Natural Law and Ethical Non-Naturalism

John D. O’Connor
Blackfriars, University of Oxford, UK

Abstract
There is a lack of clarity in the literature about what constitutes the natural law approach to ethics and what is incompatible with it. The standard, and largely historical, way of understanding the natural law approach risks overlooking theoretical differences of fundamental importance regarding what the natural law approach is usually taken to uphold. Against Craig Paterson, I argue that a necessary condition for an ethical account to uphold fully the natural law approach is that it does not contain any dependence upon the metaethical category of non-naturalism understood in non-supernaturalist (secular) terms. Using the ‘new natural law’ theory of John Finnis to illustrate my case, I also argue that an ethical theory can be largely in keeping with the natural law approach but nonetheless contain elements at odds with it: the issue is more complex than a simple binary. This is an under-explored possibility in natural law ethics.

Keywords
Finnis, metaethics, natural law, natural law ethics, new natural law, non-naturalism

Introduction
The natural law approach puts forward a conception of ethics taken by its advocates to apply, and in principle be at least partially accessible, to all humankind by virtue of our shared humanity. Particular contexts, cultures and creeds might be of ethical significance; but there remains a common human nature, even if conceptions of human nature differ across ethical accounts and are not understood in an overly determinate and prescriptive manner. This ethical approach has its lineage in the work of pre-Christian Greek and Roman philosophers; and it has been prominent within Protestantism, and especially in Roman Catholic theological ethics which continues to accord the natural law approach a preeminent place.1

1. For an account of the natural law approach in relation to classical sources and in both the Protestant and Catholic traditions, see A.P. d’Entrèves, Natural Law (London: Hutchison, 1951).
But what exactly is the natural law approach to ethics? There is a marked absence in the literature of indications of what precisely demarcates the natural law approach from non-natural law approaches. Even authoritative statements in defence of the natural law approach against other ethical approaches, such as the encyclical *Veritatis Splendor* (1993) of Pope John Paul II and the document dedicated to the natural law approach from the International Theological Commission (ITC) of the Roman Catholic Church, *In Search of a Universal Ethic: A New Look at the Natural Law* (2009), fail to give lists of features that are necessary and/or sufficient for what constitutes the natural law approach, and, perhaps more importantly, what might be at odds with it. This might have the advantage of facilitating a legitimate plurality of understandings. It might also reflect the view that detailed clarification is unnecessary in practice: the natural law approach when understood as, for example, a family of ethical accounts with overlapping similarities that are taken to apply, and in principle be at least partially accessible, to all humankind, and which typically derive largely, directly or indirectly, from the work of canonical thinkers of the natural law tradition (e.g. Aristotle, Cicero and Aquinas), might be serviceable in most contexts.

Yet I am concerned that this largely historical way of understanding the natural law approach, what I call ‘the lineage understanding’, leaves unchecked ethical accounts that sport the adjective ‘natural law’, and understandably so because of what they have in common with other natural law accounts, but which nonetheless contain elements at odds with core motivations underlying the natural law approach. In other words, might the lineage understanding, despite its general serviceability, mask internal divisions of a theoretical nature that go beyond what could plausibly constitute a legitimate plurality within the category of ‘the natural law approach’, namely, internal divisions due to opposing positions regarding what is of fundamental importance to what the whole enterprise of the natural law approach is usually taken to be concerned with and to uphold?

In what follows, I argue that such concerns are justified. My aims are diagnostic, irenic and constructive. I do not discount the value of the lineage understanding but, rather, argue for a more refined and critical use of it. It is, however, beyond the scope of this article to work out an exhaustive account of what ought to demarcate in theoretical terms the natural law approach from non-natural law approaches. But I will go part of the way. In this I will first argue that a core motivation underlying the natural law approach is to uphold the view that ethics is founded on what is internal to the nature of things, in particular ethics coming from what is inscribed in some way in the human being interacting with the world. This commitment is perhaps unsurprising given the claims of the natural law approach to apply, and be at least partially accessible, to all humankind by virtue of our shared humanity. I will then argue that any commitment to the metaethical position of non-naturalism understood in non-supernaturalist terms (i.e. without any necessary reference to the divine) is at odds with the above core motivation.² It therefore

² Despite the prominence of non-naturalism understood in non-supernaturalist terms in much secular ethics, there is little in the natural law literature about how, if we assume that the natural law approach is feasible, this metaethical category relates to the natural law approach positively or negatively. An important exception is Craig Paterson, ‘Aquinas, Finnis and Non-Naturalism’, in Craig Paterson and Matthew S. Pugh (eds.), *Analytical Thomism: Traditions in Dialogue* (Aldershot and Burlington, VT: Ashgate, 2006), pp. 171–93.
follows, I will argue, that it is a necessary condition for an ethical account to be wholly in accord with the natural law approach that it does not contain any element of non-naturalism understood in non-supernaturalist terms. This necessary condition is not an arbitrary stipulation, artificially highlighting one criterion among many others. A great deal hangs on it. It is, for example, of significant relevance to Christian theological ethics: in particular whether historically situated human nature, albeit in a fallen state but created in the image and likeness of God and open to divine grace (as Christians claim), is sufficient as the foundation of ethics. I will also dedicate the next two sections of this article to establishing further the crucial importance of the necessary condition to the whole enterprise of natural law ethics.

