* (V 10.271–91).

<sup>22</sup>*Ord.III.37.un.20* (V 10.280–1); *Ord.III.27.un.14* (V 10.52). The argument is that the highest good ought to be loved the most; God is the highest good; therefore God ought to be loved the most. For discussion, see Marilyn McCord Adams, “Duns Scotus on the Goodness of God,” *Faith and Philosophy* 4, no. 4 (1986): 486–505, at 488; and Thomas M. Osborne, *Love of Self and Love of God in Thirteenth Century Ethics*, 186–206, which is probably the most thorough discussion of this argument available.

<sup>23</sup>*Ord.IV.46.1.25* (V 14.204); *Ord.I.44.un.7* (V 6.366).

<sup>24</sup>Therefore, if for no other reason, we must reject the Copleston-Wolter claim that “it is not the content of the moral law which is due to the divine will, but the obligation of the moral law, its morally binding force.” See Copleston, *History of Philosophy*, vol. 2, 547, quoted in Wolter, *Duns Scotus on the Will & Morality*, 24. At least some of the moral law, the (strict sense) natural law, does not depend on the intervention of divine will. For the same reason we must also reject the claim that “Scotus is of the view that laws require a law-giver—so, in order for  $x$  to count as a law,  $x$  requires ratification and promulgation” (Borland and Hillman, “Scotus and God’s Arbitrary Will,” 423). I rush to point out that Wolter, Borland, and Hillman all recognize that God cannot change the (strict sense) natural law. They are less clear about why this is and what it entails. If, for example, Borland and Hillman are correct and *all* laws require a lawgiver, then a (strict sense) natural law such as “God must be loved” would have its truth from the natures of things but its status as moral law from divine legislation. This is an odd result. But there is a deeper problem here. It is one thing not to be able to change the truth of a proposition  $p$  and quite another to be unable not to legislate  $p$  (i.e., ratify and promulgate). Scotus is crystal clear that God cannot change the truth of  $p$  where  $p$  expresses a (strict sense) natural law. But I see no reason at all to attribute to Scotus the view that God is necessitated to legislate  $p$  where  $p$  expresses a (strict sense) natural law. In fact there is strong reason *not* to attribute this view to Scotus, since this view entails that God *promulgates*  $p$  but presumably a divine person cannot be under a law (and so cannot be subjected to a law’s promulgation) and all created persons are contingent. Therefore it is possible that there is no one to whom God could promulgate a law. In such a circumstance legislation would not

The (strict sense) natural law cannot be changed, even by God, because, as Scotus puts it, “[Things belonging to the] natural law are first practical principles known in virtue of their terms or as conclusions that necessarily follow from them.”<sup>25</sup> But there is a loose sense of natural law according to which such laws are neither first practical principles known in virtue of their terms nor conclusions that necessarily follow from such practical principles. Instead, these (loose sense) natural laws are those which are highly consonant (*multum consona*) with the (strict sense) natural law.<sup>26</sup>

What, then, is consonance? I do not know.<sup>27</sup> I wish I did, but this issue is not very important for present purposes. Instead, I would like to highlight one

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be possible. But then a (strict sense) natural law would not be a law. But Scotus says that (strict sense) natural laws are true *from their terms* and not, say, from divine legislation.

<sup>25</sup>*Ord.* III.37.un.16 (V 10.279); trans. Williams, 252 (modified). Williams’s translation introduces the English term “precepts” into a sentence in which no Latin term corresponding to “precepts” occurs. This makes Williams’s translation of this passage slightly misleading. Given the ambiguity of “praeceptum”—it may mean both “rule” (and a rule is truth-evaluable) and “command” (a command is not)—and given all the confusion over the years about whether Scotus is a divine command theorist and just how voluntarist is his moral philosophy, the insertion of “precepts” here seems to be too bold an interpretive move. It sets up the unwitting reader to identify (strict sense) natural laws with the precepts belonging to the first table of the Decalogue. I deny this identity. We must keep natural laws distinct from divine commands if we are going to get to the bottom of Scotus’s ethics. The Latin Williams translates here (backing up a little bit), is: “Ad quaestionem ergo dico quod aliqua possunt dici esse de lege naturae dupliciter: uno modo tamquam principia practica nota ex terminis, vel conclusiones necessario sequentes ex eis.”

<sup>26</sup>*Ord.* III.37.un.25 (V 10.283).

<sup>27</sup>One prominent interpretation of Scotus’s use of consonance in this context is “aesthetic”: that there is supposed to be a beautiful fittingness between the second table and the first table—or perhaps between the strict sense and the loose sense natural laws. In favor of the aesthetic interpretation of consonance, see Cross, “Natural Law, Moral Constructivism, and Duns Scotus’s Metaethics,”; and Bychkov, “In Harmony with Reason.” Against it, see Steele, “Irrelevance of Aesthetic Interpretation.” Hannes Möhle thinks the consonance relation is characterized *negatively* as *not deducible from*, and *positively* as *elaborations or explanations of*, and thinks the relata of this relation are the first and second tables. Möhle, “Scotus’s Theory of Natural Law,” in *The Cambridge Companion to Duns Scotus*, ed. Thomas Williams (Cambridge: Cambridge University Press, 2003), 312–31, at 316. The problem with Möhle’s view is common to every interpretation of Scotus’s ethics of which I am aware: he conflates natural law with divine commands. I tend to prefer, but do not have a settled judgment about, an alternative gloss of consonance, according to which Scotus calls the natural laws commanded in the second table consonant with those commanded in the first because he recognizes that those commands are by nature well suited for promoting the kinds of actions and habits which make a person fit for heaven. Loving the highest good in community with all the saints is our heavenly destination. Divine commands which promote loving interactions between people, which, if universally followed, would remove fear and envy and hatred from our community life, seem just the sort of commands a wise and loving God would issue as a preparation for the perfect community life in the life to come. Ingham reflects on this point with wisdom and eloquence in “Duns Scotus, Morality, and Happiness,” esp. 195. Terence Irwin takes a similar line in *The Development of Ethics: Volume 1*, 693–4.

