

# Natural Law with and without God

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*There is a common perception of natural law theory as characteristically (if not necessarily) theistic. This is sometimes presented as a drawback by secular critics of natural law thinking. Natural law authors themselves differ on the role of theism within their theories. Some have argued that natural law theory presupposes theism, while others have sought to give their views a secular basis. This article explores the relationship between natural law theory and theism. I begin by defining the characteristic features of the natural law outlook. I show that these core aspects of natural law thought can be rendered consistent with both theistic and non-theistic worldviews. However, these worldviews may yield different responses to some fundamental questions about natural law, such as where natural law comes from; how (and to what extent) humans can know about natural law; why humans should follow natural law; and whether natural law changes. I explore the consequences for natural law theories of theistic and non-theistic answers to these questions. I then offer some reasons for thinking that a version of theism incorporating what I term ‘qualified teleological perfectionism’ provides the most coherent foundation for the natural law outlook.*

## INTRODUCTION

The natural law tradition in ethics, politics, and jurisprudence is widely associated with theistic authors such as Thomas Aquinas, who has been characterised as the paradigmatic natural law theorist.<sup>1</sup> Several contemporary proponents of natural law theory, such as John Finnis, Mark Murphy, and Robert George, are also well known for their religious commitments (specifically, their Roman Catholicism). It is therefore perhaps unsurprising that natural law theory is widely viewed as characteristically (if not necessarily) theistic. This is sometimes presented as a drawback by critics who maintain that ethical, political, and legal theories should be acceptable to a range of religious and secular viewpoints.<sup>2</sup>

Natural law authors themselves differ on the role of theism within their theories. Theistic proponents of natural law take different views on whether their natural law views can be separated from their religious commitments. There are, roughly, three kinds of perspectives on this issue. Some authors maintain that natural law, being based on human rationality, is logically independent of theism.<sup>3</sup> Some hold the contrary view that natural law is untenable outside a theistic framework.<sup>4</sup> There is also a middle position: some authors maintain that natural law ideas, although logically independent of theism, cohere with it in such a way as to

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<sup>1</sup> Mark C Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge University Press, 2006) 1.

<sup>2</sup> See, eg, Margaret Davies, *Asking the Law Question* (Thomson Reuters, 4<sup>th</sup> ed, 2017) 90–6.

<sup>3</sup> See, eg, David Novak, ‘Does Natural Law Need Theology?’, *First Things* (November 2019) <<https://www.firstthings.com/article/2019/11/does-natural-law-need-theology>>.

<sup>4</sup> See, eg, Jean Porter, *Nature as Reason: A Thomistic Theory of Natural Law* (William B Eerdmans, 2005) 38–9; Tracey Rowland, ‘The Case against the Marriage of Natural Law and Natural Rights’ in Tom Angier, Iain T Benson and Mark Retter (eds), *The Cambridge Handbook of Natural Law and Human Rights* (Cambridge University Press, 2022) 74.

make both natural law and theism more appealing.<sup>5</sup> I will ultimately defend a version of this third position in the present article.

It is also important to note that the theological views of self-identified natural law authors are far from uniform. There is, as noted previously, a tendency for prominent defenders of natural law to be Roman Catholics, due no doubt in part to the long and venerable tradition of Catholic natural law thought and scholarship. However, Reformed natural law theories are currently undergoing a major revival.<sup>6</sup> There are also some influential contemporary natural law authors who either prescind from theological positions or expressly situate their theories within an atheistic framework.<sup>7</sup>

This article explores the relationship between natural law theory and theism. I begin by discussing the characteristic features of the natural law outlook. I contend that these core aspects of natural law thought can be rendered consistent with both theistic and non-theistic worldviews. However, these worldviews may yield different responses to fundamental questions about natural law, such as where natural law comes from; how (and to what extent) humans can know about natural law; why humans should follow natural law; and whether natural law changes. I explore the consequences for natural law theories of theistic and non-theistic answers to these questions. I then offer some reasons for thinking that a version of theism incorporating what I term ‘qualified teleological perfectionism’ provides the most coherent foundation for the natural law outlook.

A prefatory note is needed on the references to ‘theism’ throughout this article. I use the term ‘theism’ to designate belief in a deity or deities. However, the language and sources I use to explore the implications of theism in the article are drawn primarily from the Christian tradition. For example, I treat theism as entailing the existence of a single deity, whom I call God. My discussion of theological questions is also informed primarily by Christian scriptures and literature. This partly reflects the fact that the Western natural law tradition with which this article engages has been integrally shaped by Christian influences. However, I do not mean to imply that natural law ideas — or the specific questions engaged in this article — have no resonance outside that context.<sup>8</sup> The philosophical questions discussed here are, I think, relevant to natural law in all its varieties; similarly, the theological issues I raise have analogues in other religious traditions.

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<sup>5</sup> See, eg, John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 2<sup>nd</sup> ed, 2011) ch 13. Novak’s view could also be placed into this category, since he sees natural law and theology as logically independent, but intertwined. As he puts it, “‘Must one be religious in order to be a natural law thinker?’ [T]he short answer is, “No.” But it certainly helps.’ See Novak (n 3).

<sup>6</sup> See, eg, Stephen J Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (William B Eerdmans, 2006); J Daryl Charles, *Retrieving Natural Law: A Return to Moral First Things* (William B Eerdmans, 2008); David VanDrunen, *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought* (William B Eerdmans, 2010).

<sup>7</sup> See, eg, Philippa Foot, *Natural Goodness* (Oxford University Press, 2001); Michael S Moore, ‘Good without God’ in Robert P George (ed), *Natural Law, Liberalism and Morality: Contemporary Essays* (Oxford University Press, 2001) 221.

<sup>8</sup> For essays exploring natural law ideas from a range of religious and secular traditions, including Judaism, Islam, and Confucianism, see Jonathan Crowe and Constance Youngwon Lee (eds), *Research Handbook on Natural Law Theory* (Edward Elgar, 2019).

## THE NATURAL LAW OUTLOOK

There are many reasonable ways of capturing the core commitments of the natural law tradition, but I am going to stick with a way that I have developed elsewhere, characterising the tradition in terms of what I call the *natural law outlook*.<sup>9</sup> The natural law outlook has two elements: first, there are certain forms of life that are inherently good for humans given their nature; and second, these forms of life are fundamental to explaining the nature and purpose of social, political, and legal institutions. These two commitments fairly capture the views of the classical and contemporary writers most prominently associated with the natural law label. The natural law outlook, thus described, is theologically neutral. It is equally compatible with the views of Aquinas and the atheist natural law theorist Michael Moore.<sup>10</sup>

I have in past work put my own distinctive spin on the natural law outlook, arguing for what I have termed *diachronic natural law*.<sup>11</sup> Natural law, on this view, is hermeneutic and historicised: it is discovered through and shaped by human social practices. This conception of natural law utilises a wide understanding of human nature to situate natural law within both a biological and social context;<sup>12</sup> this wide lens, I argue, offers an explanatorily powerful framework for understanding natural law's sources, content, and normativity. However, I will not rely on this substantive conception of natural law in the present article. Rather, I wish to explore some questions raised by the natural law outlook at a more general level.