An example illustrates the relevance of putting forward the above necessary condition, though I stress that much of what I argue goes beyond the particularities of the example. Craig Paterson, in his often insightful analysis of the natural law theory of John Finnis, argues that the theory is heavily committed to non-naturalism understood in non-supernaturalist terms. Paterson, someone sympathetic to this metaethical position, praises Finnis’s theory for what he considers a major addition to our understanding of the natural law approach: opening up the approach to include extensive non-naturalism understood in non-supernaturalist terms. This claim is supported by the fact that Finnis can be viewed as an exemplar of ‘the new natural law’ approach, whose advocates include Robert P. George, Germain Grisez and Mark C. Murphy. There are some differences in the theories of these authors, but also many similarities. All are committed to the view that various goods are ethically basic, to a similar construal of what Finnis calls ‘the Pauline Principle’ (to be explained later), and that natural law can be understood in non-supernaturalist terms, even if compatible with theism. And they all claim to be strongly influenced by Aquinas. The key point here is that the concerns about non-naturalism I raise about Finnis’s theory also apply to the theories of these other philosophers and for the same reasons, though it is beyond the scope of this article to substantiate this claim. But if these theories exhibit a similar relationship to non-naturalism, then an appreciable portion of contemporary work in what is considered natural law ethics contravenes the theoretical condition I argue for. If so, then why even bother insisting that commitment to non-naturalism understood in non-supernaturalist terms undermines natural law credentials if what

3. Although involving possible anachronism, I believe that the ethics of Aristotle, Cicero and Aquinas are not dependent on non-naturalism understood in non-supernaturalist terms, though it is beyond the scope of this article to substantiate this claim. The literature on this, especially pertaining to Aristotle, is considerable: e.g. on Aristotle and also Aquinas, see David O. Brink, ‘Aristotelian Naturalism and the History of Ethics’, Journal of the History of Philosophy 52.4 (2014), pp. 813–33.

4. See Paterson, ‘Aquinas, Finnis and Non-Naturalism’, pp. 171–72.

5. See e.g. John Finnis, Natural Law and Natural Rights, 2nd edn (Oxford: Oxford University Press, 2011); Germain Grisez, The Way of the Lord Jesus, Volume One: Christian Moral Principles (Chicago, IL: Franciscan Herald Press, 1983); Robert P. George, In Defense of Natural Law (Oxford: Oxford University Press, 1999); Mark C. Murphy, Natural Law and Practical Rationality (Cambridge: Cambridge University Press, 2001).

6. See e.g. Paterson, ‘Aquinas, Finnis and Non-Naturalism’, pp. 173–82.
is understood as constituting the natural law approach has now been so widely opened up, albeit fairly recently and due in large part to force of numbers?

I will argue against this sort of move. As already suggested, it would I think go against a theoretically unified account of the natural law approach to a degree that raises serious questions about the value of ‘the natural law approach’ as a distinctive and illuminating ethical category. We should also note that the new natural law theories referred to above claim to be grounded in human nature in some way, which flags up at the very least possible tensions due to the simultaneous reliance on part of the created order that is in some sense beyond nature (i.e. non-naturalism understood in non-supernaturalist terms). More precisely, in the face of Paterson’s arguments, I will argue the following: First, there remain strong theoretical grounds for excluding theories heavily indebted to non-naturalism understood in non-supernaturalist terms from being considered natural law accounts. Second, I will argue that Finnis’s theory is far less dependent on non-naturalism than Paterson claims, so the field of ‘natural law ethics’ has not been opened up anything like as widely as claimed. That said, I will argue that Finnis’s theory is dependent on non-naturalism understood in non-supernaturalist terms to some extent.

This suggests a possibility that is importantly different from what Paterson proposes, but which is woefully overlooked in the literature: that the natural law credentials of ethical theories on theoretical grounds are more complex than a simple binary. That is, a given theory might be largely or dominantly true to the natural law approach on theoretical grounds, to the extent of meriting being categorized for practical purposes as a natural law account overall, whilst incorporating elements at odds with it. In this case, to describe an ethical account as exemplifying the natural law approach without adding suitable qualification or explanation would be inexact or misleading in a similar way to calling a theory ‘consequentialist’ without qualification or explanation even though it contains side constraints at odds with its principal maximizing aims.

