

CHAPTER 10

Scotus, Intuitionism, and the Third Sense of 'Natural Law'

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Abstract

Although Scotus never raises the question of how we know contingent practical principles, he clearly thinks we do know them. I offer an account of our knowledge of such principles that is (a) consistent with what Scotus says about the relationship of the moral law to the divine will and to human nature, (b) consistent with what he says more generally about our knowledge of contingent truths, and (c) consistent with his actual argumentative practice in dealing with contingent practical principles. As for (a), Scotus's view rules out any account on which we can "read off" moral principles from facts about God or about human nature. As for (b), Scotus explicitly makes room for non-inferential knowledge of contingent truths. And as for (c), Scotus's argumentative practice reflects the constraints stated in (a). My examination of Scotus's argumentative practice uncovers a third, hitherto unnoticed, sense of "natural law." I suggest that the core unifying sense of "natural law" for Scotus is precisely the epistemic status of the precepts of natural law as non-inferentially evident.

In this paper I'm assuming the truth of my radically voluntarist reading of Scotus with respect to the moral law: that is, that God is free with respect to all contingent practical principles, and that there is no explanation for what God wills with respect to those principles in terms of God's nature, our nature, or anything else.¹ Proceeding from that assumption, then, my question is this: How, for Scotus, do we know the truth of practical principles? Necessary practical principles are easy: they are necessary in

¹ I have a whole raft of new and better arguments for that claim in a chapter entitled "God and the Moral Law," which I will include in a book (now in progress) on Scotus's ethics; but for the time being, see in particular Williams 1998: 162–181. Authors who find a much less radical voluntarism in Scotus include

virtue of their terms, so all we need in order to see their truth is to understand their terms. But contingent practical principles are difficult. If I am right about how they get their truth value—in virtue of the divine will alone—there seems to be no obvious way for us to know them. We cannot know them by inference from any facts about God, for they do not follow from any facts about God; we cannot know them by inference from any facts about human nature, for they do not follow from any facts about human nature. Though they are not strictly speaking brute facts, since they do have an explanation (the divine will), they are brute-with-respect-to-us; for we cannot read the mind of God, and so we have no way of knowing directly whether that in virtue of which true contingent practical principles are true in fact obtains or not. We could know, it seems, only indirectly, by report: that is, by revelation.

It's important to acknowledge from the outset that there is no explicit discussion of this question anywhere in Scotus. So any possible answer to the question "How, according to Scotus, do we know the truth of contingent practical principles?" will lack textual support in one obvious sense. But I think this lack of textual support is not, in itself, an objection to any particular account of how we know contingent practical principles. For Scotus clearly thinks we *do* know contingent practical principles, and it is reasonable to ask on his behalf *how* we know them. If we can identify a means by which we know them that is (a) consistent with what Scotus says about the relationship of the

Wolter 2015: 241–290; Ingham 2001: 173–216.; and Borland and Hillman 2017: 399–429.

moral law to the divine will and to human nature, (b) consistent with what Scotus says more generally about our knowledge of contingent truths, and (c) consistent with Scotus's actual argumentative practice in dealing with contingent practical principles, we will have as much as we can expect.

My claim is that Scotus is, and must be, an intuitionist about contingent practical principles. First, a bit of terminological clarification. "Moral intuitionism" names both a normative view and a meta-ethical view. The normative view is that there are a plurality of irreducible *prima facie* duties; the meta-ethical view is that moral truths (or moral properties, or whatever) are known by intuition, that is, immediately and non-inferentially. The intuitionism I am concerned with here is the meta-ethical view. Such meta-ethical intuitionism (intuitionism with respect to moral epistemology) can be either generalist or particularist: generalist if what we are said to know by intuition is general moral truths (e.g., "Murder is not to be done," "Promises are to be kept"), particularist if what we are said to know is particular moral truths (e.g., "This act is not to be done," "This state of affairs is good"). Scotus's moral intuitionism is generalist, not particularist. For Scotus holds that we derive conclusions about the rightness of particular acts by reasoning from intuitively known practical principles by way of a practical syllogism.

My argument for the claim that Scotus is an intuitionist about contingent

practical principles proceeds in three stages. First, I argue that what Scotus says about the relationship of the moral law to the divine will and to human nature rules out any account on which moral truths can somehow be “read off” God’s nature, our nature, or the notion of the final end, happiness. Second, I show that Scotus recognizes epistemically immediate contingent propositions, so there is theoretical room in Scotus’s account of knowledge for the kind of intuitionism that I say characterizes our knowledge of contingent practical principles. And third, I show that Scotus’s actual argumentative practice is consistent with his being an intuitionist. In that context I draw out what, as far as I can tell, is a hitherto unnoticed third sense of “natural law” in Scotus. This sense of “natural law,” frequently used but never explicitly defined, makes Scotus’s commitment to moral intuitionism very clear.