I suggested a moment ago that the natural law outlook is theologically neutral. This claim requires further explanation if it is to be more than a mere stipulation, particularly since some natural law authors have maintained the contrary.<sup>13</sup> We can approach this issue by examining the first component of the natural law outlook: namely, there are certain forms of life that are inherently good for humans given their nature. This aspect of the outlook maintains that humans possess a shared nature that is sufficiently universal and stable to provide a basis for identifying intrinsic human goods. Natural law theories have traditionally borne the burden of providing an explanatory context for this foundational commitment.

There are two main natural law strategies for providing a context for the concept of human nature and its role in the tradition. I have previously termed these the *theistic* and *naturalistic* views.<sup>14</sup> The theistic view holds that humans have a common nature because they were created in this way by God. The naturalistic view holds that humans have a common nature due to their natural features, along with their social and natural environments. It is important to note that these two strategies are not inconsistent. Indeed, they occur side by side in the work of many influential natural law authors, including Aquinas.<sup>15</sup> These authors hold that humans were

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<sup>9</sup> Jonathan Crowe, *Natural Law and the Nature of Law* (Cambridge University Press, 2019) 2; Jonathan Crowe, 'Philosophical Challenges and Prospects for Natural Law Foundations of Human Rights' in Tom Angier, Iain T Benson and Mark Retter (eds), *The Cambridge Handbook of Natural Law and Human Rights* (Cambridge University Press, 2022) 485 ('Philosophical Challenges and Prospects'). See also Jonathan Crowe and Constance Youngwon Lee, 'The Natural Law Outlook' in Jonathan Crowe and Constance Youngwon Lee (eds), *Research Handbook on Natural Law Theory* (Edward Elgar, 2019) 1.

<sup>10</sup> See, eg, Moore (n 7).

<sup>11</sup> Crowe, 'Philosophical Challenges and Prospects' (n 9) 485. See also Crowe, *Natural Law and the Nature of Law* (n 9) 246.

<sup>12</sup> Crowe, 'Philosophical Challenges and Prospects' (n 9) 486–9.

<sup>13</sup> See, eg, Porter (n 4) 38–9; Rowland (n 4).

<sup>14</sup> Crowe, 'Philosophical Challenges and Prospects' (n 9) 497.

<sup>15</sup> Cf Thomas Aquinas, *Summa Theologica*, tr Fathers of the English Dominican Province (Ave Maria, 1948) pt 1, q 5, art 1.

created by God with certain natural features and social propensities. Human nature, on this view, is simultaneously theistic and naturalistic. This combined strategy provides an explanatorily rich context for the existence of intrinsic goods grounded in human nature.

It is nonetheless possible for the two strategies to come apart. A theistic, but non-naturalistic view might hold that human nature is nothing more than God's idea of humanity's place in creation. This would be a voluntaristic conception of human nature, since it makes the content of human nature — and therefore natural law — wholly dependent on God's will. There is room for dispute as to whether this voluntaristic view really counts as a natural law theory, given that natural law theories and divine command theories are often presented as opposing positions in theological ethics.<sup>16</sup> Nonetheless, there is a distinctive voluntaristic strand in the classical natural law tradition, represented by authors such as John Duns Scotus and William of Ockham, who emphasise God's intentions as the source of natural law.<sup>17</sup>

A naturalistic, non-theistic view, on the other hand, might hold that human nature is constituted by humanity's shared natural and social features. These features mean that human lives go well when people pursue certain goods and badly when those goods are neglected. The *locus classicus* of the naturalistic conception of natural law can be found in Aristotle, who famously offered a teleological understanding of human nature.<sup>18</sup> A broadly Aristotelian teleology is a common component of theistic natural law views, but it can also exist outside a theistic framework. The secular contemporary natural law accounts of authors such as Philippa Foot and David Brink illustrate this possibility.<sup>19</sup> I find it hard to see any non-programmatic reason for excluding these non-theistic ideas from the domain of natural law theory. It is also hard to see how they could be excluded while keeping Aristotle within the tradition.

If a naturalistic, non-theistic natural law theory is possible, then natural law is not necessarily theistic. This observation leaves open the question of what kind of explanatory strategy renders natural law theory most coherent and compelling. I wish to argue in this article that a version of natural law theory that combines the theistic and naturalistic explanations casts the tradition in its best light. Specifically, I will press for a picture of natural law that combines theism with a theological commitment which I call (for want of a better term) *qualified teleological perfectionism*. I will make this case by exploring a series of questions that confront natural law theories. I suggest that a theistic natural law theory incorporating qualified teleological perfectionism is better placed to deal with these questions than other viewpoints.

## WHERE DOES NATURAL LAW COME FROM?

The first question that confronts natural law theories is where natural law comes from. This question, thus expressed, might appear to be a genealogical or historical enquiry, but it is better understood as a metaphysical one. A more precise formulation might be: in virtue of what properties does something count as natural law? The properties cited in answering this query might be genealogical or historical ones, but they might equally posit metaphysical or ontological relationships between natural law and other features of the world. One might expect

<sup>16</sup> Mark C Murphy, *God and Moral Law* (Oxford University Press, 2011) 100.

<sup>17</sup> Thomas Williams, 'John Duns Scotus', *Stanford Encyclopedia of Philosophy* (Web Page, 15 August 2022) s 5.1 <<https://plato.stanford.edu/entries/duns-scotus/>>; AS McGrade, 'Natural Law and Moral Omnipotence' in PV Spade (ed), *The Cambridge Companion to Ockham* (Cambridge University Press, 1999) 273, 274–9.

<sup>18</sup> Aristotle, *Nicomachean Ethics*, tr David Ross (Oxford University Press, 1998) bk 1, ch 7.

<sup>19</sup> See, eg, Foot (n 7); David O Brink, 'Normative Perfectionism and the Kantian Tradition' (2019) 19(45) *Philosophers' Imprint* 1.

human nature to figure in such accounts, particularly given what was said in the previous section about its explanatory role in natural law theories.

I referred in the previous section to theistic and naturalistic views of human nature and its relationship to natural law. These two approaches also yield corresponding answers to the question of where natural law comes from. A clue regarding these responses comes from the appearance of the word ‘law’ in the phrase ‘natural law’. The term ‘law’ can be understood in at least two different ways, each of which plays an important role in the natural law tradition.<sup>20</sup> ‘Law’ can be a collection of commands issued by some person or body in a position of authority, as with legislation or other forms of positive law. Alternatively, ‘law’ can designate a set of stable and observable regularities, as with the laws of physics and biology.

An obvious theistic response to the question of where natural law comes from is that it comes from God. More precisely, this response holds that something counts as natural law by virtue of being part of God’s design for human flourishing. Natural law is ‘law’, on this view, in the sense that it is a command or plan issued by God. This theistic response has the merit of offering a relatively straightforward explanation of the normativity of natural law. If we assume a roughly Anselmian account of God’s attributes — specifically, that God is just, merciful, omniscient, and omnipotent — then it is both rational and just to do as God commands or plans.<sup>21</sup> Natural law as God’s plan therefore binds humans normatively. However, a potential drawback of this view lies in its apparent voluntarism; natural law, conceived purely as God’s will and without further explanation, risks appearing arbitrary or opaque to humans.