The issue is not whether natural law accounts that deviate from theoretical purity are thereby worse or better. Such evaluation would require further analysis and argument. Indeed, nothing in what I argue here rules out the possibility that a natural law theory might conceivably be viewed as improved, even for someone who is highly sympathetic to the natural law approach, by introducing certain elements at odds with the natural law approach; just as a consequentialist theory might conceivably be viewed as improved, even for someone who is highly sympathetic to consequentialism, by introducing side constraints (protecting e.g. human rights) at odds with consequentialist maximizing objectives. My aim here is simply to argue for the need for theoretical clarity and precision in the application of ‘natural law’ to ethical accounts, especially the need for care in the face of a theoretically under-scrutinized lineage understanding that risks overlooking underlying issues of fundamental theoretical importance to what the natural law approach is about.

7. See e.g. Robert P. George, ‘Human Law and Human Nature’, in George, In Defense of Natural Law, pp. 83–91.
8. Robert Nozick, Anarchy, State, and Utopia (Malden, MA: Basic Books, 1974), pp. 26–32.
The structure of this article is as follows. In the next section I give a general account of the natural law approach and highlight a core motivation for adopting it. I argue that to go against this motivation is at odds with the natural law approach. I then explain a number of relevant terms, in particular: ethical supernaturalism, ethical naturalism and ethical non-naturalism (in the rest of the article I assume that these terms are used in an ethical context and do not add the adjective, ‘ethical’). I then make a case that non-naturalism when understood in non-supernaturalist terms is at odds with the core motivation for adopting the natural law approach already argued for, and in this respect is at odds with the natural law approach itself. Finally, I focus on the ethical theory of John Finnis in the light of Paterson’s analysis.9 My aim is not simply to analyse Finnis’s theory; but to illustrate the sort of fine-grained theoretical examination that is required to assess the natural law credentials of ethical accounts, and also to give an example of how non-naturalism understood in non-supernaturalist terms can be present in an otherwise natural law theory.

The Natural Law Approach

Those working in theological and philosophical ethics choose different ethical approaches to work with largely because of what they are motivated to uphold. Advocates of the natural law approach are no different. The aim of this section is to identify a core motivation for adopting the natural law approach. This is also to identify a criterion for what is in keeping with the natural law approach and what is at odds with it. Since I wish to interrogate the lineage understanding of the natural law approach, simply examining the uses in the literature of ‘natural law’ and related terms is inadequate, since the aim is to elucidate questionable uses of these. Instead, identifying a central motivation for adopting the natural law approach touches on what the natural law approach is most concerned to uphold; and thus those accounts that are not true to this motivation, despite perhaps having numerous other features that are in keeping with the natural law approach, nevertheless to this extent cut directly against what is central to the natural law approach itself. Focusing on a central motivation also allows for a legitimate plurality of forms of the natural law approach, which despite differences can still have a core motivation in common; just as different forms of consequentialism, for example, despite their differences, all support the central motivation of upholding the primacy of maximizing the good, however this is understood.

Although there are many different accounts of the natural law approach, they nevertheless share important features.10 In order to minimize risk of idiosyncrasy or bias in my account of the natural law approach, I will focus on the view of a highly influential and

9. I do not focus on jurisprudence, a field in which natural law is often understood in contrast with legal positivism. Although Finnis works in jurisprudence, he also puts forward his views as an ethical theory, e.g. in his Fundamentals of Ethics (Oxford: Oxford University Press, 1983).

10. For a discussion of the diversity of natural law accounts influenced by Aquinas, see Fergus Kerr, After Aquinas: Versions of Thomism (Oxford: Blackwell, 2002), pp. 97–113.
mainstream moral theologian, John Courtney Murray; and on the 2009 ITC document on
natural law, which, as an official ecclesiastical publication, is intended for a wide audi-
ence and thus presumably seeks to present the natural law approach in a broad and inclu-
sive fashion without undue partisanship.

Murray gives a much-cited general and inclusive account of the natural law approach
that is uncontroversial for the Christian theological ethicist:

Natural law supposes a realist epistemology, that asserts the real to be the measure of knowledge,
and also asserts the possibility of intelligence reaching the real, i.e. the nature of things—in the
case, the nature of man as a unitary and constant concept beneath the individual differences.
Secondly, it supposes a metaphysic of nature, especially the idea that nature is a teleological
concept, that the ‘form’ of a thing is its ‘final cause’, the goal of its becoming; in the case,
that there is a natural inclination in man to become what in nature and destination he is—to achieve
the fullness of his own being. Thirdly, it supposes a natural theology, asserting that there is a
God, Who is Eternal Reason, Nous, at the summit of the order of being, Who is the author of all
nature, and Who wills that the order of nature be fulfilled in all its purposes, as these are
inherent in the natures found in the order. Finally, it supposes a morality, especially the principle
that for man, a rational being, the order of nature is not an order of necessity, to be fulfilled
blindly, but an order of reason and therefore of freedom.11

The first feature listed by Murray asserts a non-sceptical epistemological perspective:
internal to human beings are our capacities to have a sufficient grasp of the nature of
things, not only because the things of the world exhibit sufficient similarity across
instances of kinds as well as stability in nature across time and space, but also because of
our receptive capacities and intelligence. This epistemological point asserts a necessary
condition for human beings to be able to exercise correctly their practical rationality that
resides within persons themselves.