The first two stages of the argument develop ideas I have written about before,² and I will accordingly dispatch them as briefly as possible so that I can get to the third stage, which is new and (I think) the most compelling part of the argument.

I THE MORAL LAW AND KNOWLEDGE OF CONTINGENT PRACTICAL PROPOSITIONS

First I argue that what Scotus says about the relationship of the moral law to the divine will and to human nature rules out any account on which moral truths can somehow be

² In Williams 1997: 73–94. Some of the language in sections 1 and 2 of this chapter is borrowed from that earlier paper. To avoid extensive redundancy I have recapitulated the argument of that paper as briefly as

“read off” God’s nature, our nature, or the notion of the final end, happiness. The connection between Scotus’s account of the contingent part of the moral law and the view that we cannot know contingent practical truths by argument is quite straightforward. Scotus argues that the contingent part of the moral law is freely determined by the divine will. And he understands ‘freely’ here in a strong sense:

Suppose you ask why the divine will is determined to this contradictory rather than that. I reply: “It is characteristic of the improperly educated to seek causes and a demonstration for everything” —so says Aristotle in *Metaphysics* IV [1006a5–8]—“for there is no demonstration of a principle of demonstration.” *That the will wills this* is immediate, such that there is no intermediate cause between the will and what it wills, in the same way that *heat heats* is immediate (though the latter case is a matter of what is natural, whereas the former is a matter of freedom). Consequently, there is no cause of why the will wills this other than the fact that will is will, just as there is no cause of why heat heats other than the fact that heat is heat. For there is no prior cause. (Ord. I, d. 8, p. 2, q. un., n. 299; Vat. IV, 324–325)

So God’s willing in one way rather than another does not follow from any prior truths; the proposition “God wills P” is, if it is contingent, not merely contingent but immediate. Consequently, we know in advance that any argument purporting to establish the truth of a contingent moral proposition will be invalid. For example, there is no cause of its being the case that murder is prohibited other than the fact that God

I can; I have also responded to further discussion of these issues in the secondary literature over the last twenty years.

willed to prohibit murder. An argument purporting to show some other cause, some reason for that prohibition besides God's will, must be invalid. For its conclusion, that murder is wrong, does not in fact follow from any other propositions whatsoever.

Now it might be thought that I have moved a bit too fast here. There are, after all, entailment relations among various contingent propositions. So I have to qualify my claim that any contingent proposition about what God wills must be not merely contingent but immediate. After all, "God wills that there be horses" and "God wills that there be animals" are both contingent, but the former entails the latter, and the latter is (or at least might be) known on the basis of the former. "God wills that there be animals" therefore seems to be contingent but not immediate.

So perhaps the contingent propositions of the moral law follow from some other contingent propositions. The obvious place to look is at human nature. Perhaps the contingent part of the moral law follows from facts about human nature. Since it is contingent that beings with human nature exist, the moral law that prescribes the behavior that is fitting (or proscribes the behavior that is unfitting) for such beings is likewise contingent. And on this view one would still be able to say that the moral law depends essentially on the divine will, since the existence of human beings depends essentially on the divine will. But we would be able to read the moral law off human nature, and the arbitrariness that my more radical reading of Scotus's voluntarism

attributes to the contingent part of the moral law is avoided.³

The arguments for attributing such a view to Scotus deserve extensive attention of a kind that I cannot give them here, since I am focusing on Scotus's moral epistemology rather than on the foundation of his normative ethics; so I shall simply (and, I admit, unsatisfying) state briefly the reasons that I continue to insist on a more voluntarist reading. When Scotus discusses the dependence of practical principles on the divine will, he always states his view in the starkest way possible: every contingent practical principle has its truth solely from the divine will. It is clear that, for example, "Adultery is not to be committed" is contingently true; there is never any hint that "If human beings exist, adultery is not to be committed" is necessarily true. Moreover, it seems to me impossible to square this less radical reading of Scotus's voluntarism with his discussions of dispensation from the moral law and the distinction between God's absolute power and God's ordained power.⁴ Finally, as I argue in the third section of this paper, Scotus's actual argumentative practice reflects the kind of voluntarism I attribute to him, not this more modest form.

Another genus of attempts to mitigate the contingency-to-the-point-of arbitrariness that I attribute to the moral law on Scotus's view comprises arguments that some aspect of the *divine* nature limits God's creative choice. The favorite divine

³ For such an argument, see especially Wolter 1987: 25–30.