The naturalistic account of where natural law comes from is more complex. We can take our cue here from Aristotle. Aristotle’s derivation of the human good rests on the notion of a characteristic function (*ergon*).<sup>22</sup> All things, for Aristotle, have a function, which is the characteristic role or activity which allows them to be perfected. For example, a flute player has the function of playing music and an eye has the function of seeing. Humans, too, have a function, which we can identify by asking what is special about humans compared to other entities. Aristotle holds that humans are distinguished from other forms of life by their rationality. The good for humans (*eudaimonia*) therefore consists in fully engaging human rationality. This, in turn, involves acting in accordance with those virtues that reason identifies.

A crucial move in Aristotle’s argument is the shift from a descriptive account of humans as a species to the identification of their distinctive function. A purely descriptive account of human nature could not yield a natural law theory for two reasons. First, it is not plausible that everything humans regularly or characteristically do is part of natural law. This would offer no way of distinguishing beneficial from destructive tendencies. Second, a purely descriptive account could not explain natural law’s normative force. The fact that humans typically behave in certain ways supplies no normative reason to continue this pattern.

The significance of Aristotelian functions, then, is not merely that they describe the characteristic activities of a certain entity, but that they capture what is good or bad for that entity given its nature. An eye, for example, can be judged good or bad by reference to its capacity for sight. Similarly, the argument goes, human lives can be judged good or bad by

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<sup>20</sup> Crowe and Lee, ‘The Natural Law Outlook’ (n 9) 1; Crowe, ‘Philosophical Challenges and Prospects’ (n 9) 486.

<sup>21</sup> Anselm, ‘Proslogion’, tr Thomas Williams in Anselm, *Basic Writings*, ed Thomas Williams (Hackett, 2007) 75, 84–5 [ch 6–9].

<sup>22</sup> Aristotle (n 18) bk 1, ch 7.

reference to their fulfilment of rational capacities. This kind of argument remains controversial; for example, it has been charged with violating the alleged inference gap between facts and norms raised by David Hume.<sup>23</sup> It also faces the problem of how to identify the human function without objectionably begging the question in favour of a particular conception of the good. However, it represents one possible naturalistic view on the sources of natural law.

The main contemporary rival to Aristotelianism within natural law theory is the so-called ‘new natural law theory’ developed principally by Germain Grisez and Finnis.<sup>24</sup> The new natural law theory avoids relying on an Aristotelian *ergon* argument by positing the existence of self-evident human goods. These goods are not deduced from characteristic human functions; indeed, they are not derived from anything.<sup>25</sup> They are perceptible to human reason by reflecting on the ultimate ends of our practical choices. However, this process of identifying the goods is not speculative or deductive, but practical and abductive in nature.

The new natural law theory is starkly non-naturalistic in its metaethical commitments. It posits the existence of self-evident goods that are neither natural entities nor derived from them. The appeal to self-evidence carries significant weight; it is supposed to explain not only the existence and identification of the goods, but also their normativity. The goods are those values humans identify as valuable through the exercise of their practical reason. However, this human identification itself does not make them good; rather, it supplies evidence of their self-evident value. There is, therefore, a sense in which the new natural law theory (understood as a non-theistic account) supplies no answer to the question of where natural law comes from; instead, it offers a theory of why this question is unanswerable.

It is important to note once again that the theistic and non-theistic lines of thought explored in this section are not mutually exclusive. Indeed, they enrich each other in obvious ways. A theistic account of natural law’s sources, unless accompanied by a naturalistic explanation, risks appearing arbitrary. However, the non-theistic alternatives also face difficult explanatory questions. The Aristotelian account must justify its description of the human function and explain its normativity, while the new natural law theory seems to avoid the question of where natural law comes from. Both views can be ameliorated through appeals to God as the source of the human function, on the one hand, and basic goods, on the other. This does not resolve the explanatory questions, but it affords additional resources to answer them.

## HOW CAN HUMANS KNOW ABOUT NATURAL LAW?

I turn now to a second question about natural law. If natural law exists, how can humans know it? This is an epistemological problem, corresponding to the metaphysical query raised in the preceding section. There are, again, two principal responses to this question within the natural law tradition, corresponding to the theistic and naturalistic paradigms discussed previously. The theistic answer attributes human knowledge of natural law to God’s grace, while the naturalistic answer attributes it to human reason. Many natural law authors, particularly in the classical tradition, maintain some combination of these sources. God’s grace plausibly consists

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<sup>23</sup> David Hume, *A Treatise of Human Nature* (Clarendon Press, 1978) 469–70 [bk 3, pt 1, s 1]. For a defence of Aristotle’s methodology that rejects the Humean challenge, see Alasdair MacIntyre, *After Virtue* (University of Notre Dame Press, 2<sup>nd</sup> ed, 1984) 57–8.

<sup>24</sup> See particularly Germain Grisez, *The Way of the Lord Jesus: Christian Moral Principles* (Franciscan Press, 1983); Finnis (n 5).

<sup>25</sup> Finnis (n 5) 64–9.

in part of equipping humans with the potential to guide themselves, while rational human capacities, insofar as they give reliable knowledge, are plausibly a gift from God.

There is, however, a deeper question in this vicinity for both the theistic and naturalistic responses. How and to what extent is human knowledge of natural law *reliable*? This is a vexed and controversial question in Christian (and Jewish<sup>26</sup>) theology, due partly to the foundational role of the Fall in the biblical narrative. According to Genesis 2–3, humans were originally placed by God in a garden in Eden where they lived together without shame.<sup>27</sup> God permitted the humans to eat from any tree in the garden except ‘the tree of the knowledge of good and evil’.<sup>28</sup> However, the humans disobeyed God and ate from the tree; as a result, their eyes ‘were opened and they knew that they were naked’.<sup>29</sup> God responded by condemning humans to lives of pain and disharmony,<sup>30</sup> before expelling them from the garden.<sup>31</sup>

Christian theology generally holds that humans in their prelapsarian state (that is, before the Fall) existed in a state of harmony with God and each other. They nonetheless possessed free will, as illustrated by their ability to disobey God’s instructions. Their exercise of this free will to defy God resulted in their fall from grace and exile from the garden. Humanity’s current postlapsarian state is characterised by the loss of our original connection with God. Our capacities for knowledge and understanding of God’s will in this fallen state are greatly impaired, if not destroyed. As Paul famously puts it in 1 Corinthians 13, ‘now we see through a glass, darkly’.<sup>32</sup> Nonetheless, God grants humans continuing guidance through the revelations of scripture. God’s love for humans is also powerfully revealed by sending God’s son, Jesus, to take human form and suffer alongside us, even to the point of death on the cross.<sup>33</sup>

