John Duns Scotus on Natural Law and Divine Law

The Decalogue and the Law of Nature

(Ordinatio III, suppl., dist. 37)

In regard to the thirty-seventh distinction [of Bk. III] I ask: Do all of the commandments of the decalogue belong to the law of nature?

[Arguments pro and con]

For the negative view:

[1] In those things which pertain to the law of nature it does not seem God can dispense; but he has done so in some matters that run counter to precepts of the decalogue; therefore, etc. Proof of the major premise: What pertains to the law of nature is either a practical principle known immediately from its terms or necessary conclusions that follow from such principles. In either case they possess necessary truth. Therefore, God cannot make them false. Hence, he cannot make what they say is good to be anything but good, or what they say must be avoided to be anything but evil, and thus he cannot make what is illicit licit. Proof of the minor premise: To kill, to steal, to commit adultery, are against the precepts of the decalogue, as is clear from Exodus [20: 13]: "You shall not kill" [etc.]. Yet God seems to have dispensed from these. This is clear in regard to homicide from Genesis 22, regarding Abraham and the son he was about to sacrifice; or for theft from Exodus 11: [2] and [12: 35] where he ordered the sons of Israel to despoil the Egyptians, which despoilment is taking what belongs to another without the owner's consent, which is the definition of theft. As for the third, there is Hosea 1: "Make children of fornications."

[2] Furthermore, the Apostle says to the Romans 7: [7]: "It was only through the law that I came to know sin. I should never have known what evil desire was unless the law had said: 'You shall not covet.'" But what is known from the law of nature is recognized as something to be done or not to be done, even though it is not written, just as what is known naturally in theoretical matters would still be known naturally, even if it were not revealed.
Besides, the law of nature is obligatory for every state in which man finds himself, because it is known what such a nature must do and must not do. But the decalogue was not obligatory in every state, for instance, in the state of innocence, for the law had not yet been promulgated, nor did it seem to oblige before it was given.

For the opposite view:

In the beginning of the Decrees of Gratian, in dist. 6, the first gloss “Illis omnino.”

And look in the canonical epistle of John, ch. 2 [vv. 3–7]: “The way we can be sure of our knowledge of him is to keep his commandments, because whoever keeps his word, truly has the love of God been made perfect in him. The man who claims, ‘I have known him,’ without keeping his commandments is a liar. It is no new commandment I write to you, but an old one which you had from the start.” This for the negative view.

[Body of the question]

[View of others] One view here claims that the whole decalogue pertains to the law of nature and explains it in some such way as this. The law of nature is a law proceeding from first principles known to hold for actions; these are seminal practical principles known from their terms. The intellect is naturally inclined to their truth because of their terms, and the will is naturally inclined to assent to what they dictate. From such principles everything in the decalogue follows either mediately or immediately. For all that is commanded there has a formal goodness whereby it is essentially ordered to man’s ultimate end, so that through it a man is directed towards his end. Similarly everything prohibited there has a formal evil which turns one from the ultimate end. Hence, what is commanded there is not good merely because it is commanded, but commanded because it is good in itself. Likewise, what is prohibited there is not evil merely because it is prohibited, but forbidden because it is evil.

On this view, then, it seems the reply to the first argument should be that God simply cannot dispense from such cases, for what is unlawful of itself cannot, it seems, become licit through any will. For instance, killing is an evil act, from the fact that it is directed against such and such a person, for instance, a neighbor. Then given this situation, it will always be evil, and so no willing extrinsic to what are the circumstances of the case can make killing good. And then one would have to explain away those texts where God seems to have given a dispensation. One way of doing this is to claim that though a dispensation could be granted to an act that falls under a generic description [like killing in general], it could never be given insofar as it is prohibited according to the intention of the commandment [e.g., killing an innocent neighbor], and hence [killing an unjust aggressor, for example] would not be against the prohibition. Put another way, an act that is inordinate cannot become well ordered, but an act insofar as it violates a prohibition is inordinate. Therefore, it cannot be subject to dispensation insofar as it is against a prohibition.

[Refutation of this view] But these explanations, which come down to the same thing, do not seem to save what they were intended to save. For to dispense does not consist in letting the precept stand and permitting one to act against it. To dispense, on the contrary, is to revoke the precept or declare how it is to be understood. For there are two kinds of dispensations – one revokes the law, the other clarifies it.