⁴ For a brief but compelling discussion of this, see Hagedorn 2019: 55–76, at 63–66.

attributes in this context have been God's justice,⁴ his rationality,⁵ and (more recently) his aesthetic sensibilities⁶ (for lack of a better expression). Briefly to these: Scotus explicitly flat-out denies that God's justice constrains his activity of moral legislation.⁸ The only sort of rationality that constrains God is instrumental. Yes, one who wills the end must will the means: but there is no end God must will, apart from himself, and no creaturely means is necessary for that end. The attempt to use the rationality of God's will to argue against my account rests on a gross equivocation: 'rational' for us is an approval term whose contrast terms are 'arbitrary', 'capricious', 'mad', and the like; but for Scotus it's a term with purely descriptive content. It means "capable, synchronically, of opposite acts," and rationality in that sense clearly does not constrain the divine will—quite the opposite, in fact.⁹ As for God's aesthetic sensibilities, the claim that the "consonance" of the contingent part of the moral law with the necessary part bespeaks a kind of aesthetic fittingness that gives God a reason to command as he does is without foundation in the texts of Scotus. Scotus use *consonans* to indicate logical compatibility, not aesthetic harmony.¹⁰ And even if Scotus did have such divine aesthetic sensibilities in his system, they would be unavailing for our present purposes, since (a) there's no reason to suppose we can do the divine mind-reading necessary to read the moral law

⁴ For defenses of such an argument, see Wolter 1987: 11–16, and Ingham 2001: 173–216, at 197–200.

⁵ For defenses of such an argument, see Wolter 1987: 16–24, and Ingham 2001: 187–197.

⁶ For defenses of such an argument, see Bychkov 2014: 45–55, and Cross 2012: 175–97.

⁸ See Williams 2000: 169–202, at 171–189.

⁹ See Williams 2000: 189–198 and Williams 2009: 9–11.

off God's aesthetic preferences and (b) since the contingent part of the moral law is just that, contingent, either God's aesthetic sensibilities aren't a necessary feature of his nature or his aesthetic sensibilities don't pick out (that is, entail) a unique set of moral truths; either way, we're again left unable to read off the moral law from the facts available to us by natural reason.

II EPISTEMICALLY IMMEDIATE CONTINGENT PROPOSITIONS

Having argued that Scotus's account of the moral law rules out any explanation of our knowledge of contingent practical principles according to which we can "read off" such principles from facts about God or about us, I now argue that there is theoretical room in Scotus's account of knowledge for the kind of intuitionism that must characterize our knowledge of contingent moral propositions. Scotus recognizes the existence of contingent truths that are immediate, that is, not derived from any logically prior truths. Indeed, he insists that there must be such truths: "otherwise there would be an infinite regress in contingent truths, or else something contingent would follow from a necessary cause—either of which is impossible."¹¹ Now we need to distinguish here between two sorts of immediate contingent truths. I shall call them metaphysically immediate and epistemically immediate. Metaphysically immediate contingent truths

¹⁰ On this point see Steele 2016: 78–99.

¹¹ *Ord. I, d. 3, p. 1, q. 4, n. 238* (Vat. III, 145). See also *Ord. prol., p. 3, qq. 1–3, n. 169* (Vat. I, 112–113), and

are those for which there is no further explanation at all; they are the sorts of truths we might be inclined to call “brute facts” —not merely brute relative to other facts, but absolutely brute, as we might say. Scotus's favorite examples of such truths are, not surprisingly, facts about the divine will.

Among contingent truths there is a first that is immediate and nonetheless contingent, since it is not traced to a necessary truth (for a contingent truth does not follow from a necessary truth). And therefore in this case one must stop with “The will of God wills this,” which is contingent and yet immediate, since there is no other cause, logically prior to the will, of why the will wills this and not something else.¹²

This sort of immediacy, however, is not characteristic of the contingent part of the moral law. There is a “logically prior” cause—the divine will itself—that explains why the moral law is what it is.

The moral law is therefore not metaphysically but epistemically immediate. That is, while the fact that murder is wrong depends upon and is in some sense explained by the fact that God wills that murder be wrong, our knowledge that murder is wrong does not depend upon our knowledge that God wills that murder be wrong. Scotus certainly recognizes contingent truths that are immediate in this epistemic sense: for

Ord. I, d. 8, pars 2, q. un., n. 300 (Wat. IV, 325).

¹² *Ord. I, d. 8, pars 2, q. un., n. 300 (Wat. IV, 325).*

example, “I am awake” and “I am understanding.”¹³ Clearly such facts as “I am understanding” and “I am awake” are not absolutely brute or metaphysically immediate, but they are epistemically immediate. I do not know that I am awake on the basis of any logically prior facts, although no doubt there are logically prior facts.

The contingent truths of the moral law are epistemically immediate in just this way. Although they depend on logically prior facts, they are not known on the basis of any logically prior facts. They can therefore function as “principles of demonstration” for which there is in turn no demonstration,¹⁴ as unargued-for starting points for argument. They are, in words from Saint Paul that Scotus quotes in several places, “written on our hearts.”¹⁵ We can assume that they were written there by God, who created us with moral intuitions to suit the moral order he freely and contingently created.

