If natural law prohibits killing the innocent, how can God, according to biblical revelation, command Abraham to kill his son Isaac (Genesis 22)? As we would expect from thinkers whose natural law doctrine is not distanced from biblical revelation, the problem of the Aqedah or near-sacrifice of Isaac was a staple of medieval discussion of natural law, and it surfaces in modern discussions as well. It may seem that God's command to Abraham belies the claim to an intelligible natural law rooted in God's providential ordering of all things to their due end. What kind of providential ordering could include the command to kill an innocent child? [FN1]

Behind the interest in the Aqedah in discussions of moral theology and philosophy lies the question of how one can claim that there exists a God-given natural law, a morally normative order, in the face of all the suffering, death, and disorder that one finds in the world. In response to this question, this essay proceeds in two steps. First, I explore Immanuel Kant's well-known response to the Aqedah and John Thiel's recent effort to account theologically for innocent suffering. Second, seeking the roots of Kant's and Thiel's accounts, I turn to the Aqedah as the point of divergence between Duns Scotus and Thomas Aquinas on the doctrine of natural law. For Scotus and Aquinas, the Aqedah raises the questions of whether the natural law can be changed and what is the content of the natural law. I will suggest that in the divergence of Scotus and Aquinas we find the beginnings of the modern split between anthropocentric and theocentric alternatives for articulating natural law doctrine. At issue is the normative presence, or lack thereof, of God's ordering wisdom (and not merely his power) in human relationships.

*66 5.1 God and the Slaying of the Innocent

5.1.1 Immanuel Kant

In The Conflict of the Faculties, Immanuel Kant observes that in all likelihood persons who think that they receive commands from God are deluded. As he says in response to the "myth of the sacrifice that Abraham was going to make by butchering and burning his only son at God's command": "Abraham should have replied to this supposedly divine voice: 'That I ought not to kill my good son is quite certain. But that you, this apparition, are God--of that I am not certain, and never can be, not even if this voice rings down to me from visible heaven." [FN2] Kant reasons that the moral law is certain, at least insofar as not killing one's innocent son is con-
cerned, whereas divine commands are profoundly uncertain. He states therefore that “[i]n some cases man can be sure that the voice he hears is not God’s; for if the voice commands him to do something contrary to the moral law, then no matter how majestic the apparition may be, and no matter how it may seem to surpass the whole of nature, he must consider it an illusion.” [FN3] Abraham should have followed the natural law and rejected the apparently divine voice.

As Kant suggests, furthermore, how one reads such passages as Genesis 22 influences how one understands the justice or injustice of killing human beings on the grounds of religious disagreement. In Religion within the Limits of Reason Alone he gives the example of “an inquisitor, who clings fast to the uniqueness of his statutory faith even to the point of [imposing] martyrdom, and who has to pass judgment upon a so-called heretic (otherwise a good citizen) charged with unbelief.” [FN4] Assuming the inquisitor decides in favor of the stake, can one say, Kant asks, that the inquisitor acted on the basis of conscience? Kant argues that the answer is no, because conscience could never assure an inquisitor that capital punishment in such a case is just. The reason is this: “That it is wrong to deprive a man of his life because of his religious faith is certain, unless (to allow for the most remote possibility) a Divine Will, made known in extraordinary fashion, has ordered it otherwise. But that God has ever uttered this terrible injunction can be asserted only on the basis of historical documents and is never apodictically certain.” [FN5] Neither an exterior nor interior voice, nor the historical documents of Scripture, can demonstrate with sufficient power that one should act in a way which one knows on other grounds, with certainty, to be unjust.

For Kant, the question of the justice of capital punishment for heresy is thus similar to the question of the justice of Abraham killing his son: only the invocation of the divine will could make such actions “just,” but one can never know with *67 certainty whether God has in fact made his will known in this way. One can know with certainty that such actions are, humanly speaking, unjust. To go against this certainty on the basis of a faith that rests on historical grounds, which in Kant's view cannot command firm assent, would be a violation of conscience. Kant concludes, “This is the case with respect to all historical and visionary faith; that is, the possibility ever remains that an error may be discovered in it. Hence it is unconscientious to follow such a faith with the possibility that perhaps what it commands or permits may be wrong, i.e., with the danger of disobedience to a human duty which is certain in and of itself.” [FN6] In short, contrary to God's praise of Abraham in Genesis 22 for withholding nothing from God but instead receiving everything as a gift, Abraham sinned in obeying “God”—or so Kant thinks.

5.1.2 John Thiel

Without mentioning Abraham's near-sacrifice of his son, the contemporary theologian John Thiel advances similar concerns—but now about whether a God who wills the crucifixion of his beloved Son Jesus can indeed be a just and loving God. [FN7] He takes Anselm as a typical representative of the position that God does indeed providentially will the death of Jesus, the supremely innocent man. As Thiel notes, “Since Anselm has argued ardently on behalf of the logical necessity of Jesus' sacrifice, there is no way for him to avoid the conclusion that God willed the cross for Jesus. That God wills Jesus' death may sound a dissonant chord in Christian sensibilities. Yet Anselm offers this judgment as a claim about God's love for humanity, even in the guilty depths of its fallenness.” [FN8] Is God's will that Jesus must die, however, truly the epitome of love? Would a just God approve the death of a supremely innocent man? Moreover, would this approval, this affirmation that an innocent man should die, in fact be “the paradigmatic act of divine providence,” [FN9] in which the righteousness of the Father, Son, and Holy Spirit is fully revealed? For Thiel, the answer is no.
Thiel argues that Anselm's “sacrificial logic” allows believers to make some sense of their own deaths and those of others, but at the cost of maintaining what is, for some at least, an “extraordinary troubling” view that “God wills death,” including the deaths of innocent victims. Thiel challenges the “sacrificial logic,” furthermore, on the grounds that it places Jesus, who is perfectly innocent, on a different level from other human beings who are to varying degrees disordered by original sin. As Thiel remarks, “Jesus’ death is not retributive punishment, while the death of everyone else is .... Jesus' death is the undeserved death of an innocent sufferer, while the death of everyone else is deserved and thoroughly guilty.” [FN10] Two problems follow: how can our deserved deaths be truly united with Jesus' undeserved death, and how can one truly mourn the deaths of other innocent victims given that their innocence is marked by a prior and more determinative guilt?