My question then is this. Granted that all the circumstances are the same in regard to this act of killing a man except the circumstances of its being prohibited in one case and not prohibited in another, could God cause that act which is circumstantially the same, but performed by different individuals, to be prohibited and illicit in one case and not prohibited but licit
in the other? If so, then he can dispense unconditionally, just as he changed the old law when he gave a new law. And he did this in regard to the ceremonial functions he required, not by letting the ceremonial precepts stand, but not requiring them to be observed, but rather by letting an act remain the same [e.g., eating only kosher food], but not requiring anyone to do this as he did before. This is also the way any legislator dispenses unconditionally when he revokes a precept of positive law made by himself. He does not allow the prohibited act or precept to remain as before, but removes the prohibition or makes what was formerly illicit now licit. But if God cannot cause this act [of killing], which under such and such circumstances was formerly prohibited, to be no longer prohibited, even under the same circumstances, then he can not make killing licit – but that he did so is clear in the case of Abraham and in many other instances.

Also, those propositions which are true by reason of their terms, whether they be immediately so or conclusions therefrom, have their truth value prior to any act of the will, or at least they would be true even if, to assume the impossible, no act of willing existed. Therefore, if those precepts of the decalogue or the practical propositions that could be formed from them possessed such necessity (e.g., if these were necessary: "No neighbor should be hated or killed," "Theft should never be committed," and the like), it would follow that apart from all volition the divine intellect would see such propositions as true of themselves, and then the divine will would necessarily agree with them or it would not be right, and thus one would have to assume God has practical knowledge [as regards creatures], which was denied in the first book in the question about praxis. It would also be necessary to assume that his will is necessarily determined in an unqualified sense in regard to willing things other than himself, the opposite of which was asserted to be the case also in the first book, dist. 2, where we discussed the fact that his will tends to nothing other than himself except contingently.

And even if you say that a created will must necessarily be conformed to these truths if it is to be right, this still does not say that the divine will wills in accord with them; rather because it wills accordingly, therefore they are true.

The proponent of this first view replies to the question [I raise] that reason proves the opposite [namely, that God cannot make an act with the same circumstances licit at one time but not at another], for when the divine intellect apprehends these terms [of the propositions in question] and can understand from them that the propositions are true, a truth they possess prior to any act of his will in regard to them, then in the second sign of nature, namely, when the will does act in regard to them, it has to will necessarily in conformity to that dictate and hence cannot will the opposite.

[Scotus’ own opinion] To the question, then, I say that some things can be said to belong to the law of nature in two ways:

[1] One way is as first practical principles known from their terms or as conclusions necessarily entailed by them. These are said to belong to the natural law in the strictest sense, and there can be no dispensation in their regard, as the argument for the first opinion proves. It is to these that the canon of the Decrees of Gratian refers, where it is said that "the natural law begins from the very beginnings of rational creatures, nor does time change it, but it is immutably permanent" – and this I concede.

But this is not the case when we speak in general of all the precepts of the second table [of the decalogue]. For the reasons behind the commands and prohibitions there are not practical principles that are necessary in an unqualified sense, nor are they simply necessary conclusions from such. For they contain no goodness such as is necessarily prescribed for
attaining the goodness of the ultimate end, nor in what is forbidden is there such malice as would turn one away necessarily from the last end, for even if the good found in these maxims were not commanded, the last end [of man as union with God] could still be loved and attained, whereas if the evil proscribed by them were not forbidden, it would still be consistent with the acquisition of the ultimate end.

But it is different with the precepts of the first table, because these regard God immediately as object. Indeed the first two, if they be understood in a purely negative sense – i.e., “You shall not have other gods before me” and “You shall not take the name of the Lord, your God, in vain,” i.e., “You should show no irreverence to God” – belong to the natural law, taking law of nature strictly, for this follows necessarily: “If God exists, then he alone must be loved as God.” It likewise follows that nothing else must be worshiped as God, nor must any irreverence be shown to him. Consequently, God could not dispense in regard to these so that someone could do the opposite of what this or that prohibits. (In support of this put the two authorities here that are found in Richard, ch. 5.)

The third commandment of the first table is that which concerns the observance of the Sabbath. It is affirmative insofar as it prescribes that some worship be given to God at a specific time, but so far as the specification to this or that time goes, it does not pertain to the law of nature strictly speaking. Similarly with the negative portion included therein, which forbids servile work for a definite time that would interfere with the worship to be shown to him. For such work is only prohibited because it impedes or keeps one from the cult that is commanded.

[A doubt] But there is some doubt whether this precept of observing the Sabbath pertains to the natural law strictly to the extent that it requires that at some definite time worship be shown to God. For if it does not, then God could dispense from it absolutely, so that a man for the entire duration of his life would never have to manifest any affection or love for God. This does not seem probable, for without some act of goodwill or love towards God as the ultimate end, one could not do anything simply good that would be needed to attain that end, and thus this person would never be bound to will anything that is simply good in an unqualified sense. For the same reason that excludes from strict natural law the need to show worship to God now, holds also for then [i.e., the Sabbath] and, by the same token, for any specific time. Therefore, strictly speaking, it is not clear how one could infer that a person is bound then or now to worship God and, by the same reasoning, how anyone is bound at some undefined time to do so, for no one is obliged to perform at some undefined time an act which he is not obligated to perform at some definite time when some opportunities for doing so present themselves.