III INTUITIONISM AND SCOTUS’S ARGUMENTATIVE PRACTICE

Having now shown that there is room in Scotus’s thought for knowledge of epistemically immediate contingent propositions, I turn to my central point. What I mean to show here is that Scotus’s actual argumentative practice reflects a conviction that practical principles are known immediately. There is a both a negative and a

¹³ *Ord.* I, d. 3, pars 1, q. 4, nn. 238–239 (Vat. III, 144–146).

¹⁴ *Ibid.*

positive side to this case. The negative side is that Scotus does not in fact seek to establish any contingent practical principle by arguing from facts about God or human nature and indeed rejects such attempts at arguing for contingent practical principles. The positive side is that Scotus helps himself to practical principles in just the way that an intuitionist does (and must). In the course of making the positive case, I uncover a hitherto unnoticed third sense of “natural law” to which Scotus frequently appeals in his treatment of particular moral issues. This third sense of natural law makes it clear that for Scotus the natural law is as much an epistemic notion as it is a normative notion.

A full-blown defense of the negative case would require an exhaustive look at all of Scotus’s argumentation concerning contingent practical principles, which is obviously not feasible here. Instead I look at a fairly typical example of such argumentation and then examine some purported counterexamples to my claims raised by Thomas Ward in “A Most Mitigated Friar.”¹⁶

As an example of the way in which Scotus analyzes purported arguments for moral truths, consider his discussion of lying.¹⁷ Scotus considers three philosophical arguments for the claim that lying is always wrong. The first argument, drawn from William of Auxerre, would, if successful, show that the prohibition against lying

¹⁵ Romans 2:15, quoted at *Ord. prol.*, p. 2, q. un., n. 108 (Vat. I, 70); II, d. 28, n. 27 (Vat. VIII, 303); III, d. 37, q. un., n. 42 (Vat. X, 290); and IV, d. 3, q. 4, n. 147 (Vat. XI, 202).

belongs to the necessary part of the moral law: “Some say that lying is necessarily a sin because it necessarily turns one away from God, who is truth, and a lie is contrary to truth.”¹⁸ Scotus replies that “a lie is not opposed immediately to the first Truth, but rather to the truth of some particular thing about which the liar is speaking. So just as badness opposed to some particular created good does not necessarily turn someone away from the first uncreated Good, neither does falsity opposed to any truth unconnected with the first Truth [necessarily] turn someone away from the first Truth.”¹⁹ Only acts that necessarily turn someone away from God are necessarily prohibited, and so the prohibition against lies is contingent.

But our question here all along has been about the contingent part of the moral law, so Scotus’s rejection of William of Auxerre’s argument merely establishes that the prohibition of lying belongs to the part of the moral law with which we are concerned. The second argument, drawn from Aquinas, proceeds from an account of the structure of moral acts that Scotus also accepts and argues that lying is generically bad. Aquinas and Scotus agree that an act is generically bad when it has an unsuitable object or matter;²⁰ they also agree that no particular act that is generically bad can ever be good (whereas a particular act that is generically good can be bad if some feature of the act

¹⁶ Ward (2019): 385–409.

¹⁷ Here I expand upon my treatment of this discussion in Williams 1997: 73–94.

¹⁸ *Ord.* III, d. 38, q. un., n. 14 (Vat. X, 298).

¹⁹ *Ord.* III, d. 38, q. un., n. 15 (Vat. X, 298). The edition’s text is manifestly incorrect here; for the correction, see *John Duns Scotus: Selected Writings on Ethics*, 261, fn. 9.

other than its object is bad). They disagree, however, about whether the object of a lie—namely, something the speaker believes to be false—is unsuitable in such a way as to making lying generically bad and therefore never permissible. Aquinas thinks it is;²¹ Scotus thinks it is not.

Scotus’s chief objection to the argument involves an analogy with murder. On Aquinas’s view, the analysis of the structure of the acts lying and murder are parallel, and both have inappropriate objects and are accordingly generically bad:

<u>act</u>	<u>object</u>	<u>character of object</u>	<u>moral status of act</u>
speech	something believed to be false	inappropriate	generically bad
killing	an innocent human being ²²	inappropriate	generically bad

Scotus argues, however, that an innocent human being is not in fact an inappropriate object for an act of killing, because

it can become licit to kill [an innocent] human being, for example, if God revoked the commandment “You shall not kill” (as was said in the previous question [d. 37 n. 13])—and not merely licit, but meritorious, for example, if God commanded someone to kill, as he commanded Abraham concerning Isaac.²³

Now the harm done to one’s neighbor by depriving him of a true opinion or inducing a false opinion is clearly less grave than the harm done to him by depriving

²⁰ For Aquinas, see *ST* I–II.18.2; for Scotus, see *Ord.* II, d. 7, q. un., n. 29 (Vat. VIII, 89).

²¹ *ST* II–II, q. 110, aa. 1 and 3

²² Scotus ups the stakes a bit by describing the person killed not merely as “innocent” but also as “useful to the commonwealth.”

him of bodily life altogether — “indeed,” Scotus says, “there is scarcely a comparison.”²⁴ So if the killing of an innocent human being can be licit, it is even more obvious that the utterance of something the speaker believes to be false can be licit.