In other words, one might posit that a loving God wills the sacrificial death of one innocent man (Jesus) on behalf of all other guilty human beings, but such a viewpoint assures, in Thiel's view, a twofold outcome: Jesus' dying lacks real solidarity with other human deaths, and God wills that the rest of us be deservedly killed (undergo death) as well. Thiel argues that this outcome distorts our understanding both of God and of the tragedy of death. In both the “providential” and the “sacrificial” accounts of death, God's will gives an improper imprimatur to death (even of the most innocent man). We cannot even mourn properly the deaths that we see and experience because they allegedly belong to God's will. This distortion contrasts with our real experience of the tragic deaths of innocent victims, whether from cancer, violence, or other causes. Our hope that these victims find reward in God's providential plan is thwarted by the denial, in the sacrificial logic, that any of the victims (other than Jesus) are in a fundamental sense innocent.

We do not want, says Thiel, to put God on the side of death. As he observes, “we have seen that the popularity of the providential explanation stems from the desire to confirm, through God's actions, the very innocent suffering that the legal explanation denies .... [T]his indirect recognition of innocent suffering comes at the extraordinarily high price of God's arranging the particular circumstances of suffering and death that individuals find so grief-laden and tumultuous in their lives.” [FN11] Thiel's goal is therefore to account for suffering and death in a way that reclaims a full concept of innocent human suffering and that denies that God approves or wills any death. Just as Kant holds that it is wrong to kill an innocent human being (e.g., Isaac) even if one thinks that one has received a divine command to carry out such acts, in a similar fashion Thiel suggests that it would be wrong for God to will the death of an innocent human being (Jesus) and indeed wrong to imagine that God wills, in his providential plan, the deaths of even sinful human beings. As we experientially recognize, many of these deaths are tragic instances of human life being cut off, through no fault of its own, by oppressive forces. The good and wise God is not to blame. Pace sacrificial and providential accounts, for Thiel God does not in any sense ever will the tragedy of human death.

5.1.3 Evaluation

Kant deals with Genesis 22 by arguing simply that human beings who think they must obey a divine command that clearly goes against right reason, are profoundly deluded. Thiel's case, by contrast, involves elucidating the complexities of divine providence and of the order of justice between the rational creature and the Creator. Granting the differences in their argument, Kant and Thiel are united by their concern to deem irrational and unintelligible the death of the innocent, whether Isaac, Jesus, or others. Kant addresses the issue by ruling out Genesis 22 as an example of religious irrationality on the part of Abraham. Thiel argues that accounts of Christ's Cross that imply divine approval or that suggest that God wills to change the human condition through the death of an innocent man are similarly manifestations of religious irrationality.
While I have responded more broadly to anti-sacrificial and anti-providential arguments elsewhere, in what follows I want to explore specifically how similar concerns influenced late-medieval and modern developments in natural law doctrine. Duns Scotus's profound disagreement with Thomas Aquinas on the character of natural law hinges upon these very issues of God's justice and the death of the innocent. Scotus, as we will see, attempts to resolve the difficulty by displacing human-to-human relationships from the natural law. Human-to-human relationships are for Scotus governed solely by divine positive law, which can be changed by God at any time, whereas human-to-God relationships comprise the unchanging natural law.

By separating out human-to-human relationships as a realm ungoverned by an ordering inscribed in creation—and thus by denying an intrinsically ordered “human nature” with its proper requirements for fulfillment (other than obedience to God)—Scotus intends to grant God absolute and arbitrary power over the ordering of human-to-human relationships. Looked at another way, however, Scotus's position opens the door to a thoroughly anthropocentric human-to-human morality. Although Scotus means to intensify the theocentric frame, his positing of a realm of humanto-human relationships that does not intrinsically reflect the ordering pattern of divine \textit{ec-stasis} means that God could command, as the moral norm for humanto-human relationships, self-cleaving as easily as self-giving. The human-to-human no longer fully participates in the human-to-God. Thus the path is open to the kinds of anthropocentric solutions that Kant and Thiel propose—or so I will suggest.

5.2 Aquinas and Scotus on the Natural Law: Can the Natural Law Be Changed?

5.2.1 Thomas Aquinas

Can the natural law be changed? Aquinas answers in the affirmative—if what is meant by “changed” is to receive additions. As he points out, while one cannot hold that “whatever is contained in the Law and the Gospel belongs to the natural law,” one can affirm that “whatever belongs to the natural law is fully contained” in the Law and the Gospel. \[\text{[FN12]}\] God does not intend the natural law to stand on its own; a \[\text{[FN13]}\] higher participation in the eternal law (i.e. in God’s plan for ordering human action, in his providence, to its fulfillment) is possible through divine law. Divine law, comprising the Mosaic law and the Gospel of Christ, contains “many things that are above nature.” \[\text{[FN13]}\] It would not do to imagine the natural law as a closed-off system of relatively autonomous morality, since the natural law belongs within the revealed divine law, and has its ultimate intelligibility and value in that context. Emphatically, then, Aquinas affirms that the natural law can be, and is, “‘changed” in the sense of having other precepts (above the capacity of merely natural powers) added to it.