non-defining but non-controversial and necessary feature each of strict and loose sense natural laws. God *cannot* will anything contrary to (*strict sense*) natural laws. He cannot command contrary to them. He cannot make dispensations from commands to follow them. By contrast, God *can* will contrary to (*loose sense*) natural laws. It is in his power to will, and will *rightly*, contrary to these laws. And, should he issue commands to follow these (loose sense) natural laws, it is also in his power to grant dispensations from our obligations to obey these commands. Scotus argues that God in fact has made dispensations from his commands to follow (loose sense) natural laws, most famously in God's commanding Abraham to sacrifice his son Isaac, which Scotus acknowledges is contrary to the (loose sense) natural law against killing.<sup>28</sup> And he considers at some length the circumstances under which God would command contrary to the (loose sense) natural law forbidding polygamy.<sup>29</sup>

Are these (loose sense) natural laws, natural laws only if God commands them? No. However, the context in which Scotus draws the distinction between strict and loose sense natural laws does make it difficult to see that, for Scotus, even (loose sense) natural laws are prior to divine commands. The context is the relationship between the natural law and the Ten Commandments. God through Moses gave us Ten Commandments, and God in Christ gave us Two: love God and love your neighbor. Augustine had connected the Ten with the Two: "For the Decalogue has ten precepts, which . . . are arranged in such a way that the three which are on the first tablet pertain to God, namely to the knowledge and love of the Trinity; the seven which are on the second tablet pertain to the love of neighbor."<sup>30</sup> Peter Lombard took up this division of the Commandments in Book III, Distinction 37 of his *Sentences*, and Scotus follows Augustine and Lombard in his own discussion of the Decalogue.<sup>31</sup> Scotus draws the distinction between strict and loose sense natural law and maps them onto, respectively, the first and second Tables. Given the context, it is tempting, though mistaken, to draw the conclusion that nothing is a (loose sense) natural law unless it has been commanded. The view that some natural laws are natural laws only in a loose sense, as consonant with but not deductively inferrable from

<sup>28</sup>*Ord.III.37.un.13* (V 10.277).

<sup>29</sup>*Ord.IV.33.1* (V 13.421–30).

<sup>30</sup>Augustine, *Sermo* 9, cc5–6, quoted in Peter Lombard, *The Sentences*, 4 vols., trans. Giulio Silano (Toronto: PIMS, 2007–2010), III.37.1 (vol. 3, 151).

<sup>31</sup>As Lombard counted them, The Ten Commandments are, paraphrased, these: First Table: 1. You shall have no other gods but God; 2. You shall not take God's name in vain; 3. You shall observe the Sabbath; Second Table: 4. Honor your father and mother; 5. You shall not kill; 6. You shall not commit adultery; 7. You shall not commit theft; 8. Do not bear false witness; 9. Do not covet your neighbor's wife; 10. Do not covet your neighbor's house and other possessions. Scotus himself expressed some doubts that the Sabbath command really is a part of the (strict sense) natural law, but we do not need to get into this here. See *Ord.III.37.un.21–4*, 29 (V 10.281–4).

(strict sense) natural laws, stands on its own, independent of Scotus's view about the relationship between these natural laws and the Decalogue. It is just not warranted by the textual evidence to think that (loose sense) natural laws are inadequate in some way which makes them dependent for their morally binding force on being commanded by God. What is warranted is to think that God's commands, at least the Ten, are all in accord with the natural law. Concerning those (strict sense) natural laws in accordance with which God issues the first table, God could not have commanded contrary to them (though he need not have commanded at all), and he cannot make dispensations from any commands to follow them. Concerning those (loose sense) natural laws in accordance with which God issues the Second Table, God could have commanded contrary to them (though he need not have commanded at all), and he can make dispensations from any commands to follow them. In short, the natural law, in both the strict and loose sense, is what it is, whatever God commands. God cannot make (loose sense) natural laws not to be natural laws—except by not making this world or making a different world. But he could have issued commands which are contrary to those (loose sense) natural laws, and, whether his commands track or do not track the (loose sense) natural law, God could dispense people from their obligation to follow divine commands.

The priority of *all* natural laws (strict and loose) to divine commands is further supported by Scotus's discussion of the badness of Adam's original sin.<sup>32</sup> Here, he notes that eating from a certain tree is not bad on its own. It is bad only in case God commands it, as he did command Adam and Eve. But bad actions which are bad only because they are contrary to a divine command are less bad than other sorts of actions. They are less bad than those actions which are bad in themselves and not because they have been commanded. Scotus says that all the bad actions which concern the Decalogue are the sort of bad actions which are bad in themselves. God has prohibited them because they are bad, and not the other way around. *By the natural law*, any action opposed to them is bad. *By natural reason* we can see that all commands of the Decalogue ought to be observed.<sup>33</sup> So God issues the Decalogue (at least in part) because these

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<sup>32</sup>*Rep.*II.22.un (Wadding-Vives 23.103–5); *Lect.*II.21–2.1–2 (V 19.199–206).

<sup>33</sup>*Rep.*II.22.un.3 (Wadding-Vives 23.104): “Nunc autem peccatum [*sic*], quod solum est peccatum, quia prohibitum, minus est peccatum formaliter, quam illud quod in se malum est, et non quia prohibitum. Nunc autem comedere de illo ligno, non plus fuit peccatum de genere actus quam de alio ligno, sed solum quia prohibitum. Sed omnia peccata, quae sunt circa decem praecepta, formaliter non tantum sunt mala, quia prohibita, sed quia mala, ideo prohibita, quia ex lege naturae oppositum cuiuslibet fuit malum, et per naturalem rationem potest homo videre, quod quodlibet praeceptum ex illis est tenendum.” And *Lect.*II.21–2.1–2.29 (V 19.206): “Nunc autem bonum quod formaliter adimitur per primum peccatum, fuit rectitudo originalis; hoc autem non fuit maximum bonum; maius autem bonum est illud praeceptum *Diliges Dominum Deum*

commands are in accordance with a natural law which is what it is prior to and independent of God's issuing these commands. The distinction between strict and loose senses of the natural law is not present here, but this does not matter, and it does not matter if Scotus had this distinction in mind here. The badness of any actions contrary to All Ten is just due to the natures of those actions.

### III. Secular Arguments for Natural Laws

There are several texts which show Scotus the natural lawyer at work using arguments drawn from natural reason, reflecting on natural goodness and badness in human action, to draw conclusions about how we ought morally to act.