Puzzlingly, Thomas Ward takes this argument to be a point in favor of his view that Scotus does sometimes offer arguments for contingent moral truths:

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 for reasons that do not have to do with divine will... Scotus here makes clear that the persuasive power of his example depends on murder being much worse than lying.

First, the claim that the commandments against killing and lying obtain only by divine command is not meant to follow directly from the claim that God could make some killing and lying permissible or even obligatory. What supports the stronger claim is Scotus’s reference to the discussion of the Decalogue in the preceding question. There Scotus argues that only acts with an immediate relation to the divine nature are necessarily good or bad. If an act has such a relation, it is easy enough to see how the act is right or wrong in itself. For example, perjury involves an immediate relation to God, since Scotus understands perjury as the deliberate act of swearing *by God* to something

²³ *Ord.* III, d. 38. q. un., n. 17 (Vat. X, 299–300).

one disbelieves or doubts. Such an act clearly involves irreverence to God, which cannot be licit. But if an act lacks an immediate relation to the divine nature, its rightness or wrongness is subject to God's will. There is, as Scotus argued in his reply to William of Auxerre, no immediate connection between particular truths or falsehoods and the divine nature. God was therefore free to establish a moral order in which things believed to be false were licit matter for speech.

Moreover, in his discussion of the Decalogue Scotus refers us to two other discussions that provide the theoretical background for his account of the contingency of the commandments of the second table: his denial of practical cognition in God (*Ord. prol.*, p. 5, qq. 1–2, n. 333; Vat. I, 218) and his insistence that God's will is not determined necessarily to anything other than himself (*Ord. I, d. 2, pars 1, qq. 1–2, nn. 79–81; Vat. II, 176–177*). Both passages—along with other passages²⁵ that apply those discussions explicitly to the modal status of moral truths—make it clear that the second-table commandments obtain only because God wills that they obtain.²⁶

Nor does Scotus's comparison of the relative gravity of lying and murder tend at all to suggest that Scotus thinks one can reason from facts about human nature to contingent moral truths. Given the kinds of things we are, of course it is worse for us to lose our life than to lose a true belief; our natures determine what contributes to our

²⁴ *Ibid.*

²⁵ For example, *Ord. I, d. 8, p. 1, q. un., n. 273* (Vat. IV, 307), and *d. 38, q. un., n. 4* (Vat. VI, 303–304); *Rep.*

flourishing and what is detrimental to it. But Scotus could hardly be more emphatic that natural goodness and badness have no necessary significance for moral rightness and wrongness. God need not prescribe what is naturally good; he need not prohibit what is naturally bad. We cannot reason from the fact that something is good for our neighbor to the conclusion that we ought to promote or preserve it. In fact, even if we are allowed to assume the requirement to love our neighbor, we *still* cannot derive the claim that “one must will-against killing him (with respect to the good of his person) and that one must will-against committing adultery (with respect to the good of the person married to him), and that one must will-against stealing (with respect to the goods of fortune that he has at his disposal).”²⁷ Natural goodness shapes the moral law only to the extent that God wills accordingly.

Scotus offers a third argument for the wrongness of lying, drawn from Bonaventure, who argues that lying by its nature involves an evil intention, the intention to deceive. Therefore, any lie will be circumstantially bad, since it is directed to a morally illicit end. Although Scotus offers no refutation of this argument, at least four considerations make it clear that he must reject it. First, the same kind of objection Scotus raises against Aquinas’s argument works equally well against Bonaventure’s: God is free not to prohibit deception, and he is free to permit or even to command

IA, d. 38, qq. 1–2, nn. 37–38 (Wolter and Bychkov, vol. 2, 457–458).

²⁶ I make these arguments at length in “God and the Moral Law.”

deception. Second, in discussing famous lies from Scripture, Scotus is willing to admit that there are cases in which someone deliberately tells a falsehood with the intention to deceive and yet is not held guilty of sin; so we can be certain that Bonaventure's account of what makes lying sinful cannot be correct. Third, the only “proof” of the wrongness of lying that Scotus endorses is the appeal to revelation: “without exception every such lie told deliberately is a mortal sin, for it is prohibited without qualification by the commandment, ‘You shall not speak false testimony against your neighbor.’”²⁸ And fourth, the distinction Scotus makes between lies that are mortally sinful and those that are not has to do, not with whether they involve the intention to deceive, but with whether they do harm. And as the analogy with murder makes clear, the prohibition against doing harm is contingent in such a way that one could not come to know by any chain of reasoning that such a prohibition is in force.

In short, no facts about human nature, divine nature, particular people, or particular situations constrain God's contingent and sovereign willing of the moral law. There is no intermediary, so to speak, between God's will and the contingent part of the moral law. So there is nowhere for natural reasoning to get started in formulating any sort of discursive justification for a contingent moral truth. It cannot start from God's will itself, since God's will is not accessible to natural reason. It cannot start from

²⁷ *Ord.* III, d. 37, q. un., n. 36 (Vat. X, 288–289).