Yet, the natural law, while “changed” by being integrated into a gratuitous and supernatural human teleology, is internally \textit{unchanged}. In its deepest sense, the natural law cannot be changed, even by God. This is so, says Aquinas, because the natural law is the rational creature's participation in the eternal law, God's wise ordering of creation to its ultimate end. This participation is intensified, not revised, by the gift of a supernatural end. The natural capacities are expanded and enhanced so as to participate in Trinitarian communion, not cut off and redirected in a different direction. In affirming this unchangeability of the natural law, Aquinas appeals to the Church's moral practice as codified in the canon law of his day: “It is said in the Decretals (\textit{Dist. v}): The natural law dates from the creation of the rational creature. It does not vary according to time, but remains unchangeable.” \[\text{[FN14]}\]

Opposed to canon law, however, appears to be the authority of divine revelation in Scripture. Like any reader of the Old Testament, Aquinas is well aware of this rather alarming problem: “Further, the slaying of the in-
nocent, adultery, and theft are against the natural law. But we find these things changed by God: as when God commanded Abraham to slay his innocent son (Gen. xxii. 2); and when he ordered the Jews to borrow and pur-loin the vessels of the Egyptians (Exod. xii. 35); and when He commanded Osee [Hosea] to take to himself a wife of fornications (Osee i. 2).” [FN15] It would seem that, if the natural law is a pattern of just human action, God himself teaches particular human beings to violate the natural law, to act in an unjust manner. Someone who teaches others to commit injustices would himself be unjust. Aquinas, however, knows that God cannot be unjust—and thus the dilemma which we have already seen in Kant and, in a different way, in Thiel. [FN16]

In an effort to resolve this dilemma, Aquinas distinguishes human reason as ordered to universal truths (speculative reason) from human reason as ordered to operation or activity (practical reason). While not cut off from speculative reason, law falls into the latter category. For reason in its speculative mode, the principles and conclusions are the same for all people, although the conclusions are not known by all. Similarly, reason in its practical mode relies upon unchangeable first principles that are known by all. But reason in its practical mode leads to diverse conclusions from these general principles, since right reason as regards action differs depending upon the situation. Aquinas observes, for instance, that from the principles of the natural law one should conclude to the precept that “goods entrusted to another should be restored to their owner,” but in fact this conclusion (unlike conclusions of the speculative reason) does not hold in all cases: “it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust; for instance if they are claimed for the purpose of fighting against one’s country.” [FN17] The general principles of the natural law are thus unchangeably the same for all people, but the conclusions that follow from these principles admit exceptions in certain circumstances, in order to enable the person to attain the ends recognized in the general principles.

This distinction between general principles and conclusions assists Aquinas in affirming the natural law as regards difficult biblical cases such as the Aqedah (Genesis 22), once the distinction is understood within a fully theocentric framework. In the natural law, God is the lawgiver. As Aquinas says, “properly speaking, none imposes a law on his own actions.” [FN18] Human beings are subject to the law of God, God’s wise plan for the right ordering of human action to humankind’s ultimate end. In promulgating the law to human beings, God “imprints on man a directive principle of human actions.” [FN19] This imprint of the eternal law, inscribed in the metaphysical constitution of human beings, is present in two ways in accord with the body-soul unity of the human person:

There are two ways in which a thing is subject to the eternal law ...: first, by partaking of the eternal law by way of knowledge; secondly, by way of action and passion, i.e., by partaking of the eternal law by way of an inward motive principle: and in this second way, irrational creatures are subject to the eternal law ... But since the rational nature, together with that which it has in common with all creatures, has something proper to itself inasmuch as it is rational, consequently it is subject to the eternal law in both ways; because while each rational creature has some knowledge of the eternal law, as stated above [I-II, q. 93, a. 2], it also has a natural inclination to that which is in harmony with the eternal law; for we are naturally adapted to be the recipients of virtue (Ethic. ii. 1). Both ways, however, are imperfect, and to a certain extent destroyed, in the wicked. [FN20]

The key point here is that “natural law” does not place human beings in the role of giving the law to themselves. Aquinas points out earlier, “Human reason is not, of itself, the rule of things: but the principles impressed on it by nature, are general rules and measures of all things relating to human conduct, whereof the natural reason is the rule and measure, although it is not the measure of things that are from nature.” [FN21] Right reason governs human action, but does so not as first receiving “the principles impressed on [human reason] by
nature” which contain the “general rules and measures of all things relating to human conduct.” The true law-giver is God, *72 and the way that the human being participates in the law (as opposed to participating in the lawgiving, which is the task of human positive law) is the natural law.