The precise extent to which human rationality remains intact following the Fall has been debated throughout the history of Christian theology. It is important to appreciate the role natural law plays within this picture. Aquinas draws an influential distinction between four types of law: eternal law, natural law, human law, and divine law.<sup>34</sup> Eternal law is God’s overall plan for the universe; it is an idea (*Ratio*) in God’s mind.<sup>35</sup> Humans have no direct access to eternal law, although they can know it indirectly in various ways. As Aquinas puts it, ‘no one can know the eternal law, as it is in itself, except the blessed [in Heaven] who see God in His essence. But every rational creature knows it in its reflection, greater or less’.<sup>36</sup>

Natural law, for Aquinas, is that part of the eternal law governing human conduct which is accessible through human reason.<sup>37</sup> Divine law, by contrast, is that part of the eternal law governing human conduct which is revealed through scripture.<sup>38</sup> These represent two primary

<sup>26</sup> See, eg, David Novak, ‘Natural Law, Natural Theology and Human Rights in the Jewish Tradition’ in Tom Angier, Iain T Benson and Mark Retter (eds), *The Cambridge Handbook of Natural Law and Human Rights* (Cambridge University Press, 2022) 205.

<sup>27</sup> Genesis 2:25 (ESV).

<sup>28</sup> Genesis 2:17 (ESV).

<sup>29</sup> Genesis 3:7 (ESV).

<sup>30</sup> Genesis 3:16–17 (ESV). This state of disharmony is immediately illustrated by the fatal quarrel between the brothers Cain and Abel: Genesis 4:1–16 (ESV).

<sup>31</sup> Genesis 3:24 (ESV).

<sup>32</sup> 1 Corinthians 13:12 (KJV).

<sup>33</sup> Philippians 2:5–8 (ESV).

<sup>34</sup> Aquinas (n 15) pt 2.1, q 91.

<sup>35</sup> Ibid pt 2.1, q 93, art 1.

<sup>36</sup> Ibid pt 2.1, q 93, art 2.

<sup>37</sup> Ibid pt 2.1, q 94, art 4.

<sup>38</sup> Ibid pt 2.1, q 91, art 4.

ways that humans can have knowledge, albeit imperfectly, of God's plan for our lives. The point of natural law is to make some components of God's plan for humans accessible even to those who lack access to the scriptures. Its basic precepts are accessible and 'equally known by all'.<sup>39</sup> All humans are therefore accountable before God for following its requirements. Human knowledge is drastically limited by our fallen nature. Nonetheless, for Aquinas, we still have sufficient reasoning abilities to access the fundamental tenets of natural law.

Aquinas expresses a relatively moderate view of the impact of the Fall on human reasoning abilities. He depicts these as significantly impaired, but still sufficient to allow reliable knowledge of natural law. Other Christian thinkers have expressed a less sanguine opinion of the postlapsarian condition. For example, John Calvin famously states that humans are 'so entirely alienated from the righteousness of God that [they] cannot conceive, desire, or design any thing but what is wicked, distorted, foul, impure, and iniquitous'.<sup>40</sup> Calvin's stark view of human depravity has been influential in the Reformed Christian tradition, leading some Protestant thinkers to reject the possibility of natural law altogether.<sup>41</sup> Karl Barth, for example, vehemently denied that humans could possess any knowledge of God's will except through scriptural revelation,<sup>42</sup> sparking long-running scepticism about natural law in Reformed theology.<sup>43</sup>

Theistic authors who do not wish to rely on human reason as a source of reliable moral knowledge are left with two related strategies. The first is to emphasise divine revelation, holding that sound moral truths come from scripture alone. The second is to focus on divine grace, holding that humans can access moral law only by being open to God's guidance through the holy spirit. A key move made by Barth is to insist on understanding 'revelation as *grace* and grace as *revelation*',<sup>44</sup> effectively merging these two possibilities. This has the effect of ruling out not only a Thomist conception of natural law as founded on human reason, but also an Augustinian understanding of natural law as grace guiding humans through their capacity for love.<sup>45</sup> Revealed law, as we have seen, is traditionally conceptualised as distinct from natural law, leaving no room for natural law as such within the Barthian framework.

A purely naturalistic account of the human capacity to know natural law can sidestep these theological controversies, but it invites its own parallel difficulties. The naturalistic account might hold that humans can know what is good for them through their evolved inclinations and capacity for reason. However, evolved human inclinations plausibly include the inclination to behave selfishly in various contexts, particularly in relation to out-group members.<sup>46</sup> Some mechanism is therefore needed for distinguishing good inclinations from harmful ones. An

<sup>39</sup> Ibid pt 2.1, q 94, art 4.

<sup>40</sup> John Calvin, *Institutes of the Christian Religion*, tr Henry Beveridge (Hendrickson, 2008) bk 2, ch 5, s 19.

<sup>41</sup> Note, however, Constance Youngwon Lee's compelling argument that Calvin's conception of conscience still makes possible a form of natural law: Constance Youngwon Lee, 'The Spark that Still Shines: John Calvin on Conscience and Natural Law' (2019) 8(3) *Oxford Journal of Law and Religion* 615.

<sup>42</sup> Karl Barth, 'No!' in Emil Brunner and Karl Barth, *Natural Theology*, tr Peter Fraenkel (Geoffrey Bles, 1946) 65, 106; Karl Barth, *The Knowledge of God and the Service of God according to the Teaching of the Reformation*, tr JLM Haire and Ian Henderson (Hodder and Stoughton, 1938) 8–9.

<sup>43</sup> As observed previously, Reformed natural law theories are currently experiencing a significant revival. See the sources cited at (n 6) above.

<sup>44</sup> Barth, 'No!' (n 42) 71.

<sup>45</sup> For discussion, see Richard J Dougherty, 'St Augustine on Natural Law' in Jonathan Crowe and Constance Youngwon Lee (eds), *Research Handbook on Natural Law Theory* (Edward Elgar, 2019) 57, 67–71.

<sup>46</sup> MB Brewer, 'In-Group Bias in the Minimal Intergroup Situation' (1979) 86(2) *Psychological Bulletin* 307; Donald M Taylor and Janet R Doria, 'Self-Serving and Group-Serving Bias in Attribution' (1981) 113(2) *Journal of Social Psychology* 201.

appeal could be made here to natural reason or, alternatively, some inbuilt facility such as conscience. However, a purely naturalistic account of these capacities faces similar explanatory difficulties. Furthermore, human reason is itself subject to cognitive biases and distortions,<sup>47</sup> undercutting its claims to be a reliable guide to the genuine human good.

### WHY SHOULD HUMANS FOLLOW NATURAL LAW?

I move now to a third question confronting natural law ideas. Even if humans can have reliable knowledge of natural law, why should they follow it? We have so far considered metaphysical and epistemological queries about natural law; the present question is a normative one. The question can be further divided into two components. Natural law theories, as we have seen, emphasise intrinsic goods that humans characteristically pursue and value. However, the descriptive fact that humans pursue and value these goods does not entail that they are actually good. What is it that renders them genuinely valuable — that is, *worthy* of being pursued and valued, as opposed to being pursued and valued as a matter of fact?