²⁸ *Ord.* III, d. 38, q. un., n. 23 (Vat. X, 303–304).

anywhere else, because there is no road from anywhere else—that is, from any of the facts that *are* accessible to natural reason—to any contingent moral truth.

Thomas Ward objects that my conclusion here is much too strong, because Scotus does in fact offer “secular” arguments—that is, arguments not depending on any revealed premises—for the goodness of sexual intercourse and of marriage. So let’s look at those arguments and see what they tell us.

The arguments about sexual intercourse are found in *Ordinatio* IV, d. 26. The two “secular” arguments are as follows:

- (1) For a human being to preserve his own species is not more contrary to right reason or to natural inclination than for any other animal to preserve its species; indeed, the more perfect a species is, the more this accords with inclination. And a species cannot be preserved in a regular way otherwise than by procreation.
- (2) Even if human beings were immortal, it would still be suitable for them, in keeping with a correct natural inclination, to share their species in the way that would be possible for them, namely, by procreation.²⁹

Both arguments appeal to natural inclination: the principle, presumably, is that what is in accord with natural inclination is suitable (*conveniens*). The first argument also appeals to the notion of right reason: it is not more contrary to right reason for human beings to procreate than for any other animal to procreate. Both the negative character of this appeal to right reason (it is *not contrary* to right reason) and its

extension to the other animals deserve brief comment. Its negative character may not mean anything much; Scotus doesn't always express himself economically, and so his formulation could well be a clumsy way of saying that it is in accord with reason. The extension of the principle to other animals is puzzling, however; surely we cannot say that any behavior of animals either accords or does not accord with right reason, for other animals lack reason altogether. It would be human reason, not animal reason, that rightly judges that animal procreation is a suitable thing: suitable because it accords with natural inclination, and suitable also because the preservation of a species is itself suitable, and "a species cannot be preserved in a regular way otherwise than by procreation."

From these two arguments (and the two other arguments that depend explicitly on "things believed") Scotus is willing to conclude only that the act of procreation is not intrinsically—that is, generically—bad. The remaining possibilities are that it is intrinsically generically good or that it is not intrinsically good but is capable of being morally good because it is characterized by correct circumstances. It is not intrinsically good, Scotus argues, because its object is not "intrinsically worthy of being willed." Only God is such an object, because only God is the ultimate end. By contrast, "the good thing that is the object of the act of procreating or of willing to procreate offspring is not the ultimate end, but merely something ordered, or capable of being ordered, to

²⁹ *Ord.* IV, d. 26, q. un., n. 13 (Vat. XIII, 339).

the ultimate end.”³⁰

The only remaining possibility, then, is that the act is not intrinsically good but is capable of being morally good when it is characterized by correct circumstances. The first circumstance (not just for this act, but for any act) is the end. Scotus describes the correct end of this act as follows: “willing to procreate offspring *to be brought up religiously in order to expand the worship of God*” (*Ord.* IV, d. 26, q. un., n. 19; Vat. XIII, 340). Scotus’s secular argument for this conclusion is extraordinarily brief and unsatisfying:³¹ “This is proved by reason: the end of human beings is perfect human activity, as we read in *Ethics* I and X; therefore, it is for the sake of this end that a given person ought to will to have offspring” (*Ord.* IV, d. 26, q. un., n. 20; Vat. XIII, 341). The connection between the quite general notion of “perfect human activity” and the very particular end of bringing up children religiously in order to expand the worship of God is not further elucidated, and it is hardly self-evident. And the other circumstances that Scotus goes on to detail—“that this act ought to be of determinate persons” (*Ord.* IV, d. 26, q. un., n. 23; Vat. XIII, 341–342), “that it is honorable for these persons to be obligated to one another in an indissoluble bond” (*Ord.* IV, d. 26, q. un., n. 29; Vat. XIII, 343)—are derived from this end. So it is important to reflect on how Scotus might suppose that he is justified by reason in identifying this end as the one in virtue of

³⁰ *Ord.* IV, d. 26, q. un., n. 16 (Vat. XIII, 340).

³¹ Cf. Ward 2019: 395: “The secular argument for the requirement of this circumstance is convoluted.” But

which the act of procreation accords with right reason.

Here we can only speculate. One is initially tempted to think that Scotus is leaning on the love of God as an intrinsically good act. Having children in order to bring them up religiously in order to expand the worship of God would, on this reading, be justified precisely because it is a manifestation of love of God. But this won't do. If this end were straightforwardly equivalent to, or at least redescribable as, loving God, the act would be generically good, as love of God is generically good; but Scotus denies that the act of procreation is generically good. Nor can Scotus be thinking that perfect human activity *requires* that people get married and procreate, since he of course recognizes celibacy as licit. So perhaps the thought is something like this: procreation for the sake of bringing up children religiously is *one* way of engaging in perfect human activity; procreation for any other reason is not; so this end (and no other) is a good-making circumstance for the act *procreating offspring*.