The first concerns the moral goodness of sex. Scotus offers four reasons for thinking that sex can be a morally good action. Two of his four reasons appeal explicitly to revealed truths, but two are secular. Attending just to the secular: first, it is in accord with right reason for a human being to preserve his species; second, supposing human beings were immortal (thus removing the need to preserve the species), it is in accordance with a correct natural inclination [*rectam inclinationem naturae*] to share their species.<sup>34</sup> Therefore, sex is good.

But sex is not good in every circumstance. Scotus goes on to offer reflections on the circumstances in which sex is in fact morally good. He describes three circumstances which must obtain for a procreative act to be morally good, and he argues for the moral necessity of these circumstances using both revealed and secular reasons. First, the couple must will as an end of the action the procreation of offspring who will achieve the perfect human activity of worshipping God. The secular argument for the requirement of this circumstance is convoluted but appeals to Aristotle's view that contemplation of divine things is the perfection of human action.<sup>35</sup> Second, the action must be performed by "determinate persons," that is, just two people, one a man and one a woman. The secular reasons for this include that children ought to know who their parents are and vice versa and that families ought to be tightly knit.<sup>36</sup> Third, the couple must have entered into an indissoluble bond of marriage, and the secular reasons for this are similar to those for the second circumstance.<sup>37</sup> But he adds that even if he cannot prove that sexual partners *must* be indissolubly married for their action to be morally good, still, it is "honorable and consonant with natural reason [*honestum et rationi naturali consonum*] that a man and woman should be under such an obligation

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*tuum* etc. et alia praecepta decalogi, et ista sunt magis bona quam *Non comedas de ligno vitae*, quia hoc non est bonum nisi quia praeceptum erat, sed bonum decalogi est bonum formaliter ex se."

<sup>34</sup> *Ord.*IV.26.un.13 (V 13.339).

<sup>35</sup> *Ord.*IV.26.un.19–20 (V 13.340–1).

<sup>36</sup> *Ord.*IV.26.un.23–6 (V 13.341–2).

<sup>37</sup> *Ord.*IV.26.un.29 (V 13.343).

for the sake of such an end [procreation].”<sup>38</sup> Therefore, in these circumstances, but perhaps not only in exactly these circumstances, sex is good.

The second text concerns God’s possible permission of polygamy.<sup>39</sup> Scotus conceives of circumstances in which God might permit actions contrary to the law demanding monogamy. The context is the biblical patriarchs’ practice of having multiple wives. Was it licit for them to do so? Perhaps in the time of the patriarchs there was a special need to increase the number of worshippers of God, so God dispensed the patriarchs from the obligation to be monogamous. Perhaps there might come a time in the future where, due to some war or disaster or plague, there are few men but many women. Scotus can imagine God making polygamy licit as a special dispensation, designed to repopulate the world. Nevertheless, Scotus thinks that it belongs to the (loose sense) natural law, that marriage is between just one man and just one woman.<sup>40</sup> In order for polygamy to be permissible, a divine command would need to be in place.<sup>41</sup> We need the command in this case because polygamy is contrary to the (loose sense) natural law, which we can clearly discern by reflecting on the purpose of marriage.

In a third relevant text, Scotus says that the authority of parents over children is “just by the natural law in virtue of which children are bound to obey their parents. Neither was this revoked by any positive Mosaic or Gospel law [i.e., divine commands given through Moses or Jesus Christ], but rather it was confirmed.”<sup>42</sup>

A fourth relevant text is a brief reflection on the epistemological effects of human fallenness. When Scotus discusses covetousness, forbidden in the ninth and tenth commandments, he thinks that *corrupt* human beings would not be able to figure out that this is wrong. Scotus says, “Corrupt human beings would not have known that such coveting is contrary to the natural law; for that reason it was necessary for that fact to be set forth explicitly in a revealed law.”<sup>43</sup> This passage is part of Scotus’s response to an objection raised early in the question. The objection cites Romans 7:7, “I would not have known covetousness if the law had not said, ‘You shall not covet,’” and then argues that if *p* belongs to the natural law then the truth of *p* can be known even if *p* “is not written down.” Therefore, there is no natural law against covetousness.<sup>44</sup> In his reply, Scotus just

<sup>38</sup> *Ord.IV.26.un.30* (V 13.343–4).

<sup>39</sup> *Ord.IV.33.1* (V 13.421–30).

<sup>40</sup> *Ord.IV.33.1.22–3* (V 13.428–9).

<sup>41</sup> *Ord.IV.33.1.26* (V 13.428–9).

<sup>42</sup> *Ord.IV.15.2.93–94* (V 13.81), trans. Allan Wolter in John Duns Scotus, *Political and Economic Philosophy* (St. Bonaventure, NY: The Franciscan Institute, 2001), 33.

<sup>43</sup> *Ord.III.37.un.41* (V 10.289–90), trans. Williams, 257.

<sup>44</sup> *Ord.III.37.un.5* (V 10.272), trans. Williams, 248–9.

denies that *p*'s belonging to the natural law entails that *p* can be known apart from some special promulgation. Corrupt human beings, he reasons, might be damaged in such a way that they are unable to learn some parts of the natural law. But nowhere in this text does Scotus say or imply that commandments nine and ten *make* concupiscence wrong; instead, they *reveal* its wrongness. Notice that he does not think we fallen creatures lack ability to discern other parts of the natural law. This is attested by the examples already given in this section. The text is important because it sets forth Scotus's view about why there is a need for divine legislation ("revealed law"). The need is not that God's world is otherwise bereft of moral laws. Instead, the need is that fallen humans cannot figure out what the moral laws are. In other words, God's commands have to do with the epistemology and not the metaphysics of natural law.

Williams said that it is a mistake "to suppose that Scotus ever offers an argument for a contingent moral proposition."<sup>45</sup> By now it should be clear that this is untenable. Williams supported this claim by offering a reading of Scotus's discussion of lying.<sup>46</sup> I read this as a fifth text in support of my own take on Scotus, so a brief discussion of it and Williams's reading of it is worthwhile. In this question Scotus asks whether every lie is a sin. He considers several arguments for the affirmative, rejecting these in turn and then going on to offer his own nuanced reasons for his affirmative answer. In response to one view, Scotus retorts with an analogy: "What one believes to be entirely false is no more inappropriate or illicit matter for speech than a human being who is innocent and useful to the commonwealth is illicit matter for killing."<sup>47</sup> To help us understand the analogy, Scotus then refers back to *Ordinatio* III.37.un.13, in which he presents the following thought experiment: take two acts of killing where all relevant circumstances are the same. Can God make one act of killing licit while leaving the other illicit? Scotus answers "yes," and his proof is that God did just this when he commanded Abraham to kill Isaac, thereby dispensing Abraham from the command against killing. As there so here: Scotus is saying that where there are two acts of lying in which all relevant circumstances are the same, God can dispense one liar from the command against lying, making his lie licit, while leaving the other liar's lie illicit. Williams draws a harsh lesson from this text: it "illustrates just how uncompromising Scotus's voluntarism really is. For it shows not merely that the prohibition against killing this man does not follow from any facts about human nature, but that this prohibition does not follow from any facts whatsoever, other than God's will."<sup>48</sup> But Williams's lesson is too harsh.