There is also a second question in this vicinity. If we establish that at least some of the things humans characteristically value are actually good, then what *motivates* humans to pursue those things? It might seem to some readers that a belief that something is good itself supplies motivation to pursue it. This is motivational internalism about the good. However, according to the widely accepted Humean picture of moral psychology, the fact that we believe something to be good does not by itself motivate us to pursue it; this requires that we also desire to pursue the good.<sup>48</sup> This picture yields motivational externalism about the good. If motivational externalism is correct, then there is a further puzzle facing natural law theories: what motivates humans to follow natural law, as opposed to, say, pure self-interest?

A theistic approach to natural law has a relatively simple and unified answer to these questions, albeit at the cost of some contentious assumptions. The theistic view holds that human nature and natural law are integrated parts of God's beneficent plan for creation. Humans are created by God in such a way as to pursue and value those ends that are good for them. These ends are good because God designates them as such, but they are also beneficial for humans, because God is just, merciful, and wise. Furthermore, the theistic view can posit that God created humans with an inbuilt, albeit fallible, motivation to pursue the good. This account makes some large ontological and theological assumptions — apart from the existence of a roughly Anselmian God, it also assumes that human corruption is not so great as to render humans totally or predominantly incapable of discerning the good or being motivated to pursue it.

Non-theistic natural law theories also offer answers to these questions. There are at least three lines of response available. The first is the Aristotelian strategy discussed previously. The Aristotelian view holds that the human function designates that role or activity that perfects our nature.<sup>49</sup> This teleological goal is worthy of pursuit because it captures what it means to be a well-functioning human, in the same way that the capacity for sight captures what it means for something to be a well-functioning eye. Aristotle further maintains that a fully rational person will be inclined by nature to pursue this goal. His famous discussion of weakness of will (*akrasia*) therefore treats it as a serious puzzle why somebody who is aware of the right course

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<sup>47</sup> See generally Jonathan Crowe, 'Human, All Too Human: Human Fallibility and the Separation of Powers' in Rebecca Ananian-Welsh and Jonathan Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016) 37.

<sup>48</sup> See generally Michael Smith, 'The Humean Theory of Motivation' (1987) 96(381) *Mind* 36.

<sup>49</sup> Aristotle (n 18) bk 1, ch 7.

of action might fail to perform it.<sup>50</sup> The converse puzzle — namely, why somebody who is aware of the right course of action would be motivated to perform it — does not arise.

The Aristotelian view can be criticised for failing to adequately explain why characteristic human capacities, even in their perfectible form, should be treated as normative ends. How, for instance, can the Aristotelian deal with the possibility that human nature might take a wrong turn; that is, humans might develop in such a way as to characteristically pursue a function that is harmful, rather than beneficial, to their flourishing? The most promising answer seems to lie in a distinction between true and false (or beneficial and harmful) manifestations of human nature, but this line is difficult to maintain through appeals to reason alone. Appealing to reason in this context threatens a vicious cycle: how could the rational capacities of thoroughly corrupted beings reliably distinguish healthy and destructive forms of their nature? It is no accident, from this perspective, that Aristotelian views are enduringly popular among theistic moral philosophers. Theism helps make sense of the Aristotelian view of human functions and motivations, by allowing them to be ascribed to the design of a wise and beneficent God.

A second non-theistic model of natural law is afforded by the naturalistic metaethics developed by authors such as Brink and Moore. These authors do not treat moral facts as identical with or reducible to natural facts, including facts about human nature. Rather, they hold that moral facts supervene upon natural facts through a type-identity relation; this means that for any moral fact there are a range of other natural facts that can combine to make it true.<sup>51</sup> This view avoids the challenge of explaining how natural facts can be normative, since it denies that moral facts are strictly identical or reducible to natural facts. Proponents of this view also tend to be motivational externalists; they deny that moral properties necessarily motivate, although they align to some extent with natural human desires.<sup>52</sup> This metaethical framework, although sophisticated and appealing, faces difficult questions, such as explaining exactly how and why normative facts supervene on non-normative ones.

A third non-theistic option is offered by the new natural law theory. Authors like Grisez and Finnis, as we saw before, maintain that human practical reasoning is directed at certain intrinsic goods. These goods are self-evident, meaning they are not derived from natural facts; this allows the new natural law theory to avoid breaching the Humean is-ought gap.<sup>53</sup> The new natural law authors generally avoid engaging contemporary discussions on metaethics, meaning it is not always easy to situate them within these debates. However, it seems clear they are committed to a non-naturalistic metaethical ontology, since the basic goods bear no logical or ontological relation to the natural world. This makes the view vulnerable to some standard puzzles about non-naturalism, such as the putative strangeness of non-natural normative entities and their ability to interact causally with the natural world, including to motivate action.<sup>54</sup>

A casual reading of the new natural law theorists makes the basic goods appear like Platonic entities existing in some supernatural realm. The actual view of Grisez and Finnis, although

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<sup>50</sup> Ibid bk 7, ch 2.

<sup>51</sup> See, eg, David O Brink, 'Moral Realism and the Sceptical Arguments from Disagreement and Queerness' (1984) 62(2) *Australasian Journal of Philosophy* 111, 119–21; Michael S Moore, 'Moral Reality Revisited' (1992) 90(8) *Michigan Law Review* 2425, 2515–16; Michael S Moore, 'Legal Reality: A Naturalist Approach to Legal Ontology' (2002) 21(6) *Law and Philosophy* 619, 678–9.

<sup>52</sup> See, eg, David O Brink, 'Moral Motivation' (1997) 108(1) *Ethics* 4, 18–21; Michael S Moore, 'Moral Reality' (1982) (6) *Wisconsin Law Review* 1061, 1121–3.

<sup>53</sup> Finnis (n 5) 33–6.

<sup>54</sup> JL Mackie, *Ethics: Inventing Right and Wrong* (Penguin, 1977) 38–42.

they never (to my knowledge) make it fully explicit, seems to be that the basic goods exist in the mind of God; they are, in other words, part of God's plan for humans.<sup>55</sup> This theistic addendum provides powerful explanatory context for the non-naturalism of the new natural law theory. It offers an explanation as to what types of entities the basic goods are (namely, divine ideas) and why they should be regarded as normative for humans (due to God's authority). It also potentially explains why humans are intrinsically motivated by the goods (due to God's design). This is, of course, an explanation that will not convince atheists; once it is added, the new natural law theory is no longer a candidate for a non-theistic account of natural law.

### DOES NATURAL LAW CHANGE?

The final question for natural law theories that I wish to explore is a historical or genealogical one: does natural law change? I have discussed this question in detail elsewhere as part of my argument for a diachronic conception of natural law.<sup>56</sup> Natural law is often conceived as timeless or unchanging; as Finnis strikingly claims, natural law itself (as opposed to natural law *ideas* or *theories*) '[has] no history'.<sup>57</sup> I have argued, by contrast, that this ahistorical view of natural law is unhelpful and misleading.<sup>58</sup> The core components of natural law — namely, intrinsic human goods and principles of practical reason — reflect what is good and reasonable for humans given their nature. Human nature, in turn, is a product of both biology and social circumstances. It follows that natural law can and does change to the extent that human nature changes. Its practical form depends in multiple ways on human social environments and norms.