Of course, human rational participation is a share in God's providence--as a sharing in God's eternal law-that enables human reason to govern human action and thus to be “provident both for itself and for others.” [FN22] Yet this human practical reason or providence does not constitute the principles of the natural law: “the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light.” [FN23] This imprint of God's reason inclines us naturally, in our very rationality, toward what is good for our fulfillment as human beings. Our rational perception of a hierarchical ordering of goods that our metaphysical constitution (body-soul) inclines us to pursue is the working out of the divine imprint. [FN24] A law, as Aquinas says, is “nothing else than a dictate of reason in the ruler by whom his subjects are governed.” [FN25] As regards the natural law, the “ruler” is God.

If God is the ruler, what about human suffering and death? Aquinas grants that God, as the wise ruler of human beings, may exact just punishment upon human beings who merit such punishment at such a time that God deems befits his plan for human ordering to the ultimate end. Since the punishment of human sin is suffering and death--a punishment intrinsic to the crime, because sin pridefully turns away from the source of life--God can punish sinners by no longer sustaining in being their earthly lives; indeed all sinners undergo this punishment at some time or another in God's providential plan. Aquinas explains, “All men alike, both guilty and innocent, die the death of nature: which death of nature is inflicted by the power of God on account of original sin, according to 1 Kings ii. 6: *The Lord killeth and maketh alive.*” [FN26] Just as the natural law can at times require killing in order to fulfill justice (e.g., in defense of a community under attack), so also God, in his wisdom and goodness, can directly require killing. God is not thereby exacting an unjust penalty. Similarly, God, as the creator and governor of the universe, is the true owner of all things. He can re-allocate things without there being an injustice: one cannot steal from oneself.

Along these lines, Aquinas engages Genesis 22, Exodus 12, and other difficult biblical texts. Because God knows the good end toward which he is moving human creatures, he can justly command the killing of Abraham's child born under the penalty of sin--although by no means does God in fact will Abraham to go through with this sacrifice. Likewise God can justly command the Hebrews in Exodus 12 to take and keep what belongs ultimately not to the Egyptians, but to God. So, too, God has ordained the union of man and woman in marriage, by which the human species endures and flourishes. These ends of the human species, in the plan of God, *73 may by God's command be achieved outside of the marital bond without the commission of a sin. In other words, marriage, life, and material possessions all belong to God's ordering of human creatures to their proper flourishing. God can accomplish his wise ordering directly without overturning the natural law. The general principles of the natural law--principles defined by the goods pertaining to God's ordering of human creatures to union with God--do not change. But “in some particular cases of rare occurrence,” [FN27] God may, at the level of secondary precepts flowing from the first principles, command that human persons enact directly the good ordering that God wills, in ways that human persons could not justly act on their own behalf.

For Aquinas, therefore, what is at stake in these biblical passages is the status of the natural law as a participation in the eternal law. The natural law does not have an integrity that, as it were, stands on its own. Rather the natural law is human rational participation in God's eternal law or wise ordering of all things to their fulfillment. As such, natural law does not exhaust the ways in which God can communicate the eternal law. Aquinas affirms that God cannot change the natural law as regards the goods that befit human happiness and toward
which human beings are thus, in a hierarchically ordered fashion, inclined. To change these goods—as opposed to adding new goods—would be to destroy human nature. Yet, attaining these goods directly is possible for the creator and lawgiver whose goods they are. God can order things to their ends in a sovereign manner, without overturning justice. What would be theft for a man on his own authority, is not so when commanded by God: God ordains the distribution of material possessions toward the ultimate end of human union with God. What would be murder for a man on his own authority, is not when commanded by God: God ordains the ending of life likewise toward the ultimate end. What would be unjust sexual intercourse for a man on his own authority, as outside licit marriage bonds, is not when commanded by God: God ordains the union of man and woman toward the ultimate end of human union with God.

This account of reality is, of course, radically theocentric. God is sovereign over all the goods toward which the natural law directs the human person. In his eternal law, God wisely orders these goods. God cannot overturn or change these goods, which would be to obliterate human nature, and so the first principles of the natural law are unchangeable. However in rare cases God can change the secondary principles or conclusions that indicate the ways of rightly attaining the goods, without thereby denying the general truth of the secondary principles. God can do this because, as the sovereign giver of all the goods, God can distribute them justly and wisely in ways that human beings could not do on their own authority, since human beings (unlike God) do not have authority over the goods. God has authority, in his goodness and wisdom, over the distribution of human goods: this follows from the doctrine of the eternal law. Natural law participates in, rather than displacing or rivaling, God's authoritative ordering.

*5.2.2 Duns Scotus*

In seeking to work out a doctrine of natural law, Scotus begins by questioning Abraham. Although he finds a certain senselessness to Abraham's near-sacrifice of Isaac, he celebrates this apparent senselessness as divine “sense.” Scotus summarizes the problem as he sees 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?” [FN28] In Scotus's view, this is exactly what God has done in Abraham's case.

For Abraham in the case of the near-sacrifice of Isaac, God makes licit the killing of the innocent. The apparent senselessness arises from the fact that the same God also commands, in the Decalogue, “You shall not kill” (Exodus 20:13, Deuteronomy 5:17). This apparent senselessness is compounded by Scotus's refusal to appeal to distinctions between “murder” and justified killing, e.g. in self-defense. He notes that the typical manner of “explain[ing] away those texts where God seems to have given a dispensation ... is to claim that though a dispensation could be granted to an act that falls under a generic description, it could never be given insofar as it is prohibited according to the intention of the commandment, and hence would not be against the prohibition.” [FN29] In Scotus's view, the problem with such efforts to explain away difficult cases based upon dispensations in certain circumstances is that they cannot account for cases such as Abraham's, which involve God's command to kill the innocent. For Scotus, the case of the Aqedah is no mere isolated incident, but one among “many other instances” in which God commands, as licit, acts of killing that elsewhere, in the same circumstances, God prohibits as illicit. [FN30]