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<sup>45</sup>Thomas Williams, "Reason, Morality, and Voluntarism," 86.

<sup>46</sup>*Ord.*III.38.un.17 (V 10.299–300).

<sup>47</sup>*Ord.*III.38.un.17 (V 10.299–300), trans. Williams, 261–2.

<sup>48</sup>Thomas Williams, "Reason, Morality, and Voluntarism," 89.

While it is indeed a sobering thought that God could make some killing, or lying, permissible or even obligatory, it simply does not follow from this possibility that natural laws against killing and lying obtain in the first place through a divine command. Indeed, later in the same passage Scotus implies that killing is worse than lying and for reasons that do not have to do with divine will. Scotus says that if God can dispense one killer from the command against killing, *how much more so* can he dispense one liar from the command against lying, since “it is less bad to take true opinion away from one’s neighbor, or to be the occasion of generating false opinions in him, than to take away his bodily life. Indeed, there is scarcely a comparison.”<sup>49</sup> Scotus here makes clear that the persuasive power of his example depends on murder being much worse than lying.

I take it that these five texts supply good reasons to think that Scotus thinks that we get natural law from nature, not divine commands. Now I want to consider some texts which might be viewed as challenges for the view I am advancing.

#### IV. Natural Law Dependent on Divine Will?

Early in *Ordinatio* III.37.un (the question about whether the Ten Commandments belong to the natural law), before giving his own full-fledged view, Scotus offers an argument for thinking that the Ten Commandments do not belong to the natural law. While Scotus eventually rejects the conclusion, he does not reject all the premises. One of the premises he seems to accept says that whatever propositions are true from their terms or deductively inferable from propositions true from their terms, are true “prior to any act of will; or at any rate they have their truth even if, *per impossibile*, there is no willing.”<sup>50</sup> As we have seen, in the view Scotus goes on to develop, the natural laws which are selected for special attention in the second table of the Ten Commandments are natural laws only in a loose sense and therefore are *not* among those propositions which are true from their terms or deductively inferable from propositions true from their terms. The text suggests, then, that (loose sense) natural laws are true *posterior* to an act of will; or at any rate *do not* have their truth if there is no willing. So it appears that we need an act of divine willing in order to get true (loose sense) natural laws.

The need for a divine act of willing fits nicely with a strongly voluntarist reading of Scotus, since it seems to say that what we need, in order to have any (loose sense) natural laws, is a special act of divine legislative willing (such as commanding). But the text does not force us to adopt this strongly voluntarist

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<sup>49</sup>*Ord.*III.38.un.17 (V 10.299–300), trans. Williams, 261–2.

<sup>50</sup>*Ord.*III.37.un.14 (V 10.277), trans. Williams, 251.

reading. For example, it is equally in accord with the text to hold that the relevant act of divine will is simply the very same as that by which God selects this world as the world to make.

Logically prior to creation and logically prior to God's willing to create and to create this world, the divine intellect considers many propositions which are neither true nor false. Instead they are possibly true. When God decides on the world he wants to make, many possibly true propositions become true, or become such that they will be true.<sup>51</sup> Examples of such propositions are, "There will be humans," "There will be this particular human," and, "This particular human eats cake on October 25, 2000." It is different with necessarily true propositions. These do not get their truth from the divine will. They have their truth prior to the divine will. Thus, for necessarily true propositions, they will stay true whatever world God decides to make, and whether or not God decides to make a world at all. Examples of such propositions are, " $2 + 2 = 4$ ," and "A human is a rational animal." This difference between true necessary propositions and true contingent propositions holds not only for descriptive propositions, of the sort given as examples just now, but also for practical propositions, including propositions about what morally ought to be done.<sup>52</sup> (Strict sense) natural laws are among the true necessary propositions and (loose sense) natural laws are among the true contingent propositions.

There would not be any contingent (i.e., loose sense) natural laws unless God makes the world, just as there would not be any contingent truths whatsoever unless God makes the world. (Scotus is thus committed to something like an S5 modal logic: a proposition expressing the possible truth of a proposition is itself necessarily true.) We are not forced by the texts to think that Scotus holds that we could have all the natural facts about this world and, unless God did some additional, value-conferring willing, the natural world would be bereft of moral value, or bereft of all moral value except that which is entailed by the necessarily true natural laws. To adapt a much-discussed analogy, we can say that in physics as in morals, not all the laws built into this world constrain God's

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<sup>51</sup>*Rep.I-A.38.1–2.35–45* (Wolter and Bychkov 2.457–60). Allan B. Wolter and Oleg V. Bychkov produced a new Latin text of *Reportatio I*. There are several versions of the "Reports" on Scotus's late lectures, so "I-A" distinguishes one from several. Wolter and Bychkov's text, with translation, is in John Duns Scotus, *The Examined Report of the Paris Lecture: Reportatio I-A*, 2 vols. (St. Bonaventure, NY: Franciscan Institute Publications, 2004–8). Scotus's considered view seems actually to be that *most* contingent truths are true because God wills them to be so. Contingent truths about sins kept Scotus from generalizing his view across all contingent truths. See Gloria Frost, "John Duns Scotus on God's Knowledge of Sins: A Test-Case for God's Knowledge of Contingents," *Journal of the History of Philosophy* 48, no. 1 (2010): 15–34.

<sup>52</sup>Scotus is very clear about this in *Ord.I.38.un.10* (V 6.307).

willing: he can prevent fire from heating, for example.<sup>53</sup> But he cannot make fire to be something which by nature does not heat. If God wanted to make nothing which by nature heats, he would not have made fire. Similarly, God can make it right (through a command, or through a dispensation from a command) for Abraham to kill his son. But he cannot make murder to be something which by nature is not wrong. If God wanted to make nothing which by nature is wrong, he would not have made humans—a world consisting entirely of yellow rubber duckies would have been a better choice.