What, then, is the justification for the claim that this end (and no other) is a good-making circumstance for that act? Scotus offers two, the first relying on "things believed" (*Ord.* IV, d. 26, q. un., n. 21; Vat. XIII, 341) and the second appealing to authority. So he has no secular argument for the claim, and indeed it is only the appeal to authority that gives him precisely the claim that he wants:

This is confirmed through Augustine, *On Genesis* IX: "Not all who have offspring

it isn't convoluted; it's just bad, or (to be charitable) enthymematic. I quote the argument in full.

have the good of offspring, since it is not the offspring themselves who are said to be the good of offspring, but rather the hope or desire by which one seeks offspring so that they may be instructed in religion.”³²

Ultimately, then, Scotus offers no secular argument for the goodness of procreation. The middle term (so to speak) of the argument he does give—namely, that procreating for the sake of giving one’s offspring a religious education and thereby expanding the worship of God is a form or manifestation of perfect human activity—is something Scotus professes to know only on the basis of faith and authority.

Scotus identifies two further good-making circumstances of the act of procreation. (The end is, as Scotus consistently maintains, the first circumstance after the object,³³ so these further good-making circumstances presuppose that the act has the right end; if the act lacks the right end, these other circumstances cannot make the act good.) The first is that it be “of determinate persons” (*Ord.* IV, d. 26, q. un., n. 23; *Vat.* XIII, 341–342), that is, of one man and one woman; the second is that these persons are “obligated to one another in an indissoluble bond for this end” (*Ord.* IV, d. 26, q. un., n. 29; *Vat.* XIII, 343). Scotus acknowledges that the first of these is not “proved by natural reason to be unqualifiedly necessary, in such a way that its opposite would be

³² *Ord.* IV, d. 26, q. un., n. 22 (*Vat.* XIII, 341). Though there is something a bit like this in *De Genesi ad litteram* IX, 7, and Richard Middleton (who is apparently Scotus’s source here) attributes these words to Augustine in his commentary on the *Sentences* (IV d. 31 princ. 1 q. 3 in corp.), the quotation actually derives from Peter Lombard, *Sent.* IV d. 31 c. 2 n. 4 (*Ad Claras Aquas*, vol. 2, 444).

³³ See *Ord.* prol., p. 5, qq. 1–2, n. 251, n. 362 (*Vat.* I, 169); I, d. 48, q. un., n 5 (*Vat.* VI, 388–389); II, d. 40,

repugnant to natural and manifest reason” (*Ord. IV, d. 26, q. un., n. 28; Vat. XIII, 343*); he likewise says that the second “could not be proved manifestly by natural reason” to be “unqualifiedly necessary” (*Ord. IV, d. 26, q. un., n. 30; Vat. XIII, 343–344*). The best we can say is that it is “honorable (*honestum*) for persons belonging to the Church to be determinately conjoined one with another for this act” (*Ord. IV, d. 26, q. un., n. 28; Vat. XIII, 343*) and “that it is honorable and consonant with natural reason that a man and woman should be under such an obligation [i.e., that of indissoluble monogamous marriage] for the sake of such an end” (*Ord. IV, d. 26, q. un., n. 30; Vat. XIII, 343–344*).

So Ward errs in thinking that Scotus “uses arguments drawn from natural reason, reflecting on natural goodness and badness in human action, to derive conclusions about how we ought morally to act.” Only if the circumstances that make for natural goodness were “unqualifiedly necessary, in such a way that [their] opposite would be repugnant to natural and manifest reason,” would natural reason be able to reach conclusions about what is morally required. But those circumstances are not unqualifiedly necessary. They are “consonant” — that is, consistent, compossible — with self-evident principles and conclusions that follow demonstratively from such principles, in other words, with the natural law in the strict sense (n. 31). But then their opposites are likewise consonant with such principles and conclusions: otherwise, the

q. un., 10–11 (*Vat. VIII, 470*); *Quodl. q. 18, n. 15* (*Vivès XXVI, 236–237*); English translation in *John Duns Scotus, God and Creatures*, 403.

goodness of a properly circumstanced act of procreation *would be* unqualifiedly necessary.

So the question recurs: what, if anything, does this “consonance” really come to? Does it constrain, or at least guide, the deliverances of reason? Consonance by itself does not seem to do the right kind of work, since consonance, as Scotus uses the term, falls short of entailment. But it is important that Scotus does not here say merely that the goodness of procreation is consonant with the natural law in the strict sense: he says that it is *evidently* consonant with the natural law in the strict sense and therefore belongs to the natural law in some looser sense (ibid., n. 31; Vat. XIII, 344). I propose that it is not mere consonance, but the *evidentness* of that consonance, that Scotus is appealing to here. Consonance is a logical notion, evidentness an epistemic notion. Accordingly, I shall argue that what unites the notion of natural law in its strict and looser senses for Scotus is the epistemic status of the principles that belong to natural law. They are the principles that we know intuitively.