The second feature listed by Murray puts forward a commitment that perhaps more
than any feature distinguishes the natural law approach from most other ethical
approaches. The natural law approach is committed to the existence of some degree of
teleological ordering understood in terms of internal principles that uphold the entities of
the world as the things they are. This includes their potentialities: it is part of the nature
of living creatures that they develop over time in ways appropriate to the kinds they are.
In any case, the basis of the natural law approach is grounded primarily (and in some
cases exclusively) on upholding the integrity of human beings as the teleologically
ordered, unified, rational and bodily creatures we are or are in principle capable of
becoming. The key point here is that this is a conception of ethics that is founded on what
is intrinsic to persons, their nature and their well-being, and not on what is extrinsic to
them. As the ITC document puts it:

The moral good corresponds to the profound desire of the human person who—like every
being—tends spontaneously, naturally, towards realising himself fully, towards that which

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11. John Courtney Murray, We Hold These Truths: Catholic Reflections on the American
Proposition (Lanham, MD: Rowman & Littlefield, 2005), pp. 293–94.
allows him to attain the perfection proper to him, namely, happiness . . . It pertains to the reason of the subject to examine if [these] particular goods can be integrated into the authentic realisation of the person: if so, they will be judged morally good, and if not, morally bad.\(^\text{12}\)

The fourth feature given by Murray is that human beings possess sufficient rationality and freedom for ethical considerations to apply. As unified spiritual, bodily and intellectual beings (as per the first feature listed by Murray), and since our practical reasoning is with reference to the fulfilment of human nature (as per the second feature listed by Murray), our rationality exercised in freedom should not be understood in primarily formal or a priori terms. It needs to come out of the sort of virtuous beings we are capable of becoming and be capable of doing justice to the range of human concerns, such as physical and emotional well-being, quality of agency and selfhood, autonomy, virtue, aesthetic experience, leisure, spiritual needs, and the possession of interpersonal goods such as friendship. This is, again, to assert a core motivation for adopting the natural law approach: to uphold a conception of ethics that is founded on what is intrinsic to persons. As the ITC document puts it:

\begin{quote}
it aims at having the subject acquire the intellectual and affective dispositions which allow him to be open to moral truth, so that his judgement may be adequate. Natural law could not, therefore, be presented as an already established set of rules that impose themselves a priori on the moral subject; rather, it is a source of objective inspiration for the deeply personal process of making a decision.\(^\text{13}\)
\end{quote}

The third feature of natural law listed by Murray is commitment to theism. As is clear from Murray’s writings on the natural law approach and pluralism (to which he made significant contributions), whilst Christian theological ethicists like Murray assert the need to include theism for a comprehensive natural law account, they can nevertheless allow the term ‘natural law’ to apply to non-theistic accounts because they possess the other three features listed by Murray.\(^\text{14}\) This allows for dialogue across religious and philosophical traditions, both theistic and non-theistic, an important element in the natural law approach’s claim to apply to all humankind. Both *Veritatis Splendor* and the ITC document accept this.\(^\text{15}\) Yet the inclusion of theism might seem a threat to the natural law approach: Might God’s command overrule or displace what the natural law might propose, setting God’s command against the natural law itself? In the face of this question, the mainstream Christian natural law tradition is clear. The ITC document puts it well:

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\(^{12}\) International Theological Commission, *In Search of a Universal Ethic: A New Look at the Natural Law* (London: Catholic Truth Society, 2012), section 41; first published in Italian and in French in 2009 by Libreria Editrice Vaticana, Citta del Vaticano.

\(^{13}\) ITC, *In Search of a Universal Ethic*, section 59.

\(^{14}\) Indeed, the first five essays in Murray’s *We Hold These Truths* address questions of contemporary pluralism in relation to the commitment among the founding fathers of the United States of America to forms of the natural law approach, both secular and Christian.