One worry here stems from the fact that (loose sense) natural laws are *contingently* true. Their truth, I claim, is *prior* to any divine legislative willing such as commanding, but *posterior* to God's selection of this world as the world to make. But Scotus says that God can do whatever does not entail a contradiction.<sup>54</sup> And a contingent proposition is a proposition the contrary of which is possibly true. So, for example, if "murder is wrong" is contingently true, then "it is not the case that murder is wrong" is possibly true. So it looks like God can make it true that it is not the case that murder is wrong. From here one might be tempted to infer that God could make a world, more or less like ours, with created persons like us, and *also* make it true that it is not the case that murder is wrong in that world—make it true, say, that murder is permissible in that world.<sup>55</sup> But this would be too hasty. We should not saddle Scotus with such a view if we are not forced by the texts to do so. And in this case, we are not forced by the texts to do so. God must will something or other in order to make true "it is not the case that murder is wrong"—prior to any act of divine will, there are no contingent truths, there are only necessary truths and possible truths. But plausibly, willing a world of rubber duckies entails (when the one willing is omniscient) a willing to make it true that it is not the case that murder is wrong. It is not the case that murder is wrong, in such a world, because there are no created persons to be murdered or to commit murder. By contrast, for any world containing created persons for whom it is causally possible for them to kill one another, we simply have no reason to think that God could, consistently, will that world and *also* will that it not be the case that murder is wrong.<sup>56</sup>

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<sup>53</sup>Daniel 3:19–27. *Ord.*I.8.306 (V 4.328); *Lect.*I.8.285 (V 17:108). This example is discussed in a similar context but with different conclusions drawn in Marilyn McCord Adams, *William Ockham*, vol. 2 (Notre Dame, IN: Notre Dame University Press), 1196; in Giorgio Pini, "Scotus on the Possibility of a Better World," *Acta Philosophica* 18, no. 2 (2009): 283–306; and in Wolter, "The Unshredded Scotus," 273–5.

<sup>54</sup>*Ord.*I.44.un.7 (V 6.366).

<sup>55</sup>I am grateful to an anonymous referee for raising this worry.

<sup>56</sup>For this reason I cannot completely concur with Thomas M. Osborne's interpretation of how Scotus understands God's command to Abraham to kill Isaac. Osborne says, "Scotus merely states that God can make murder good, since God himself is not bound by anything outside him." See Osborne, *Human Action*, 85. God can indeed make it good for Abraham to kill Isaac, accord-

A similar point has been developed recently by Borland and Hillman.<sup>57</sup> The text under discussion in the relevant section of their paper says, “There is nothing in the divine will that inclines specifically to any secondary object [that is, any object other than God] in such a way that it would be impossible for it justly to incline towards its opposite. For without contradiction the will could will the opposite, and thus it could justly will such.”<sup>58</sup> They note that “‘God’s will could justly will the opposite of what he wills’ is ambiguous.” It could mean, “If God justly wills that  $x$  ought to do some good thing  $A$ , then God could justly will that  $x$  ought [not] to do  $A$ .”<sup>59</sup> But, Borland and Hillman note, “Nothing Scotus says here rules out that he is not, instead, thinking along these lines: If God justly wills that  $x$  ought to do some good thing  $A$ , then God could justly *not will* that  $x$  ought to do  $A$ .” This is a key and indeed groundbreaking insight into Scotus’s ethics. God’s ability to will the opposite of what he has willed simply does not entail that God could upend the moral order. According to Borland and Hillman, simply not willing that some possible practical proposition be a true natural law is sufficient to will the opposite of willing that some possible practical proposition be a true natural law.

One might object to Borland and Hillman’s interpretation of “willing the opposite” on the grounds that “not willing” does not seem to be an act of willing. This is delicate, but Scotus does indeed think that *nilling* is an act of will. For Scotus, the faculty of will is capable of two different sorts of acts: willing (a positive movement toward an object) and nilling (a rejection of an object). Therefore, so long as we understand the “not will” in Borland and Hillman’s formulation as “nill” rather than “not have any act of will in the matter,” we leave their formulation cogent.

A second, related objection to Borland and Hillman’s interpretation of “willing the opposite” starts with the observation that not willing the truth of a proposition (such as that  $x$  ought to do  $A$ ) is insufficient to make that proposition false. However, a divine *nilling* with respect to a proposition is, plausibly, to do more in regards to it than just to leave it possibly true. Plausibly, God’s nilling a proposition is sufficient to make that proposition false. So if we interpret “not

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ing to Scotus, because God can dispense Abraham from the command against murder and issue an alternative command—kill your son—and in this sense Osborne is correct. But this is a far cry from God’s making a world with creatures like us and then making it the case that “murder is wrong” is false in that world. As I understand Scotus, God could do no such thing. For my take on how we ought to understand Scotus’s teaching about dispensations, see section VI.

<sup>57</sup>Borland and Hillman, “Scotus and God’s Arbitrary Will,” 412.

<sup>58</sup>*Ord.*IV.46.1.32 (V 14.206), trans. Wolter in Wolter, *Duns Scotus on the Will & Morality*, 187, and quoted in Borland and Hillman, “Scotus and God’s Arbitrary Will,” 410.

<sup>59</sup>Borland and Hillman, “Scotus and God’s Arbitrary Will,” 410. I insert the “not” here to rectify a typo in the published version of their article. The authors assure me (via email correspondence) that they intended a “not” to go where I have inserted it.

willing” as “nilling” then, plausibly, if God nills the proposition that  $x$  ought to do  $A$  then that proposition is false.<sup>60</sup>

There is good reason, therefore, to think that Scotus’s comments about the dependence of (loose sense) natural laws on divine will is entirely consistent with the view that, given the world more or less as it is, with creatures like us, the natural law (in both strict and loose senses) is fixed. The truth of such laws is dependent on divine will because they would not hold had not God willed there to be this world. But they obtain by nature and not by divine legislative imposition because, given the world God willed there to be, the natural law could not be otherwise.