But if this is strictly of the natural law, so that “God must be loved” follows necessarily from “God must not be hated” or some other such precept, then this argument from singular instances to a universal statement does not hold, but represents a fallacy of a figure of speech, even as does the converse, where one argues from several determinate instances to one indeterminate one. But if this third commandment is not strictly a matter of natural law, then it must be judged like the precepts of the second table of the decalogue.

[2] The other way in which things belong to the law of nature is because they are exceedingly in harmony with that law, even though they do not follow necessarily from those first practical principles known from their terms, principles which are necessarily grasped by any intellect understanding those terms. Now, it is certain that all the precepts of the second table also belong to the natural law in this way, since their rightness is very much in harmony with the first practical principles that are known of necessity. And in this way one has
to understand that statement in the Decrees of Gratian, dist. 6, canon 3: “The moral precepts pertain to the natural law, and therefore they show no evidence of having undergone any change.” Note the gloss which says: “The law concerns change not as regards moral matters but only as regards those pertaining to ritual.”

This distinction can be made clear by an example. Given the principle of positive law that life in a community or state ought to be peaceful, it does not follow from this necessarily that everyone ought to have possessions distinct from those of another, for peace could reign in a group or among those living together, even if everything was common property. Not even in the case of the infirm is private possession an absolute necessity; nevertheless, that such persons have their own possessions is exceedingly consonant with peaceful living, for the infirm care more about goods of their own than they do about common property, and would rather that the common goods be assigned to them than that they be given to the community and its custodians for the common good, and so strife and disorder could occur. And it is this way, perhaps, with all positive laws, for although there is some one principle which serves as the basis for establishing these laws, still positive laws do not follow with simple [logical] necessity from the principle in question or explicate it as regards certain particular cases. Nevertheless, these explications are greatly in harmony with the first universal principle they clarify.

To put all we have said together, first we deny that all the commandments of the second table pertain strictly to the law of nature; second, we admit that the first two commandments belong strictly to the law of nature; third, there is some doubt about the third commandment of the first table; fourth, we concede that all the commandments fall under the law of nature, speaking broadly.

[An objection] Against the first of these, I argue: According to the Apostle to the Romans [13: 9]: “The commandments, ‘You shall not commit adultery; you shall not murder . . .’ and if there be any other commandments, they may all be summed up in this: ‘You shall love your neighbor as yourself.’ ” Therefore, in this precept, “Love your neighbor,” etc., are included the precepts of the second table. For the Apostle appears to prove this point expressly and thus seems to conclude “Whoever loves his neighbor fulfills the law.” What the Savior says also proves this, for the major [of the argument] is found in Matthew 22: [40]: “On this depends the whole law and the prophets.” But the love of neighbor follows necessarily from this necessary principle: “God must be loved.” Therefore, all the precepts of the second table, from first to last, follow from the precepts of the first table. Hence, if those of the first table pertain strictly to the law of nature, because they are included in the first precept or principle, which does belong to the natural law in an unqualified sense, it follows that the precepts of the second table also belong strictly to that law, even though they are conclusions drawn from the same principle. – Proof of the assumption [that love of neighbor follows from love of God]: This is clear from what was said in dist. 28 of this third book, where it was proved in two ways. The perfect love of God is a well-ordered love and cannot be jealous, in the sense of being appropriated [to oneself alone], because love of the good of all as something belonging to oneself alone is inordinate. Now, the love of someone who does not want the beloved [i.e., God] to be loved by others is inordinate and imperfect. Hence, it follows that if God is to be loved perfectly and orderly, then the one loving God must will that his neighbor also love God; but in so willing, he is loving his neighbor. Indeed this is the only way in which our neighbor is loved out of [supernatural] charity, as is pointed out in the Glosses, therefore, etc.

[Solution] To this one can reply in three ways:
First, the precept "Love the Lord, your God," etc., is not simply of the natural law insofar as it is affirmative. However, insofar as it is negative, prohibiting the opposite, namely, "Do not hate God," it does pertain strictly to the natural law. Just when one is required to love God is not clear, however, as was pointed out in discussing the third commandment. Now, from the negative precept, it does not follow that one must want his neighbor to love God, although this would follow from the affirmative formulation, which is not clearly something belonging to the natural law strictly.