I do not intend in the present article to continue this discussion at the general level of natural law theorising. Interested parties can read what I have said elsewhere. Rather, I am concerned with the implications of this issue for theistic and non-theistic accounts of natural law. One option available for theistic natural law is to maintain that natural law is timeless. This might be because it exists in the mind of God and God is outside of time. There are, however, two related challenges for this perspective. The first arises from the Thomistic distinction between eternal law and natural law, discussed previously.<sup>59</sup> Aquinas maintains that eternal law exists in the mind of God; it is therefore timeless and unchanging. Natural law, however, is that part of the eternal law knowable by humans. On the one hand, it is still part of the eternal law and therefore timeless. However, it is also necessarily the object of human knowledge.

This twofold character of natural law gives rise to what Constance Youngwon Lee has instructively called 'a dialectic of dual perspectives'.<sup>60</sup> Natural law, from God's viewpoint, is timeless. However, humans lack direct access to God's ideas. Indeed, human knowledge and understanding is drastically limited because of the Fall. Natural law, being that part of eternal law accessible to human reason, is itself subject to human reasoning abilities; it exists so that humans, despite our limitations, can still be accountable before God. Humans, as well as having limited reasoning abilities, are also historically bounded creatures; unlike God, we exist within

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<sup>55</sup> Cf Finnis (n 5) 389–90.

<sup>56</sup> Jonathan Crowe, 'Is Natural Law Timeless?' (2021) 33(1) *Bond Law Review* 1; Jonathan Crowe, 'The Evolution of Natural Law' in Wojciech Zaluski, Sacha Bourgeois-Gironde and Adam Dyrda (eds), *Research Handbook on Legal Evolution* (Edward Elgar, 2024) 396.

<sup>57</sup> Finnis (n 5) 24.

<sup>58</sup> Crowe, *Natural Law and the Nature of Law* (n 9) 6–7; Crowe, 'Is Natural Law Timeless?' (n 56); Crowe, 'The Evolution of Natural Law' (n 56).

<sup>59</sup> Aquinas (n 15) pt 2.1, q 91.

<sup>60</sup> Lee (n 41) 615.

time. It therefore makes sense to think about natural law, considered from a human perspective, as having a history. Natural law, from this viewpoint, may well evolve over time.

This Thomistic point leads me to the second challenge for a theistic view of natural law as timeless. This challenge is a scriptural one. (I will expound it here in terms of the Christian Bible, but it also applies within other text-based religious traditions, insofar as their scriptures set out a historical narrative.) The Old Testament takes a historical form; it tells the story of the people of Israel and the development of their relationship with God over many generations. The Israelites are guided throughout their history by revelations from God, but these revelations do not always take the same form; rather, they are often responsive to historical circumstances. There is, for example, one set of divine instructions for Adam and Eve,<sup>61</sup> another for Noah and his descendants,<sup>62</sup> another for Abraham,<sup>63</sup> and yet another for Moses and Aaron.<sup>64</sup>

These divine revelations are all part of God's plan and, in that sense, they are timeless. However, for their human recipients, as well as for later readers of the Bible, they occur in a historical context. Indeed, it is worth reflecting on God's choice to present the Bible itself in the form of a historical narrative.<sup>65</sup> If God had intended the Bible to be interpreted ahistorically, as a collection of timeless edicts, then why would it be made available in this format? The historicity of the Bible is given further weight for Christians by the arrival of Jesus as described in the New Testament. Jesus offers a new understanding of the law which, for Christians, revises Old Testament thinking. He does not sweep away the old law, but fulfils it,<sup>66</sup> implying that the Old Testament must be interpreted diachronically in light of the New Testament.

There is, to be sure, a Thomistic distinction to be made here between natural law and divine law.<sup>67</sup> God's instructions in the Bible are not part of the natural law, accessible to human reason, but rather part of divine law, accessible through scripture or direct revelation. However, there is something strange about the idea that revealed law is deeply historical, while natural law is timeless. Both are, after all, intended for human guidance and mediated by human situations and voices. Why not think that God, in structuring revealed law historically, also intends to tell us something important about the character of natural law? Natural law, on this view, is not something that comes to us all at once, but something we must uncover progressively. It will, like Jesus's proclamation of the new law, become available when the time is right.

I have so far argued in this section that theistic natural law theories, particularly in the Christian tradition, have reason to view natural law as existing in time. A similar point applies to naturalistic natural law views, albeit for different reasons. These views connect natural law with natural facts, such as facts about human nature. However, the natural world is subject to causal processes, meaning that natural facts are, in general, susceptible to change. There are, to be sure, universal laws of physics and biology, but these merely describe the contours of the causal procedures within those domains. If natural law is constituted by or supervenient on natural facts, this suggests that the content of natural law will be highly dynamic — if not in

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<sup>61</sup> Genesis 2:16–17; 3:1–5 (ESV).

<sup>62</sup> Genesis 6:13–22; 7:1–5; 9:1–17 (ESV).

<sup>63</sup> Genesis 15; 17:1–14 (ESV).

<sup>64</sup> Exodus 12:1–23, 43–9; 20–3 (ESV).

<sup>65</sup> The genre of the Bible, as well as its content, is presumably an important aspect of God's guidance for humans. See, eg, 2 Timothy 3:16–17 (ESV).

<sup>66</sup> Matthew 5:17 (ESV).

<sup>67</sup> Aquinas (n 15) pt 2.1, q 91.

its fundamental precepts, then at least in its applications. And it is difficult to see how, from a naturalistic viewpoint, one could access the natural law independently from its applications.<sup>68</sup>

The dynamic conception of natural law explored in this section is, however, not without challenges. The idea of a discovery process to progressively uncover natural law assumes that this process will, at least on balance or through the long arc of history, turn out right. However, what if it goes wrong? What if, in other words, the flaws in human nature prevail and our understanding of natural law gets progressively worse? There are two ways of understanding this possibility. The first is that natural law itself remains the same (perhaps because it is in God's mind) but our understanding of it deteriorates. The second, perhaps even more troubling, interpretation is that natural law *itself* might deteriorate. If natural law is constituted, rather than merely discovered, by historical processes, then it seems a live possibility that it might develop into something that is less, rather than more, suited to human health, peace, and flourishing.

A theistic natural law view has two resources to guard against this outcome. First, it can appeal to God's agency as a safeguard that human discovery of natural law will stay broadly on the right track. Second, it can posit that natural law, in its ideal form, remains in God's mind, thereby ensuring that although human understanding of natural law may oscillate throughout history, the ideal will remain intact. It is less clear how a purely naturalistic natural law theory can deal with this problem. Natural law, for the naturalist, is nothing more than the normative facts yielded by human nature or other natural facts. What guarantees that these normative facts will not decay over time? This, after all, appears to be the overall causal trend of the natural universe, according to the second law of thermodynamics.<sup>69</sup> If entropy rules the natural universe, and morality is natural, then why should morality not prove to be entropic?