This view, that some contingent moral laws obtain just in virtue of God making creatures like us, faces a challenge from a text in Scotus’s discussion about whether God could have arranged the world differently. Here he says, “[God] can establish a different law [than the one he has established], and if that law were established by God, it would be correct, because no law is right except to the extent that it is set up by the divine will that accepts it.”<sup>61</sup> The passage suggests, on the surface at least, that there could be different natural laws just because God wanted there to be different natural laws; and this would be incompatible with my claim that Scotus thinks natural laws are established by the natures of things and not by divine decree. But this passage must be read with care, in its context. So reading it, it is clear that by “no law” Scotus does not really mean “no law.” He establishes a domain a couple paragraphs before this quotation which includes only laws of a certain kind. Just as everyone knows what I am talking about when I tell my students that no one may use a phone in class, so Scotus establishes a context where the relevant domain is to be assumed.

The context is whether, concerning the things God has in fact made, God could order them in a way that is different from the way he has in fact ordered them. Scotus begins by highlighting a feature he says is common to all persons, both God and created persons. Persons have both absolute power and ordered power.<sup>62</sup> Ordered power is the power to act in accordance with a right law.<sup>63</sup> Absolute power is the power to act beyond or against a right law.<sup>64</sup> Now, when

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<sup>60</sup>Important as Borland and Hillman’s article is, they write within the Wolter-Williams paradigm that (loose sense) natural laws are more or less to be identified with divine legislation such as the second table of the Decalogue. As they say, “Scotus is of the view that *laws* require a *law-giver*—so, in order for  $x$  to count as a law,  $x$  requires ratification and promulgation.” See Borland and Hillman, “Scotus and God’s Arbitrary Will,” 423. It is their (Wolterian) view that God’s legislative options are quite limited both by God’s nature and by creaturely nature (411), but for there to be genuinely moral truths (i.e., practical truths with morally binding force) there must be commands and/or legislation.

<sup>61</sup>*Ord.I.44.un.8* (V 6.366), trans. Williams, 96–7.

<sup>62</sup>*Ord.I.44.un.3* (V 6.363).

<sup>63</sup>*Ord.I.44.un.3* (V 6.364).

<sup>64</sup>*Ord.I.44.un.3* (V 6.364).

someone lacks authority over a law, but that law has authority over him, then acting beyond or against that law—exercising one’s absolute power—is to act disorderedly. For such a person, the only way to act orderedly, with respect to that law, is to follow that law.<sup>65</sup> However, concerning some law (call it *L1*), when someone possesses authority over *L1*, authority in a very strong sense according to which *L1* is not right except because that person has established *L1*, then that person’s acting beyond or against *L1*—exercising absolute power—can be orderly, because that person can establish some other law (call it *L2*) in accordance with which the action that was contrary to *L1*, accords instead with *L2*.<sup>66</sup>

God has this sort of authority over *some* laws. Scotus says that some laws (*leges aliquae generales*) have been established by the divine will and not by the divine intellect. The divine intellect “offers” some proposition, neither true nor false in itself but possibly true, to the divine will, for its consideration. If the proposition “pleases” the divine will, it is a right law. Scotus gives one example of such a law (“everyone who is to be glorified, first will be given grace”), and says it is like this for other laws (*aliis legibus*) too.<sup>67</sup> Immediately after this, Scotus says that when God acts in accordance with those right laws (*illas rectas leges*) he has established, he acts by his ordered power. And when God does not act in accordance with those laws (*illas leges*), he acts by his absolute power. God, we are reminded, can do anything which does not include a contradiction.<sup>68</sup> The paragraph immediately following draws the main conclusion of the question:

Accordingly, I say that there are many other things [God] can do ordinately; and when the correctness of the law [*huiusmodi legis*] according to which someone is said to act rightly and ordinately is in the power of the agent himself, there is no contradiction involved in the claim that many things other than those that are made in conformity with these laws [*illis legibus*] can be made ordinately. Therefore, just as he can act otherwise, so also can he establish a different law, and if that law were established by God, it would be correct, because no law is correct except insofar as it is established by the divine will’s acceptance.<sup>69</sup>

Here, when he says that no law is correct unless it has been established by the divine will’s acceptance, Scotus is referring back to the laws that have been under discussion since he said, two paragraphs prior, that some laws have been established by the will and not by the divine intellect. To read the conclusion as applying to all laws whatsoever, is to draw a stronger conclusion than Scotus

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<sup>65</sup> *Ord.*I.44.un.4 (V 6.364).

<sup>66</sup> *Ord.*I.44.un.5 (V 6.365).

<sup>67</sup> *Ord.*I.44.un.6 (V 6.365).

<sup>68</sup> *Ord.*I.44.un.7 (V 6.365–6).

<sup>69</sup> *Ord.*I.44.un.8 (V 6.366), trans. Williams, 96–7.

here draws. Consider that (strict sense) natural laws are prior to the divine will. God cannot not will in accordance with them. He cannot make them other than they are.<sup>70</sup> So if Scotus's "no law" conclusion really is supposed to apply to all laws whatsoever, then Scotus's ethics is after all hopelessly inconsistent. Reading the "no law" conclusion in the way I do here keeps Scotus's ethics so far consistent.

The restricted domain of laws implicit in the above quotation also permits us to hold that there are some laws which were made true by God's willing them to be true, such as (loose sense) natural laws, but which God cannot make untrue given the world as it is (with creatures like us). The question in which Scotus draws the "no laws" conclusion only aims to show that, given the world as it is, God could establish another order. It does not aim to show that the alternative order could be different in every respect.

One reasonable challenge to this "restricted domain" reading of the passage is that, in the paragraph immediately preceding the paragraph in which the "no laws" conclusion is drawn, Scotus says that God can do whatever does not include a contradiction.<sup>71</sup> In reply, it is important to recall that (strict sense) natural laws are logically necessary. God cannot change them. Thus, that God can do anything logically consistent does not entail that God can establish any law (unrestricted domain) whatsoever. Moreover, Scotus says that God commands natural laws (without discrimination between loose and strict senses) because they are right and not vice versa.<sup>72</sup> The rightness of such laws is therefore *prior* to any commands God chooses to issue, even if *posterior* to God's willing to make this world. Given the world more or less as it is, with persons like us, it is indeed "contradictory" for God to make false some practical proposition which is true by the natures of things.