Second, one could reply that from this precept, "Love the Lord, your God," it does not follow that I ought to want my neighbor to love God. And when one insists that a perfect and well-ordered love is not a jealous one, I reply that I do not have to will that the common good pertain to another in such a way that [God] has to be loved by this other. For it is not necessary that I will this good for another, if God does not want to be the good of such [e.g., for one who dies hating God], as when he destines one [viz., the saint] and not the other [viz., the sinner], wishing to be the good of the former but not of the latter. The same argument holds for the maxim "Whoever loves perfectly, wishes the beloved to be loved," namely, by one whose friendship pleases the beloved. It is not certain from the law of nature that everyone is such that his love is accepted by the God who is loved or should be loved.

The third way of answering the objection is that even if it were strictly a matter of the natural law that our neighbor be loved in the way this was explained above, namely, that one must want the neighbor himself to love God, because this is what it means to love one’s neighbor, the precepts of the second table still do not follow [logically] from this. For instance, that one must not kill him, so far as the good of his person is concerned; or that one must not want him to commit adultery, so far as the good of his partner is concerned; or that one must not want him to steal, so far as the goods of fortune that he uses are concerned; or that one must want him to show reverence to his parents, which consists not just in honoring them but also in supporting them. For it is possible for me to will that my neighbor love God and nevertheless not will that he preserve corporeal life or conjugal fidelity, and so on with the other precepts. Consequently, these two can coexist, viz., that I want my neighbor to love God as I ought to love him (which would be a kind of necessary conclusion from the practical principles) and still do not will him this or that good pertaining to the second table, since the latter is not a necessary truth.

And then one could say to the quotations from Paul and Christ that God has now explained [in the Scriptures] a higher love of neighbor that transcends that which is included in, or follows from, the principles of the law of nature. In other words, although the love of neighbor that can be inferred from principles of the law of nature only requires that we love him in himself, still the love of neighbor as explained [by Christ and Paul] includes willing him these other goods, or at least not wishing him the opposite evils, such as not wanting him to be deprived unjustly of corporeal life, or conjugal fidelity, or temporal goods, and the like. Hence it is true that love of neighbor fulfills the law, viz., in the way it has been explained that this law of love must be observed, although not in the way that love of neighbor follows from the first principles of natural law. In a similar fashion, the whole law – so far as the second table and the prophets are concerned – depends on this commandment: "Love your neighbor as yourself," again understanding this not as something that follows of necessity from the first practical principles of the law of nature, but as the Lawgiver intended the love of neighbor to be observed according to the precepts of the second table.
[Reply to the initial arguments]

[To 1] As for the initial arguments, the first is in my favor, for it proves that the precepts of the second table are not part of the natural law strictly speaking.

[To 2] To the second, I say that although God’s existence could have been inferred by natural reason from principles known in themselves, nevertheless, for the ignorant people unskilled in intellectual matters, it would be known only from revealed law. Hence the Apostle to the Hebrews 11: [6] says: “Anyone who comes to God must believe that he exists” – understanding this to mean, if he neither had nor could have any other knowledge of God. Thus, even if some sin could be inferred to be against the law of nature, nevertheless to corrupt men it might not be known that their lusts were against the natural law, and therefore, it would have been necessary to explain – either by the law that was given, or in some other way – that such sins of lust are prohibited by the second table. One could concede that such things are not known per se.

[To 3] To the other, I say that in every state all the commandments have been observed and should be observed. In the state of beatitude, indeed, there will be the highest observance of the affirmative precepts and of the negative ones as well, except perhaps that alone of honoring parents, not because there will be any wish not to honor them, but because in heaven there will be no necessity of performing actions, at least so far as “honor” includes providing them with what is necessary to sustain life, for there no one will need such help. In the state of innocence also all were bound by these precepts, which were either prescribed interiorly in the heart of everyone or perhaps by some teaching given exteriorly by God and passed on by parents to their children, even though at that time nothing would have been written in a book. Nor need it have been, because they would have easily remembered it, and the people of those times had longer lives and were better endowed naturally than the people of a later age, at which time the weakness of the people required that the law be given and written down.

As to the point touched upon in the first argument about the children of Israel despoiling the Egyptians, it could be said that in this case God did not dispense them from the law “Do not steal,” for they did not simply take away a thing belonging to another. Since God was the higher owner, he could have transferred the ownership of these things, even if the lower “owners” were unwilling. In this way Christ did not sin in allowing the demons to enter the pigs, which were immediately thrown into the sea; for he did not unjustly deprive their owner of his pigs. Another explanation could be this: the sons of Israel, by serving the Egyptians, deserved the things they took as wages, even though the Egyptians unjustly were unwilling to give them up. In such a case the superior judge could have compelled the Egyptians to do so, and since the Jews accepted these things which should have been theirs by permission of the same higher judge, they licitly and justly appropriated them.

As for the argument for the opposite viewpoint, the canon in question has to be understood of the law taken in a broad sense, and in this case it extends to the precepts of the second table.