### QUALIFIED TELEOLOGICAL PERFECTIONISM

The preceding sections of this article considered four questions that confront natural law theories: where natural law comes from; how humans can know about natural law; why humans should follow natural law; and whether natural law changes. I examined the consequences of theistic and non-theistic ripostes to these questions. I alluded, along the way, to various explanatory advantages of a theistic framework. Theistic natural law views have a relatively straightforward way of accounting for the sources and normativity of natural law, while also being better placed to accommodate the idea that natural law evolves beneficially, rather than deteriorating. The question of human knowledge of natural law, meanwhile, implicates enduring theological controversies, but naturalistic accounts face their own challenges.

The putative benefits of theistic views of natural law are not costless. Most obviously, they entail accepting the existence of a generally Anselmian God. This belief, although widely held both today and throughout history, is evidently controversial. Some people will consider it too great a price to pay. It is germane to reiterate, at this point, that I am not arguing in this article that a non-theistic conception of natural law is untenable. Indeed, I began by observing that the natural law outlook is compatible with both theistic and non-theistic theories. The naturalistic natural law framework developed independently by Brink and Moore is a strong non-theistic candidate. However, I argue that, on balance, a theistic view is preferable for its explanatory advantages. Theistic views can and should supplement their theological resources with

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<sup>68</sup> Cf David O Brink, 'The Autonomy of Ethics' in M Martin (ed), *The Cambridge Companion to Atheism* (Cambridge University Press, 2006) 149, 156-7.

<sup>69</sup> Max Planck, *Treatise on Thermodynamics*, tr A Ogg (Longmans Green, 1903) 100 [s 133].

naturalistic explanations as a way of avoiding the charge of arbitrariness associated with voluntarism. I will further suggest in this concluding section that the explanatory benefits of theism are best realised by adopting a theological stance that I term qualified teleological perfectionism.

We saw earlier in this article that Christian theologians have differed on their views of the human condition after the Fall. It is common ground that human knowledge and reasoning capacities in their postlapsarian state are seriously impaired. However, there is a range of opinions on the extent to which they remain intact. Some authors hold that, although deeply flawed, human capacities are sufficient to afford reliable knowledge of natural law, whether through the exercise of practical reason or some other divinely granted mechanism such as the capacity to love or our sense of conscience.<sup>70</sup> Others maintain that human abilities are so destroyed that any natural theology is unsafe; we must take our cues from scripture alone. This harsh view of human depravity, often attributed (rightly or wrongly) to Calvin and Martin Luther, has influenced the historical unpopularity of natural law in Reformed circles.<sup>71</sup>

Qualified teleological perfectionism begins by taking a position in this debate. It situates itself towards the former end of the spectrum described in the previous paragraph, holding that human capacities, although corrupt and fallible, are not so impaired as to make moral knowledge impossible. It also takes a position on a second question: namely, the trajectory of human moral knowledge over time. Evidently, if one thinks that the human capacity for moral knowledge has been destroyed, one will not think that humans can make moral progress by relying on their natural abilities. One may rather conclude, like Barth, that we must trust in scripture alone.<sup>72</sup> This view attracts a difficult question as to how humans can hope to reach a sound interpretation of scripture if their natural abilities are so impaired. However, in any event, it makes any reliance on natural law unpromising as a source of moral progress.

A more sanguine conception of human nature, meanwhile, does not necessarily translate into a belief in moral progress. One might hold that human access to natural law remains consistently minimal, sufficient only to keep the peace, rather than offering any hope of improvement in the earthly realm.<sup>73</sup> However, this minimal conception of natural law is at odds with the natural law outlook's conception of intrinsic goods.<sup>74</sup> Contemporary natural law theory tends to focus not narrowly on keeping the peace, but more broadly on how humans can best lead flourishing lives in community with each other. The ultimate focus of human life, within a Christian framework, is on serving God and preparing the way for the world to come. However, this does not mean that moral progress in this world is unachievable.

Qualified teleological perfectionism therefore maintains that human moral knowledge in the postlapsarian condition is such as to permit moral progress. It is *perfectionist* in the philosophical sense that it posits an objective account of the good human life as the focus of moral and political theory.<sup>75</sup> It is *teleological* in the roughly Aristotelian sense that it holds

<sup>70</sup> On the role of conscience, see Lee (n 41).

<sup>71</sup> For an illuminating discussion, see Grabill (n 6) ch 1.

<sup>72</sup> Barth, 'No!' (n 42) 106.

<sup>73</sup> This might be described as a Hobbesian view of natural law. For a helpful overview, see Mark C Murphy, 'Was Hobbes a Legal Positivist?' (1995) 105(4) *Ethics* 846.

<sup>74</sup> Hobbes, for example, held a very parsimonious view of intrinsic goods compared to most natural law authors. As Murphy writes, '[f]or Hobbes there is but one natural good ... and that is self-preservation ... that is, *not being dead*': *ibid* 866.

<sup>75</sup> See generally Steven Wall, 'Perfectionism in Moral and Political Philosophy', *Stanford Encyclopedia of Philosophy* (Web Page, 12 August 2021) <<https://plato.stanford.edu/entries/perfectionism-moral/>>.

humans are naturally disposed and suited to pursue this good; furthermore, since humans are disposed and suited to pursue the good, they have the potential to make progress over time in understanding and realising it. This moral progress, however, is far from assured, since human capacities after the Fall remain seriously corrupted. Qualified teleological perfectionism is therefore *qualified* in the sense that it holds moral progress to be uncertain; furthermore, where moral progress does occur, it is likely to be inconsistent and unreliable.

Qualified teleological perfectionism, thus formulated, focuses on the prospects for moral progress. It might be objected that natural law theories need not make any claims about moral *progress* to be compelling and coherent; what matters, on this view, is rather the possibility of moral *knowledge*.<sup>76</sup> Humans might, for example, have sufficiently intact natural capacities to grasp the basic character of goods and obligations, but not necessarily to improve their understanding of these over time. However, it seems to me that the existence of reliable moral knowledge strongly suggests at least the *possibility* of moral progress; why think that moral knowledge, unlike other forms of knowledge, is wholly immune from development or refinement? Furthermore, it seems odd to think of human goods as static in the way this view suggests. Rather, the development of human communities seems regularly to reveal new modes of engagement with the goods beyond those known or accessible to previous generations.<sup>77</sup>

Qualified teleological perfectionism is a theological doctrine insofar as it takes a position about the human postlapsarian state. It is not, however, a soteriology. It does not entail that humans are redeemed by achieving moral progress in this world (or condemned for failing to do so). It endorses the idea of human depravity, albeit not in its most austere versions, but it takes no stance on predestination, atonement, or justification. Specifically, it does not imply that humans are justified, in whole or part, by works contributing to moral progress. It is therefore compatible with the Reformed doctrine of salvation by faith alone (*sola fide*).<sup>78</sup> Qualified teleological perfectionism also takes no position on the mechanism by which moral progress is possible. My own preference is for an account focusing less on the capacity for reason and more on the role of love.<sup>79</sup> That is, my view is more Augustinian than Thomist; however, qualified teleological perfectionism, as I describe it here, is equally compatible with Thomism.