As additional defense of the restricted domain reading, consider the example Scotus uses of the sort of law which obtains just because it pleases the divine will: everyone who is to be glorified, first will be given grace. This does not belong to the natural law, either in the strict or the loose sense. It belongs to the divine positive law. The parallel discussion in *Reportatio* uses different examples, but they too are examples drawn from divine positive law, not natural law.<sup>73</sup>

In this section I hope to have shown that there is a consistent alternative way to read texts in which Scotus makes law dependent on divine will, a way which avoids a strongly voluntarist position and coheres with the evidence, discussed

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<sup>70</sup>*Ord.*IV.46.1.14, 43 (V 14.201, 208).

<sup>71</sup>*Ord.*I.44.un.7 (V 6.366).

<sup>72</sup>*Lect.*II.21–2.1–2.29 (V 19.206); *Rep.*II.22.un.3 (Wadding-Vives 23.104).

<sup>73</sup>*Rep.*I-A.44.1.9–10 (Wolter and Bychkov 2.533). The examples are "every just person shall be saved, and every evil one damned," and "every rational soul shall be saved." Borland and Hillman helpfully emphasize the distinction between (loose sense) natural laws (what they call 'NL3 laws') and divine positive law in Borland and Hillman, "Scotus and God's Arbitrary Will," 416–7.

in the previous sections, that natural law is what it is independent of divine legislative willing, such as commanding. In the following section I will discuss a text which poses another sort of challenge to my view, a text which seems to say that things are good because God wills them to be good, and not vice versa.

#### V. Creaturely Goodness Dependent on Divine Will?

In *Ordinatio* III.32.un, Scotus asks whether God loves all things equally. The answer is that he does not. God loves himself most of all, and loves everything else for his own sake. But among the things he loves for his own sake, he loves some more than others; for example, he loves human beings more than inanimate material objects. Scotus cashes out God's greater love of humans than inanimate material objects in instrumental terms: God loves inanimate material objects for human beings' sake (to provide humans what they need to flourish), and loves human beings for his own sake. In this respect, the degree of God's love for a thing, strictly speaking, does not track its natural goodness but simply its place in God's contingently-ordained, complex hierarchy of *for-the-sake-of* relations, a hierarchy terminating in God. Summarizing and clarifying his view, Scotus says,

This inequality [of God's love for created things] is not on account of any goodness presupposed in any objects other than God that is some sort of reason for his willing one way rather than another. Rather, the reason is in the divine will alone: for it is because the divine will accepts certain things in such and such a degree that those things are good in that degree, and not the other way around.<sup>74</sup>

This passage seems to assert that things are good because God wills them to be and not vice versa. But there is more going on here.

Scotus is saying that no goodness in a creature is a determining reason for God to assign it its place in the hierarchy of things God loves for God's own sake. Instead, the reason for a thing's place in this hierarchy is that God assigns it that place. Thus, a thing's degree of goodness (its *gradus*, which in context means its place in the hierarchy) is logically posterior to, and fully explained by, God's assigning it that degree, and not the other way around. This is a strong statement. However, Scotus is very precise here: the goodness that God's love confers on a thing is, in this context, *the goodness of its place in the hierarchy*, and not any other sort of goodness, such as natural goodness. Immediately after the passage just quoted, Scotus brings up natural goodness (here called 'essential goodness'):<sup>75</sup>

<sup>74</sup>*Ord.* III.32.un.22 (V 10.137–8), trans. Williams, 188–9.

<sup>75</sup>Essential goodness and natural goodness are slightly distinct notions for Scotus, where essential goodness corresponds to something like first actuality—simply being a specimen of some natural kind—while natural goodness corresponds to second actuality—being a good specimen

Alternatively, if one grants that there is some degree of essential goodness in them as they are presented by the divine intellect, such that according to reason they ought to please the divine will in a well-ordered way in proportion to their goodness, this, at any rate, is certain: their being pleasing as far as actual existence is concerned derives entirely from the divine will, without any determining reason on their part.<sup>76</sup>

The alternative suggestion here is that the natural goodness of a thing makes it such that God ought to love it in a way that is proportionate to its natural goodness. Scotus does not gainsay this. He only asserts that there is no goodness in any creature which constrained God to create that creature: “their being pleasing as far as actual existence is concerned”—that is, God’s pleasure to make them exist—“derives entirely from the divine will, without any determining reason on their part”—that is, when God considers the still-merely-possible creature, including whatever natural goodness it would possess were it actual, God’s will is not determined to make it. This is not really a point about where goodness comes from at all; instead, it is a point about divine freedom: God’s knowledge of possibles does not determine his willing.

The picture suggested in the passages just quoted is that Scotus recognizes two logically distinct hierarchical orders of goodness. First, there is the goodness things have by having a place in a hierarchy of things willed for God’s sake: God loves the grass for the sake of the cow and the cow for the sake of the human and the human for Christ’s sake and Christ for God’s own sake (let us say). This hierarchy is contingent. God must love everything for his own sake,<sup>77</sup> but God is free to distribute the for-the-sake-of relations in many different ways. Second, there is the natural or essential goodness things have by being what they are. God loves all of the naturally good things he has made in proportion to their natural goodness. So God loves the cow more than the grass because the cow is better than the grass, and the human more than the cow, and so on. “God loves all lovable things distinct from himself,” Scotus tells us.<sup>78</sup> This hierarchy too is contingent, but for a different reason. There need not have been any cows or grass or anything other than God. No merely possible thing is such that God’s understanding of the natural goodness it would have were it actual constrains God to actualize it.<sup>79</sup> But once God lifts the curtain on creation he does not get to decide—in the order

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of some natural kind. But nothing hangs, in the present context, on this distinction. See *Ord.* II.7.un.28–33 (V 8.88–90) and *Ord.* II.40.un.7 (V 8.468–9).

<sup>76</sup>*Ord.* III.32.un.22 (V 10.138), trans. Williams, 188–9.

<sup>77</sup>*Ord.* III.32.un.8 (V 10.130–1).

<sup>78</sup>*Ord.* III.32.un.8 (V 10.131), trans. Williams, 187.

<sup>79</sup>*Ord.* III.32.un.22 (V 10.138)—this is the text under discussion in this section—but also see Scotus’s rejection of practical knowledge toward creatures in God, in *Ord.* I.38.un (V 6.303–8) and also in *Ord.* Prologue.5.1–2.332–344 (V 1.217–25).

of natural goodness—whether the grass is better than the cow. The hierarchy of natural goodness forms automatically, given the things there actually are.