\(^{15}\) See e.g. John Paul II, *Veritatis Splendor* (London: Catholic Truth Society, 1993), paras 36 and 74; ITC, *In Search of a Universal Ethic*, sections 3,4, 8, 9, 11, 35, 38, 42, 50, 52 and 112.
there exists a harmony among the three realities: God, man, and nature. In this perspective, the world is perceived as an intelligible whole, unified by the common reference of the beings that compose it to a divine originating principle, to a Logos... By the dynamisms that the creator Word has inscribed in the innermost part of things, he orients them to their full realization.\textsuperscript{16}

Although originating in the divine wisdom and will, the human \textit{telos} is intrinsic to the created human being, not extrinsic. Historically instantiated human nature is not so flawed that it cannot reveal divine purposes for humankind and be the basis for reflection capable of arriving at ethical truth. Indeed, even when moral injunctions derived from revelation appear at odds with the deliberations of human practical reasoning, the theistic proponent of the natural law approach will seek to understand the divine moral injunction in terms of the fulfilment of what is intrinsic to human nature and even revise the conception of human nature in the light of this. There is no question of giving way to a divine command ethics that sets the divine will against the God-given integrity that is internal to the created order. Yet, again, ethics is on the basis of what is intrinsic to the nature of human beings. This view is supported by the ITC document:

Thus creatures are animated by a dynamism that carries them to fulfil themselves, each in its own way, in the union with God. This dynamism is transcendent, to the extent to which it proceeds from the eternal law, i.e., from the plan of divine providence that exists in the mind of the Creator. But it is also immanent, because it is not imposed on creatures from without, but is inscribed in their very nature. Purely material creatures realize spontaneously the law of their being, while spiritual creatures realize it in a personal manner. In fact, they interiorize the dynamisms that define them and freely orient them towards their own complete realization.\textsuperscript{17}

Having identified across the different features of the natural law approach a core motivation for adopting the natural law approach, I can now make a claim that I believe is strongly supported by my analysis and that will be important in the overall argument: Not only is the desire to uphold what is internal to the nature of things (in particular human beings) as the foundation and basis for ethics a core motivation for adopting the natural law approach; it is sufficiently central and sufficiently important that to permit elements in an otherwise unproblematically natural law account that undermine this core motivation would be to permit what is at odds with the natural law approach itself. The motivation to uphold ethics as coming from what is inscribed in some way in the human being interacting with the world is clearly supported by the ITC document; and is not only present across all the different features in Murray’s account, but is integral to them all. This is to isolate a criterion for determining what is in keeping with the natural law approach and what is at variance with it. This does not, however, specify how what is internal to the nature of things as the foundation and basis for ethics is to be understood. It allows for a legitimate plurality, whilst also giving a criterion on theoretical (not lineage) grounds for assessing the natural law credentials of ethical theories.

\textsuperscript{16} ITC, \textit{In Search of a Universal Ethic}, section 69.
\textsuperscript{17} ITC, \textit{In Search of a Universal Ethic}, section 63.
Naturalism, Supernaturalism and Non-Naturalism

I will first clarify the relevant terms: naturalism, supernaturalism and non-naturalism. I will then explain why I think that non-naturalism understood in non-supernaturalist terms is at odds with the natural law approach.

Supernaturalism is the view that reference to the divine is necessary for any adequate explanation and justification of ethical claims. Thus divine command ethics is a form of supernaturalist ethics, since it holds that adequate ethical explanation or justification needs to make reference to the supernatural (e.g. an act is morally wrong because God has commanded that acts of that type not be done).

Naturalism asserts that ethical facts—for example, it is the case that murder is morally wrong—are natural facts, and so ethical facts can be wholly explained in terms of the natural. This leaves room for ambiguity since ‘natural’, ‘naturalism’ and their cognates have different meanings depending on what they are taken to contrast with. ‘Natural’ can be understood as contrasting with ‘supernatural’, along the lines of the created/creator distinction. But, especially in secular contexts in which the existence of the divine is discounted from the outset, ‘natural’, ‘naturalism’ and their cognates are often understood in terms of contrasting with ‘non-natural’, ‘non-naturalism’ and their cognates, which are understood in a wholly non-supernatural sense. This is to admit the metaethical category of ‘non-naturalism’ that is wholly part of the created order, wholly non-supernatural, but nonetheless contrasting with ‘naturalism’. It is this non-supernaturalist sense of non-naturalism that I am concerned with in this article. For the sake of simplicity I will henceforth use the term ‘non-naturalism’ and its cognates in this way, and without the qualification, ‘understood in a non-supernaturalist sense’. Therefore, to recap how I will use the terms: the created order is contrasted with the supernatural, and the former contains the mutually exclusive categories of the natural and the non-natural.