Aquinas, we recall, argues that all human life belongs to God and deserves the punishment of death; God can
righteously carry out this punishment through human instruments without causing them to violate the command-
ment “You shall not kill,” which proscribes unjust killing. For Aquinas, the commandment “You shall not kill”
belongs to the unchangeable natural law, because it flows from God's eternal law for the ordering of human ac-
tion to human fulfillment in union with God. God does not dispense Abraham from the commandment, but 
stead God, through Abraham, justly requires what is God's own. In contrast, Scotus focuses on Abraham's ac-
tion. Rather than beginning with God's action and accounting for Abraham's action instrumentally, Scotus be-
gins with Abraham's action--his acceptance of God's command to kill his child Isaac. Scotus does not place 
Isaac into the context of the relational ordering of creature to Creator, in which ordering Isaac's life is from God 
and under the penalty of sin. Rather, Scotus asks how Abraham, if God unchangeably commands to all persons 
“You shall not kill,” could justly will to kill his child. *75 Abraham, Scotus suggests, could not justly do it even 
if commanded by God--unless God also dispensed Abraham from the commandment “You shall not kill.” No 
dispensation could be possible if the commandment belongs to the unchangeable natural law.

Scotus therefore reasons that “You shall not kill” does not belong to the unchangeable natural law. The un-
changeable natural law, he reasons, commands that which “has a formal goodness whereby it [what is com-
manded] is essentially ordered to man's ultimate end, so that through it a man is directed towards his end” and 
prohibits that which “has a formal evil which turns one from one's ultimate end.” [FN31] The first two precepts 
of the Decalogue, “You shall not have other gods before me” and “You shall not take the name of the Lord, your 
God, in vain,” belong on this account to the unchangeable natural law. These precepts order human beings di-
rectly toward their end, God. To disobey these precepts would be, under any terms, to cut oneself off from God. 
As regards the status of third precept of the Decalogue, “Remember the sabbath day, to keep it holy,” Scotus is 
somewhat in doubt, because he wonders whether being ordered to God as one's end requires worshipping God at 
this or that particular time, rather than at another time.

The other seven commandments of the Decalogue, Scotus argues, do not possess strict necessity as regards 
attaining God as one's ultimate end. Having affirmed the first two commandments of the Decalogue (those about 
God) as necessarily following from the “first practical principles known from their terms” [FN32] and thereby as 
unchangeable natural law, Scotus points out that the last seven commandments (known as the “precepts of the 
second table” [FN33]) can be dispensed with without necessarily causing the person to fail to attain the ultimate 
end. Although Scotus does not say, one assumes that only God can issue such a dispensation, because these sev-
en commandments “are exceedingly in harmony with that [natural] law” [FN34] expressed by the first two com-
mandments. This harmony is such that, “speaking broadly,” one can conceive of the entire Decalogue as belong-
ing to the natural law. By means of this broad sense, Scotus is able to avoid disagreeing with canon law that, as 
Aquinas observed, held that the moral precepts of the Decalogue belong to the unchangeable natural law.

Speaking in a strict sense, however, Scotus holds that the last seven commandments of the Decalogue 
“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.” [FN35] To take 
the example of “You shall not kill” (Scotus himself employs other examples), even the killing of the innocent 
does not necessarily constitute such a malicious deed that it cuts one off from God. One can only be cut off from 
God by directly turning away from one's *76 obligations to God. The commands that have to do with other hu-
man beings cannot therefore be of the same import as the commands regarding God. As Scotus says about the 
last seven commandments, “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.” [FN36]
These are strong words, no matter with what qualifications one takes them. Could God really make murder not intrinsically and as such an impediment one's ability to attain to eternal life in union with God? Scotus's argument is premised on the fact that the killing of the innocent has as its object human beings, whereas in contrast the first two commandments of the Decalogue “regard God immediately as object.” [FN37] As an objection to his position, he cites two biblical passages: Romans 13:9, “The commandments, ‘You shall not commit adultery, You shall not kill, You shall not steal, You shall not covet,’ and any other commandment, are summed up in this sentence, ‘You shall love your neighbor as yourself’” and Matthew 22:37-40, “And he [Jesus] said to him, ‘You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the great and first commandment. And a second is like it, You shall love your neighbor as yourself. On these two commandments depend all the law and the prophets.” [FN38] It would seem, Scotus remarks, that these biblical passages, the words of the Apostle Paul and of Jesus Christ himself, inseparably unite love of God (the “first table” of the commandments of the Decalogue) and love of neighbor (the “second table”). Were this the case, then Scotus's view that the last seven commandments of the Decalogue are not strictly unchangeable natural law, but rather are dispensable precepts that nonetheless possess a significant harmony with the commandments of the unchangeable natural law (i.e. the first two commandments pertaining to God), would be untenable. If love of God cannot be separated from love of neighbor, then the Decalogue's commandments about how to treat other human beings would belong just as strictly to the natural law as would the Decalogue's commandments about God. The ultimate end (God) would in a strict sense necessarily be lost not only by disobeying the commandments that pertain directly to God, but also by disobeying the commandments that pertain to how to treat human beings.