My claim in this article is that qualified teleological perfectionism maximises the explanatory advantages of theistic natural law theories. It does so in three aspects. First, it posits that humans have sufficient capacity to attain moral knowledge to make natural law possible, thereby undermining the Barthian objection to natural theology. Second, it holds that humans are intrinsically disposed to pursue the good, defusing the challenge posed by motivational externalism.<sup>80</sup> Third, it maintains that moral progress is possible, although not assured. This offers a response to the worry posed in the preceding section of this article: namely, how can we be confident that natural law will not deteriorate over time with shifts in human nature? This final point is nuanced and requires further elaboration.

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<sup>76</sup> I am grateful to Constance Youngwon Lee for helpful discussion on this issue.

<sup>77</sup> For discussion, see Crowe, 'The Evolution of Natural Law' (n 56).

<sup>78</sup> See, eg, Ephesians 2:8–9 (ESV).

<sup>79</sup> See, eg, Jonathan Crowe, 'From Alterity to Proximity: Emmanuel Levinas on the Natural Law of Love' in Zachary R Calo, Joshua Neoh and A Keith Thompson (eds), *Christianity, Ethics and the Law: The Concept of Love in Christian Legal Thought* (Routledge, 2023) 149.

<sup>80</sup> I don't mean that qualified teleological perfectionism entails motivational internalism, but rather that it makes motivational externalism less troubling.

Qualified teleological perfectionism does not hold that moral progress is assured, only that humans have the ability to achieve it. It is still possible, on this view, that human moral dispositions and knowledge will get worse, not better. However, qualified teleological perfectionism means it is unlikely that the long arc of history will yield catastrophic deterioration in human moral capacities.<sup>81</sup> It is more likely that humans will oscillate between their good and bad tendencies, sometimes making progress and sometimes eroding it. This commitment has the potential to bolster our confidence in human decision procedures designed to maximise the soundness of practical reasoning and overcome natural biases, such as seeking dialectical equilibrium between applications, principles, and theories.<sup>82</sup>

Furthermore, qualified teleological perfectionism makes possible what I see as an important move for naturalistic accounts of natural law: namely, identifying natural law in the normative sense with an idealised version of human capacities. Natural law, on the version of this view I have developed previously, comprises those goods and principles humans would value and observe under ideal deliberative conditions, which I describe as conditions of full imaginative immersion.<sup>83</sup> This account resolves the problem of the normativity of natural law by denying that natural law is equivalent to the goods and principles people actually observe; rather, it equates to their idealised version. However, the notion of an idealised version of actual human capacities only makes sense if those capacities are, in some coherent and appealing sense, perfectible; totally corrupt human capacities are hardly something worth perfecting.

Theistic natural law theories, as we saw previously, have another way of making sense of an idealised conception of natural law; they can say that ideal natural law exists in God's mind. However, I have also emphasised throughout this article that theistic natural law perspectives are most powerful when combined with a plausible naturalistic theory, because this makes them less reliant on a strongly voluntaristic conception. Naturalistic natural law theories also play an important role in making sense of the notion of natural law as something distinct from divine revelation; that is, they provide an evidence base for natural theology in the sense disdained by Barth. It is, then, a merit of qualified teleological perfectionism that it renders both theistic and naturalistic versions of natural law theory more compelling.

## CONCLUSION

I commenced this article by discussing the core components of the natural law outlook. The bulk of the article then engaged with some important metaphysical, epistemological, normative, and genealogical questions confronting natural law theories. I defended three claims about the relationship between natural law theory and theism in the course of this discussion. First, I argued that the natural law outlook is compatible with both theistic and non-theistic perspectives. Second, I contended that a theistic version of natural law theory offers significant explanatory advantages in responding to some fundamental questions about natural law. Third, I suggested that the explanatory merits of theistic natural law theories are maximised by adopting a theological position I termed qualified teleological perfectionism: roughly, the view

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<sup>81</sup> Some readings of the Book of Revelation may support this vision of catastrophic human deterioration, taking it as a sign of the end times. However, such ideas are far from Christian orthodoxy. I will not attempt to engage the hermeneutic issues they raise here.

<sup>82</sup> For discussion, see Crowe, *Natural Law and the Nature of Law* (n 9) 59–63; Jonathan Crowe, 'The Role of Snap Judgements in Constitutional Deliberation: A Dialectical Equilibrium Model' in Ron Levy et al (eds), *The Cambridge Handbook of Deliberative Constitutionalism* (Cambridge University Press, 2018) 156 ('The Role of Snap Judgements in Constitutional Deliberation').

<sup>83</sup> Crowe, *Natural Law and the Nature of Law* (n 9) 25–6, 124–5. See also Jonathan Crowe, 'The Idea of Small Justice' (2021) 34(3) *Ratio Juris* 224, 228–9, 235–7.

that the human capacity for moral knowledge is such as to permit, although not guarantee, moral progress.

It is appropriate to conclude by clarifying the upshot of the article. The article's primary aim is to clarify the theoretical challenges facing various natural law positions and the resources they possess to answer them. There is also a sense in which the article defends a theistic view of natural law theory. The arguments I have offered in this regard might strike some readers as modest.<sup>84</sup> After all, I have proffered few, if any, independent reasons to accept either natural law theory or theism. I have, rather, focused on the connections between them. Specifically, I have argued that natural law theorists who care about the explanatory power of their theories have reason to be theists and endorse qualified teleological perfectionism.

However, there are two senses in which the article's claims are not as modest as they may initially appear. First, although this article alone may be unlikely to convert any non-believers to theism, belief in the divine does not function in an all or nothing way. Everyone who has reached an opinion on the matter holds their view with a greater or lesser degree of credence; they are, in other words, more or less agnostic about their commitment to atheism or theism.<sup>85</sup> The arguments in this article, then, have the potential to influence people's beliefs about the divine by shifting their levels of credence in a theistic direction. Similarly, the article supplies proponents of theistic natural law with reason to increase their credence in qualified teleological perfectionism, as opposed to other rival pictures of the human moral condition.

Second, coherence is arguably not only a desideratum of theories, but also (under certain conditions) a reason to believe the theories are true. The widely applied decision procedure of dialectical equilibrium, for example, proceeds on the basis that we can make progress in our knowledge of the world by seeking coherence between and among our beliefs about applications, principles, and theories.<sup>86</sup> The claims advanced in this article about the connections between natural law and qualified teleological perfectionism, then, are claims not just about the ideas themselves, but about the nature of the world. If sound, they give us reasons (albeit certainly defeasible) to believe that those ideas are true.

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<sup>84</sup> I am grateful to Alex Deagon, Joel Harrison, and Joshua Neoh for helpful discussion on this point.

<sup>85</sup> Thanks to Nick Aroney for suggesting this way of framing the issue.

<sup>86</sup> Crowe, *Natural Law and the Nature of Law* (n 9) 59–63; Crowe, 'The Role of Snap Judgements in Constitutional Deliberation' (n 82).