From the evidence presented so far, the claim that belonging to the natural law is a matter of epistemic status is at best tenuously supported. But a look at references to natural law in Book IV of the *Ordinatio* shows Scotus making extensive use of this epistemic notion of natural law. Thus at *Ord.* IV, prol., n. 11 (Vat. XI, 3), when he is setting out the organizational scheme of Book IV of the *Sentences*, we find Scotus saying

that the Master will deal with “the principal sacrament of the Mosaic law” and then consider “what corresponded to it in the law of nature,” meaning, in the time before any law had been given. He speaks in several places of the age or era (*tempus*) of the law of nature. For example, he says that “we do not read of any sacrament instituted by God in the age of the law of nature” (*Ord. IV, d. 1, p. 2, q. 2, n. 218; Vat. XI, 77*).³⁴ In one question he asks “whether there was any sacrament corresponding to circumcision in the age of the law of nature” (*Ord. IV, d. 1, p. 4, incidental q. 2, n. 385; Vat. XI, 138*), and in his reply he uses several variations on the phrase: “during the age of that law of nature” (*pro tempore illius legis naturae, ibid., n. 391; Vat. XI, 139*),³⁵ “in the age of the law of nature” (*in tempore legis naturae, ibid., n. 392; Vat. XI, 139*), “during that age” (*pro tempore illo, n. 395, ibid., Vat. XI, 140*), and even “in the law of nature” (*in lege naturae, ibid., n. 396; Vat. XI, 141*).

The last example is drawn from the claim that is possible that some form of sacrifice was instituted as a sacrament by God in the law of nature, so there the expression might refer not to the era (though that still seems the most natural reading in

³⁴ This is language from an argument that Scotus rejects, but he does not reject the language of *pro tempore legis naturae* for the age in which no law had been given. One sees a similar pattern in *Ord. IV, d. 3, q. 4, n. 156 (Vat. XI, 205)*: “And if the question is what remedy for original sin there was for the young children of the Jews from the Passion until the proclamation of the Gospel, it is said [by Richard Middleton] that it was not circumcision but the faith of the parents, as in the age of the law of nature”; Scotus rejects the argument, but for reasons that do not tell against this use of the expression *tempore legis naturae*, which indeed he uses *in propria persona* a little later in the question.

³⁵ Q, which I tend to follow for reasons given in the introduction to Williams 2018, omits the demonstrative, which makes for a better and more consistent reading, but the substantive point is not affected if we simply follow the edition.

context) but to the obligations that held during that era. That is, it is possible that God instituted some sacrifice as a sacrament as one of the obligations that held during the period when no law had been given. Certainly this second meaning is another way in which Scotus speaks of the “law of nature”: “Hence those things that belonged to the law of nature were also to be observed by Moses until the giving of the Law on Mount Sinai” (*Ord.* IV, d. 3, q. 4, n. 203; Vat. XI, 222).

What are we to make of this third sense (or these third and fourth senses) of “natural law”? Scotus seems to accept a normative and an epistemic claim about the natural law in whatever sense. The normative claim (uninterestingly enough) is that whatever belongs to the natural law ought to be observed; the epistemic claim is that whatever belongs to the natural law can be known independently of revelation. because it is “written inwardly on the heart.” It is by this epistemic criterion that natural law is distinguished from positive law, which of course also ought to be observed:

On the basis of [Jesus’] statement [in John 15:22, “If I had not come and spoken to them, they would not have sin”] I accept the following proposition: “no one is bound by any divine precept unless it is promulgated by someone suitable and authoritative or by truthful report and the testimony of good people that everyone ought rationally to believe”; and I understand this to apply to positive law, which is not known inwardly in the heart.” (*Ord.*, IV, d. 3, q. 4, n. 147; Vat. XI, 202).

The commandments of the second table are known inwardly in the heart, as Scotus says explicitly in *Ord.* III, d. 37, q. un., n. 42 (Vat. X, 290). Whether the other obligations that obtain during the era of the law of nature—such as, perhaps, the obligation to offer some sort of sacrifice—are likewise known inwardly in the heart is not entirely clear.³⁶ If they are, we have a unifying or core sense that unites all three notions of “natural law”: they are the obligations that are known intuitively, whether because they are self-evident or follow from what is self-evident (natural law in the strict sense) or because they are evidently consonant with such truths (natural law in the broad sense) or because they are simply, in some way, evident (natural law in this underdeveloped third sense).

³⁶ Scotus talks of God as *instituting* some sacrament in the time of the natural law. Institution sounds like positive law, and positive laws, as we have seen, are not written inwardly on the heart.