But what exactly is non-naturalism? Explaining this is rendered complicated as there is no widely agreed account of the natural/non-natural distinction. This is perhaps unsurprising given that much of what can be considered artificial in human life, and thus in some way non-natural, could be construed as natural from other perspectives. The wearing of spectacles is natural in the sense that it enables us to continue using a natural sensory capability according to its natural telos (i.e. to see objects in focus); but is non-natural in the sense that spectacles are not to hand as part of the natural order, but are artefacts. In the face of such difficulties, a standard way of drawing the natural/non-natural distinction is to take the lead from G.E. Moore for whom natural facts are those whose discovery and study is the proper matter of the natural sciences and psychology. To this we can add further disciplines such as economics and social theory, and any other fields of interest whose subject matter is concerned with what interacts causally within the world and can be measured and perceived in a posteriori fashion. In this context we can understand the domain of the natural in as inclusive a fashion as possible in order to incorporate whatever can be observationally discerned and experienced and

18. G.E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1903), p. 40.
19. See Nicholas Sturgeon, ‘Moral Explanations’, in David Copp and David Zimmerman (eds.), *Morality, Reason and Truth* (Totowa, NJ: Rowman and Allanheld, 1985), pp. 49–78.
that is of ethical relevance in human life, such as personal flourishing (physical and mental), quality of selfhood, agency, virtue, and the subjective engagement with self and the world as reflected in, for example, personal testimony and the arts. For the naturalist, natural elements such as these constitute the goodness/badness of a human life and are therefore the foundation of ethics. The conception of naturalism I put forward not only includes the wide diversity of relevant ethical considerations for human beings, who by virtue of their human nature possess the needs and capacities involved in, for example, self-expression and establishing complex societies; it also allows for an understanding of naturalism, and of the natural law approach on theoretical grounds, that is as inclusive in content as possible.\(^{20}\)

Since non-naturalism can be understood as what is both non-supernatural and mutually exclusive of the natural, we can understand non-naturalism as that part of the created order that is outside the purview of the sciences broadly construed, and of related disciplines and fields of interest as outlined above. Within the history of ethics, the presence of non-naturalism has been considerable.\(^{21}\) One reason why belief in non-naturalism gets going is because some philosophers believe, without wishing to invoke the existence of the divine, that ethics possesses a number of features that cannot be explained in wholly natural terms: the non-natural domain accounts for what is missing. Consider, for example, the view that moral permissibility and impermissibility possess an overriding imperatival force that, it is claimed, cannot be explained or justified in wholly natural terms. If it is further assumed that there is only the non-supernatural order, and yet moral permissibility and impermissibility understood in this overriding way exist, then the only remaining option is that there is at least some morally relevant non-naturalist element in the midst of an otherwise wholly naturalist account. Another example is the view that certain interpersonal obligations exist and will continue to exist regardless of how humans might evolve. Thus, if humans evolved so that we came to value self-reliance above everything else, the naturalist might on the basis of this defend the view that it would be morally wrong to aid people in great distress seeking our assistance, even if to do so would not be at disproportionate cost. But if one’s intuition is that it is a moral truth that one should help people in such circumstances regardless of possible evolutionary change, then this is in effect to assert an autonomy of ethics in relation to the natural and thereby to admit non-naturalist elements into the picture.

\(^{20}\) This is sometimes called ‘relaxed naturalism’, in contrast to, say, naturalism limited to the natural sciences. Relaxed naturalism is usually understood as non-reductive (e.g. due to high degrees of multiple realizability), but some reduction is possible. My arguments are, however, independent of whether relaxed naturalism is reductive or non-reductive, since either way it is limited to what is open to empirical investigation and thereby wholly excludes non-naturalism. For a classic defence of relaxed naturalism, see John McDowell, ‘Two Sorts of Naturalism’, in Rosalind Hursthouse, Gavin Lawrence and Warren Quinn (eds.), \textit{Virtues and Reasons: Philippa Foot and Moral Theory} (Oxford: Clarendon Press, 1995), pp. 149–79.

\(^{21}\) The most obvious proponent of non-naturalism in ethics is Plato, whose theory of the Forms is strongly non-naturalist. Non-naturalism has been prominent in British ethics; see Thomas Hurka, \textit{British Ethical Theorists from Sidgwick to Ewing} (Oxford: Oxford University Press, 2014).
The literature on naturalism and non-naturalism is immense; and it is beyond the scope of this article to attempt to settle the debates between naturalists and non-naturalists.\textsuperscript{22} My main concern lies elsewhere: with how non-naturalism is at odds with the natural law approach. The two examples I have just given indicate clear reasons for this: non-naturalism involves giving at least some role to normative force and/or normative standards that are autonomous of, and not grounded in, the nature of the very entities to which the normative standards or forces apply (i.e. human beings). To postulate non-naturalism in ethics is therefore in effect to propose a non-supernaturalist analogue of divine command ethics: foundations of ethical demand from outside the nature of the things to which they apply. And this is directly at odds with the core motivation behind the natural law approach and its corresponding criterion that I have argued for in the previous section.\textsuperscript{23}

**Non-Naturalism and Finnis’s Natural Law Theory**

Assuming my arguments regarding non-naturalism being at serious odds with the natural law approach are sound, if non-naturalist elements make their way into natural law accounts, it would be unsurprising if this were to happen in subtle ways, perhaps unrecognized by their authors. I will argue that this fits with the case of Finnis’s natural law theory. This is, however, to argue that this theory is far less heavily committed to non-naturalism than Paterson thinks.