To this challenge to his position, Scotus offers three replies. First, he proposes that while the prohibition against hating God pertains strictly to the natural law, the command to love God (Matthew 22:37) does not. This is so because “[i]ust when one is required to love God is not clear,” [FN39] as Scotus had also argued in regard to the commandment about the sabbath. In other words, hating God clearly cuts one off from the ultimate end, but actively loving God need not always be done in order to attain human fulfillment in the ultimate end. On this view, actively loving God is not commanded by the natural law. Actively loving one's neighbor, then, would not belong strictly to the natural law either. Second, Scotus points out that God may be permitting the damnation of one's neighbor. We would not want to love the neighbor any more than God loves the neighbor. As Scotus puts it, “it is not necessary that I will this good for another, if God does not want to be the good of such, as when he destines one and not the other, wishing to be the good of the former but not of the latter.” [FN40] In other words, the commandment that we love our neighbor in particular ways could not belong strictly to the natural law if God himself, in willing the ultimate end, does not will to include the neighbor in God's love. Loving God does not mean that we have to love someone whom God, by withholding grace, does not love.

These two points possess a certain logical rigor but may not be particularly theologically attractive. It should be pointed out, then, that Scotus's goal is not to demonstrate either of the above two points. Rather he wishes to demonstrate that the Decalogue's commandments about love of neighbor do not strictly pertain to the natural law, because ultimately the natural law consists simply in what brings us to attain our end in God. The natural law is ultimately about God, and God can and does, when he wishes (e.g., Abraham), release human beings from the performance of the other commandments of the Decalogue. Scotus's position thus has two aims: to retain the absolute primacy and priority of God, and to account for the divine contradictions to the last seven commandments of the Decalogue that Scotus finds in the biblical record. Given the primacy of God, for Scotus active love of God need only occur when God wills that it should, and this will can vary; and similarly active love of neighbor need only occur when God himself wills love for the neighbor, and (given the predestination of some) this
varies from neighbor to neighbor. The only unvariable element, which thus pertains to the natural law, is that we
must not hate God, and must not hate his order of predestination.

Scotus gives a third reply. He argues that one could “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 ... not will him this or
that good pertaining to the second table, since the latter is not a necessary truth.” [FN41] In other words, even
were it strictly necessary to love one's neighbor as oneself in order to attain the ultimate end, that necessity
would not mean that the last seven commandments of the Decalogue were strictly necessary in the way that the
commandments pertaining to God (at least the first two) are. One need not will as regards one's neighbor that he
not be killed—one might even will that he be killed—in order to will that one's neighbor should love God pro-
perly. On this argument, “corporeal life or conjugal fidelity, and so on” are not the crucial thing. [FN42] Even
should one wish to deny one's neighbor one of these earthly aspects, these earthly aspects are not necessary. The
only necessary thing is union with God.

*78 This reply makes particularly clear Scotus’s focus upon the primacy and priority of God, who alone is
necessary for human fulfillment and who thereby alone is the subject of commandments that strictly belong to
the natural law. Once this is established, Scotus is perfectly willing to grant that “one could say to the quotations
from Paul and Christ that God has now explained a higher love of neighbor that transcends that which is in-
cluded in, or follows from, the principles of the law of nature.” [FN43] God can certainly command that we do
more than what is strictly necessary, in order to show our love for him. On the basis of natural law, Scotus
holds, love of neighbor can only extend to loving the neighbor as God loves him and willing for him what God
wills for him (perhaps not much). But if God so commands, as seems for Scotus to be the case in the New Testa-
ment, then the love of neighbor can be extended to include “willing him these other goods, or at least not wish-
ing 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.” [FN44] So long as these goods are not at the same level as God in terms of the
natural law, Scotus gladly includes them: “the Lawgiver intended the love of neighbor to be observed according
to the precepts of the second table.” [FN45]

The precepts regarding human-to-human relationships, in short, are not natural law, but they are the will of
the Lawgiver. This will can change; the Lawgiver can will to dispense with them in particular cases. Scotus
compares God's power over these precepts to that of human legislators in relation to positive law: “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.” [FN46] These precepts, in short, while in general harmony with the natural law pre-
cepts regarding God, can be, when God decrees, simply removed. There is nothing intrinsic to the relationship of
human beings with God that requires human beings not to kill innocent human beings. If God so chooses, killing
innocent human beings can be an act that fully accords with worshipping and honoring God (that is, in accord
with the proper precepts of the natural law). Scotus is not saying that God wills such dispensations frequently.
But because of the radical difference posited by Scotus between the precepts that have to do with God, and those
that have to do with other human beings, he concludes that no act toward another human being is absolutely
bound up in one's relationship with God.

On this basis he interprets the case of the Aqedah and the other cases cited by Aquinas:

To kill, to steal, to commit adultery, are against the precepts of the decalogue, as is clear from Ex-
odus [20:13]: ‘You shall not kill.’ 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 *79 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.’ [FN47]

For Scotus, Genesis 22 involves the planning, at the command of God, of a murder. Murder, while generally illicit, is not in his view strictly illicit. God can make murder licit, because ultimately one's relationship to God does not depend upon how one treats other people, so long as one remains obedient to God. It is worth noting again that Scotus by no means denies that murder is generally illicit, generally disharmonious with the natural law precepts regarding God. They are disharmonious because God wills them so. In this fashion Scotus interprets Romans 7:7, where Paul states that “if it had not been for the law, I should not have known sin. I should not have known what it is to covet if the law had not said, ‘You shall not covet.’” Scotus observes on this passage that corrupt minds, ignorant of God and his law, require both God's existence and ethical norms to be revealed. For this reason God reveals to Israel (and thus to Paul) that “such sins of lust are prohibited by the second table.” [FN48]