These two hierarchies of goodness are logically distinct because while God is not free to love grass more or less than it deserves, given its degree of natural goodness, he is free to give grass any place he wants to give it in the hierarchy of things loved for God's sake. The last could be first, so to speak.<sup>80</sup> God's for-the-sake-of hierarchy could be a little topsy-turvy relative to the natural goodness hierarchy. But God's having a for-the-sake-of hierarchy is consistent with there being a natural goodness hierarchy.<sup>81</sup>

## VI. The Coherence of Scotus's Ethics

The natural law (strict and loose senses) obtains in virtue of the sort of creatures God has made. Given human beings, there is natural law about how they ought to act, arising from what is good and bad in human action. Some natural laws (natural laws in the strict sense) are true from their terms or deductively inferrable from laws true from their terms. These are true prior to any act of divine will whatsoever, even an act of divine will which elects to create rather than not to create. That God must be loved is true even if God alone exists. Other natural laws (natural laws in the loose sense) become true when God decides to make a world containing creatures like us. If there are no humans there are no rules about how humans should act; at best there are possible rules, rules made to be actual rules if God creates humans. God does indeed command us to follow the natural law, at least in regards to those natural laws which get taken up as the content of the Ten Commandments. But the commands of God which have natural law as their content do not make the natural law the natural law.

God can, of course, in this very world as it is set up with the very kinds of things which are actually in it, issue commands which do not concern the natural law. That people must receive grace before they are glorified is an example of such a law.<sup>82</sup> This is a law which holds *only* because God wants it to. God, keeping the world in all other respects just as it is, could instead will, and so legislate, that not all people must receive grace before they are glorified, or that only those who perfectly observe the law will be glorified, or whatever. But these sorts of laws are not at issue in the fundamental questions about the coherence of Scotus's ethics.

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<sup>80</sup>Matthew 20:16.

<sup>81</sup>For extra confirmation of this view, consider *De Primo Principio* III, where Scotus argues that God is top-of-the-line both in the order of final causality (for-the-sake-of relations) and in the order of eminence (natural goodness comparisons). Scotus, *A Treatise on God as First Principle*, trans. Allan B. Wolter (Chicago: Franciscan Herald Press, 1966), 42–71.

<sup>82</sup>*Ord.*I.44.un.6 (V 6.365).

God can also, in this very world as it is set up with the very kinds of things that are in it, will (rightly) that some people not follow the (loose sense) natural law. God's command to Abraham to kill Isaac is the most poignant example of such a willing. God is, *in this respect*, free with regard to the (loose sense) natural law. Observing it perfectly does not necessitate that a created person reach his final end of union with God. And failing to observe it perfectly does not necessitate that a created person fail to reach his final end of union with God.<sup>83</sup> God may, therefore, use extra-(natural)-legal means to draw people to their final ends—creative, if sometimes bewildering, *routes* to God.<sup>84</sup> The wrongness which obtains, by nature, in an act of killing an innocent son is not the sort of wrongness which prevents God from commanding a father to kill his son. Through the Decalogue God commands us to follow the natural law. But God can make dispensations from any command (*praeceptum*) in the second table. When God makes these dispensations, Scotus tells us, he either revokes the command or explains how the command is to be understood in a particular situation.<sup>85</sup> This understanding of dispensation from commands does not show us that God can change the natural law (leaving the world with creatures like us intact). Instead, it shows us that God need not command us to follow the (loose sense) natural law and may command us to act contrary to the (loose sense) natural law. Therefore, concerning some action wrong by the (loose sense) natural law, God cannot make this wrong action right, but he can make it right to *do* this wrong action.

The (loose sense) natural law is therefore not *absolutely* morally binding. It is morally binding unless God tells you to do otherwise. The claims that natural goodness makes on us are, conceivably, separable from the claims God makes on us. They run together nearly all the time, but they need not. Only the (strict sense) natural law is absolutely morally binding.

Our judgment of the coherence of this picture depends, in part, on how we define the sphere of the moral. If to be morally binding *just is* to be absolutely binding, decisively binding—binding such that if, among one's reasons for doing some action, *a*, is that one morally ought to do it, then no other reasons for not doing *a* make it permissible not to do *a*—then Scotus's ethics is hopeless. To make sense of Scotus's ethics we need conceptual space to be able to say that

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<sup>83</sup>*Ord.III.37.un.18–9* (V 10.280). This point resolves Irwin's puzzle about how Scotus can consistently maintain that second table commands are both consonant with first table commands and contingent in the sense that God has prerogative over them. (See Irwin, *The Development of Ethics: Volume 1*, 693–5). He can consistently maintain this because God is not bound to count successful conformity to his second table commands as meritorious of heaven (or lack of success as demeritorious).

<sup>84</sup>John E. Hare, *God's Call: Moral Realism, God's Commands, and Human Autonomy* (Grand Rapids, MI: Eerdmans, 2001), 84.

<sup>85</sup>*Ord.III.37.un.13* (V 10.276).

there are genuinely *moral* reasons for acting which are not *absolutely* binding, because subject to a divine command or permission otherwise, *and also* some moral reasons for acting which *are* absolutely binding, because not thus subject. A full-fledged argument that the sphere of the moral can be divided up in this way is beyond the scope of this paper. But it seems to me plausible to think that, in general, our moral obligations are hierarchically ordered in such a way that, in some circumstance in which fulfilling one moral obligation entails not fulfilling the other moral obligation, we can fail to fulfill a moral obligation and nevertheless act rightly, provided we fulfill the higher moral obligation. I am morally obligated not to use your boat without your permission but morally obligated to do all I can to save that person from drowning. He is out too far for me to swim to him, no one else is around, etc. So I use your boat to try to save him. My moral obligation not to appropriate your boat is not decisively binding because my moral obligation to do something to save that person is a higher-on-the-hierarchy moral obligation and the two moral obligations cannot be met in this circumstance. I think something along these lines is the way to make sense of Scotus's ethics. Our moral obligations to do what God tells us to do are top-of-the-hierarchy moral obligations, so when they run up against our moral obligations to follow lower-on-the-hierarchy moral obligations, we morally ought to do what God tells us to do. A trust, faith, in God's goodness towards us, would then lead us to search for the good purpose God has in those rare events when he tells people like Abraham to do something contrary to his lower-on-the-hierarchy moral obligations. These sobering thoughts might give us good reason to reject Scotus's ethical theory, but they do not give us good reason to think it is incoherent.<sup>86</sup>

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