I will begin by giving a brief overview of relevant aspects of Finnis’s theory. I will argue, \textit{pace} Paterson, that the core of the theory, based on goods, is in keeping with naturalism. I will then explain and analyse Finnis’s construal of what he calls ‘the Pauline Principle’. I will argue that Finnis’s construal of this principle relies on non-naturalism. To that extent, at least, Finnis’s theory contains what is at odds with the natural law approach.

Finnis’s theory is grounded in what he calls the ‘basic goods’: life, knowledge, play, aesthetic experience, sociability or friendship, practical reasonableness, and religion. The goods are basic because there is nothing more fundamental in the theory: they are not, for example, derived from human nature. Instead, for Finnis, agents when encountering the

\textsuperscript{22} Accounts of naturalism, non-naturalism and supernaturlsm are found in most textbooks on metaethics; see e.g. Matthew Chrisman, \textit{What is This Thing Called Metaethics?} (Abingdon: Routledge, 2017).

\textsuperscript{23} This criterion is to be understood in metaphysical, not epistemological, terms. The metaphysical is more fundamental. The epistemological approach associated with non-naturalism is intuitionism. Knowledge of non-naturalist properties/entities requires some form of intuitionism; whereas the functioning of intuitionism does not require the existence of non-naturalist properties/entities. Indeed, a wholly intuitionist epistemology could account for knowledge of naturalist properties/entities. An intuitionist epistemology is therefore compatible with the natural law approach. The account I give in the next section of coming to know the basic goods illustrates what could be viewed as a naturalistic version of intuitionism. For a sympathetic account of intuitionism, see Jonathan Dancy, ‘Intuitionism’, in Peter Singer (ed.), \textit{A Companion to Ethics} (Malden, MA and Oxford: Blackwell, 1993), pp. 411–19.
world exercise their practical reason and in this they experience inclinations within themselves towards certain objects which provide the occasion for the recognition that the objects of the inclinations are intrinsically good and self-evidently so. Furthermore, in keeping with their status as basic, the different basic goods are understood as evaulatively incommensurable: there is no scale or standard more basic than the goods by which the value of any basic good can be set against the value of any other.

At this early stage it might appear that Finnis has already succumbed to non-naturalism. The mechanism involved in intellectually grasping the basic goods is akin to intuitionism, the standard epistemological account for non-naturalism, in which facts come to be known in a non-inferential, a priori, or self-evident manner, in contrast to the mainly a posteriori methods of the sciences. Moreover, and central to Paterson’s claim that Finnis’s theory is heavily non-naturalist, since the means of arriving at the basic goods in no way involves derivation from human nature, the method does not contravene the Humean principle that the evaluative cannot be derived from the non-evaluative, the so-called ‘fact/value distinction’. Commitment to the fact/value distinction is (along with commitment to intuitionism) a marker for reliance on non-naturalism, since if values are asserted (without invoking theism) and these cannot be derived from natural properties of, for example, human nature (understood non-evaluatively), then non-naturalism presumably needs to supply what the natural is unable to provide. Possible commitment to non-naturalism here can therefore be understood on both epistemological and metaphysical grounds: coming to know what the basic goods are and understanding the basic goods as not wholly explicable in terms of the natural.

Yet, despite appearances, it is not at this stage in Finnis’s account that suspicions of non-naturalism are justified. This is important, since if the account of the basic goods implies non-naturalism, and since the basic goods are the foundations of Finnis’s account, then the theory would be thoroughly permeated by non-naturalism and would, by my lights, merit possible exclusion from being considered a natural law theory. My reason for asserting that such exclusion is unjustified is not, for example, because Finnis denies that his method is intuitionist. It is, rather, that it is possible to give a credible, explicitly naturalistic explanation of Finnis’s account of how the basic goods have been arrived at. For example, some studies indicate that preschool children who have received only the rudiments of moral formation and who have very little experience of articulating moral evaluations will uphold standards of fairness, not only in relation to themselves but also in relation to others. The naturalist understands this, not in terms of a child...

24. Finnis, *Natural Law and Natural Rights*, pp. 33–42, 60–69, 85–97.
25. Finnis, *Fundamentals of Ethics*, pp. 86–90; Finnis, *Natural Law and Natural Rights*, pp. 111–18, though also see Murphy, *Natural Law and Practical Rationality*, pp. 190–98.
26. Paterson, ‘Aquinas, Finnis and Non-Naturalism’, pp. 171–72, 182–84.
27. E.g. Finnis, *Fundamentals of Ethics*, p. 22; Finnis, *Natural Law and Natural Rights*, p. 72.
28. See Finnis, *Natural Law and Natural Rights*, pp. 60–73.
29. Hannes Rakoczzy, Marlen Kaufmann and Karoline Lohse, ‘Young Children Understand the Normative Force of Standards of Equal Resource Distribution’, *Journal of Experimental Child Psychology* 150 (2016), pp. 396–403.
grasping moral truths external to the child and existing at least partially in a non-naturalist domain, but as a reflection of values and concerns whose basis is innate to the child, even if the awareness and knowledge of the moral truths is itself not innate, but occasioned by what is experienced when engaging with the world. The same sort of naturalistic mechanism can explain how we come to grasp the basic goods in the way put forward by Finnis.