Although the prohibitions are not for Scotus absolute, since he has unhinged them from the commandments regarding God, nonetheless they are absolute when God wills them, which is almost always. Scotus's concern is to elevate and prioritize God, not to unleash antinomianism in human beings. In this regard, he adds a ringing affirmation that “in every state [from the state of innocence to the state of glory] all the commandments have been observed and should be observed.” [FN49] He also takes pains to minimize the number of divine dispensations from the second table. The despoiling of the Egyptians, for instance, need not be theft. What was taken could be considered as the rightful wages of the enslaved children of Israel, and moreover, as Aquinas likewise argues, “Since God was the higher owner, he could have transferred the ownership of these things, even if the lower ‘owners' were unwilling.” [FN50] As we have seen, too, Scotus grants in a broad sense that the commandments of the second table belong to the “natural law,” although strictly speaking they do not. In general, people should act as though these commandments do belong to the natural law, because they are God's commandments and they are harmonious with worshipping and honoring God (that is, the natural law strictly speaking). Few dispensations from the commandments regarding other human beings can be found. Yet because of the transcendence of God, worshipping and honoring him are not on the same level as actions pertaining to human beings. God can will that a particular act of murder be morally good, but God cannot will that not worshipping or not honoring him be morally good.

*80 In Scotus's view, as noted above, the gospel adds something to what is owed in love of neighbor. Beyond loving our neighbor as God loves him (perhaps not much), the gospel adds “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.” [FN51] Scotus is thereby able to affirm, with certain limitations, Jesus' statement regarding love of God and love of neighbor fulfilling “all the law and the prophets” (Matthew 22:40). As Scotus puts it, “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.” [FN52] The key is the will of the Lawgiver, God. Scotus recognizes that God wills, in general, that the commandments of the Decalogue regarding one's neighbor be observed. He also recognizes that in the gospel God wills that one's neighbor be loved, not only so much as God loves him, but even as one loves oneself. These commands of God are immensely important for Scotus. His insistence on the radical distinction between the “first table” and the “second table” intends...
to ensure, however, that the commandments of the second table receive obedience as God's commandments, rather than as something within human nature that compels God or that is strictly linked with worshipping and honoring God.

5.3 Concluding Reflections

Taking seriously the biblical claim that the just punishment of original sin is death (e.g., Genesis 3:19; Romans 5, 6:23, 8:2; 1 Corinthians 15; 2 Corinthians 1; Hebrews 2), Aquinas observes, “All men alike, both guilty and innocent, die the death of nature: which death of nature is inflicted by the power of God on account of original sin, according to 1 Kings ii. 6: The Lord killeth and maketh alive.” [FN53] As we have seen, for Aquinas, since all things are participated and received from God, there is no autonomous possession by creatures of anything. Rather, God primarily possesses all things and can justly redistribute all things. Moreover, God can do so by acting through human causes. Aquinas therefore argues that the Aqedah cannot be read as if God were commanding Abraham to perform a homicide. God's command signals that even Isaac, the child of the promise, the long-awaited heir to the great covenant, is utterly in God's hands; the promise and the covenant do not become autonomous possessions of human beings. This, then, is no murderous command, and Abraham is implicated in no murderous intent. Without turning *81 from the natural law, Abraham obeys the source of the natural law, who commands the due punishment of death--without intending to exact it. God is the primary agent in Genesis 22.

Scotus, too, reads God as the agent in Genesis 22. Yet Scotus holds that God does indeed command a homicide, and that Abraham's actions can only be construed as murderous. Murder does not always, on this view, separate a human being from the God whom he or she worships and reveres. On the contrary, sometimes God wills the murder of human beings, the killing of the innocent. For Scotus, the commandment “You shall not kill” is not intrinsically bound to the commandments regarding God, and so the injunction against murder does not strictly speaking belong to the natural law. The natural law includes only those principles and conclusions of practical reason which are necessarily true, [FN54] and only those principles and conclusions which pertain directly to worshiping and revering God are necessarily true, because God can and does dispense with precepts that order human beings to each other.

Scotus thereby secures the radical difference between God and the created order. Scotus and Aquinas agree in their accounts of natural law that the main agent is God. They differ as regards whether Abraham and God are implicated in homicidal actions, and they differ as regards whether homicide is strictly and unchangeably against the natural law. Ultimately, of course, the key is that Aquinas views Abraham differently than does Scotus. For Aquinas, God's agency lies at the heart of human moral action, and so God's ordering of Isaac's death toward the just end of punishment suffices to make Abraham's action, as commanded by God with this ordering in mind, not murderous. Scotus, on the other hand, does not try to justify Abraham's actions vis-à-vis Isaac from within a framework of law. Rather, he argues that there is no ordering of human actions vis-à-vis other human beings (no “law”) that intrinsically pertains to human ordering to the ultimate end. For Scotus, when God wills murderous action on the part of an agent, such action does not divert the agent from the agent's ultimate end, union with God.

What Scotus has done, in short, is effectively to disjoin God's law (as opposed to God's will) from human action vis-à-vis other human beings. God's law, as expressed in natural law, now pertains solely to human action vis-à-vis God. Once conceived as independent of God's law--an autonomy strictly limited in Scotus by God's
will which human beings are required freely to obey--human action vis-à-vis other human beings takes on two central aspects. First, God's intrinsic connection with human moral action is weakened. It becomes difficult to conceive of Abraham as anything but an autonomous agent whose actions, on their own terms, are simply homicidal. Second, the intrinsic meaningfulness of human action vis-à-vis other human beings is called into question.

To return to where we began, I would suggest that one can see the working out of these two problems in later thinkers such as Kant and Thiel. Where Scotus gives to the “second table” autonomy from God's law, though not from God's will, Kant conceives natural law solely as an autonomous human construction by practical reason. No other mode can be credible: for Kant God's supposed communication of law by other modes “can be asserted only on the basis of historical documents and is never apodictically certain. After all, the revelation has reached the inquisitor only through men and has been interpreted by men, and even did it appear to have come to him from God himself (like the command delivered to Abraham to slaughter his own son like a sheep) it is at least possible that in this instance a mistake has prevailed.” [FN55] Kant's approach gives to human practical reason the governing role possessed in Aquinas's account by God's eternal law. Correspondingly, Kant cannot conceive that the killing of Isaac, had it happened, could be anything other than homicide, because he lacks Aquinas's understanding of God's authority over the goods of the created order, including the good of covenantal life.

If Kant displays the first problem Scotus's position raises, namely the autonomy from God's law of human actions vis-à-vis other human beings, Thiel particularly exhibits the second problem. For Thiel, the world of human action, marked by suffering and death, has lost its order and intelligibility. God can give meaning to this world only extrinsically, by means of an eschatological promise indicating his will to restore all things at the end of time by means of the general resurrection. On this view natural law takes on an eschatological hue, since God's ordering is entirely bound to his will to resurrect human beings at the end of time. The present life is not marked by a divine order other than the divine promise or will in Jesus Christ to bring about order eschatologically. Kant's Enlightenment confidence in human practical reason's ability to discern a moral ordering disappears in Thiel, for whom both human and divine ordering have been defeated by the chaos of suffering and death. A doctrine of natural law could hardly be possible in such a framework, since there is no efficacious lawgiver (God or man). Thus whereas Kant decries the nearsacrifice of Isaac as utterly and unavoidably senseless, Thiel decries all death as utterly senseless. Like Kant's practical postulate, though in an explicitly Christian mode, Thiel hinges everything upon the world to come.

Kant and Thiel, then, represent two modes of anthropocentric thought regarding the ordering of human action in this world--Kant profoundly confident, Thiel not. By contrast, Aquinas and Scotus offer two modes of theocentric natural law thought. But Scotus is theocentric to a point, at which he stops in order to preserve God's absolute freedom and transcendence. By claiming that human actions vis-à-vis other human beings do not participate in the ordering-to-God expressed by human actions vis-à-vis God, Scotus refuses to allow the theocentric ordering to go “all the way down”; the ordering, as regards human-to-human actions, remains extrinsic. Human-to-God ecstasis, on this view, is not mirrored by human-to-human ecstasis. Scotus's limited form of theocentric natural law generates a strong sense of an autonomous human realm (however answerable to the divine will), in which human-to-human actions have no intrinsic ordering, and human nature (outside the will) is not intrinsically teleologically ordered to God. Lacking an intrinsic “ecstatic” ordering, human relationships come to be seen as fundamentally based upon power rather than wisdom.

References


[FNa1]. This essay previously appeared as “God and Natural Law: Reflections on Genesis 22” *Modern Theology* 24 (2008): 151-77

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[FN1]. For further theological reflection on the Aqedah, see Levering (2005), chapter 1.


[FN3]. Ibid.


[FN5]. Ibid., 175.

[FN6]. Ibid.

[FN7]. I discuss this question in detail in *Sacrifice and Community*, chapter 2.


[FN9]. Ibid.

[FN10]. Ibid., 156.

[FN11]. Ibid.

[FN12]. I-II, q.94, a. 4, ad 1.

[FN13]. Ibid.

[FN14]. I-II, q. 94, a. 5, *sed contra*.

[FN15]. I-II, q. 94, a. 5, obj. 2.

[FN16]. See I, q. 21, a. 1.
[FN17]. I-II, q. 94, a.4.

[FN18]. I-II, q. 93, a.5.

[FN19]. I-II, q. 93, a.5, ad 1.

[FN20]. I-II, q. 93, a.6.

[FN21]. I-II, q. 91, a.3, ad 2.

[FN22]. I-II, q. 91, a.2.

[FN23]. Ibid.

[FN24]. See I-II, q. 94, a.2.

[FN25]. I-II, q. 92, a.1.

[FN26]. I-II, q. 94, a.5, ad 2.

[FN27]. Ibid.


[FN29]. Ibid., 200.

[FN30]. Ibid., 201.

[FN31]. Ibid., 200.


[FN33]. Ibid., 203.

[FN34]. Ibid.

[FN35]. Ibid., 202.

[FN36]. Ibid.

[FN37]. Ibid.

[FN38]. See ibid., 204.

[FN39]. Ibid., 205.

[FN40]. Ibid.

[FN41]. Ibid., 206.

[FN42]. Ibid.
[FN43]. Ibid.

[FN44]. Ibid.

[FN45]. Ibid.

[FN46]. Ibid., 201.

[FN47]. Ibid., 199.

[FN48]. Ibid., 207.

[FN49]. Ibid.

[FN50]. Ibid.

[FN51]. Ibid., 206.

[FN52]. Ibid.

[FN53]. I-II, q. 94, a. 5, ad 2.


[FN55]. Kant (1960), 175.

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