Finnis’s account thus far is naturalistic, even if it does not contravene the fact/value distinction since there is no derivation from the non-evaluative to the evaluative. The key point here is that commitment to the fact/value distinction might be a necessary condition for a morally realist theory to be committed to non-naturalism; but, as the example of arriving at the basic goods shows, pace Paterson, it is not a sufficient condition. This conclusion regarding non-naturalism can also be understood on metaphysical grounds, and not just the epistemological grounds as already set out. After all, the basic goods are basic: there is nothing more fundamental in the theory, such as a property of ‘good’ that could be understood in non-naturalist terms. Indeed, the basic goods in themselves can be understood in straightforwardly naturalist terms, as what is good for human beings given the nature we possess.30 Finnis’s theory, admittedly, contains markers of non-naturalism, but he deftly manages to avoid non-naturalism at this early and key stage.

Having identified the basic goods, Finnis presents nine principles of practical reasonableness for us to make rational and defensible decisions in relation to the basic goods.31 Since the basic goods come to be known in a naturalistic fashion, there is a basis for initial confidence that the principles of practical reasonableness put forward by Finnis are also naturalistically grounded. This seems unproblematically the case with some of the principles, such as that agents should adopt, and act from, a coherent plan of life; and that one ought to bring about good through actions that are efficient and not wasteful of time, energy, or other goods. Other principles of practical reasonableness strike me as less easy to defend on purely naturalistic grounds, such as that there should be no arbitrary preferences among the basic values (which I interpret as that we should not act as though there is any hierarchy among the basic values); and that we should not act in a way that accords arbitrary preference among persons (which I interpret as that reasons arising directly from the basic goods are agent-neutral).32 But the principle that strikes me as most vulnerable to concerns regarding non-naturalism is Finnis’s seventh principle of practical reasonableness: that one must respect every basic good in every act and never choose against a basic good.33 This is sometimes referred to as ‘the Pauline Principle’, given its apparent similarity to the principle put forward by St Paul in the Epistle to the Romans: ‘And why not say . . . “Let us do evil so that good may come”? Their condemnation is deserved!’34

30. See Murphy, Natural Law and Practical Rationality, pp. 16–17.
31. Finnis, Natural Law and Natural Rights, pp. 100–126.
32. Finnis, Natural Law and Natural Rights, pp. 105–109.
33. Finnis, Fundamentals of Ethics, pp. 109–112; Finnis, Natural Law and Natural Rights, pp. 118–25.
34. St Paul, Epistle to the Romans 3:8 (New Revised Standard Version translation).
Finnis puts forward his seventh principle of practical reasonableness in a strong form, as a moral absolute:

To choose an act which in itself simply (or primarily) damages a basic good is thereby to engage oneself willy-nilly (but directly) in an act of opposition to an incommensurable value (an aspect of human personality) which one treats as if it were an object of measurable worth that could be outweighed by commensurable objects of greater (or cumulatively greater) worth . . . But it can never be justified in reason. We must choose rationally . . . Reason requires that every basic value be at least respected in each and every action.35

Finnis uses the verb ‘to respect’ not to mean that one is obliged to always promote a particular basic good, but that one must never act directly against any of the basic goods.36 In the above passage Finnis therefore asserts that one can never act against any of the basic values corresponding to the basic goods for any reason whatsoever. This is far more controversial than weaker forms of the Pauline Principle (e.g. a defeasible presumption against acting against any basic good), not only with regard to asserting moral absolutes, but also because the principle applies to all the basic goods equally, since there is for Finnis no hierarchy of basic goods.37

Thus, it would for Finnis be absolutely prohibited for Dorian, a morally upright man tortured by inner anguish, to destroy the portrait that depicts his mental state given that the insightful painterly depiction of Dorian’s anguish is part of what makes the picture aesthetically good: to destroy the picture due to its insightful depiction would be to destroy it for its aesthetic qualities. Dorian’s experience of the work is, let us say, a combination of aesthetic experience alongside an even stronger emotion of distress that there exists a picture that reveals his inner state so perceptively. The grounds for destroying the picture would therefore be due to its artistic quality in relation to the depiction of Dorian. To destroy the picture whose existence is a source of misery, along with its attendant aesthetic experiences, would therefore be to act against the basic good of aesthetic experience and this must never be done. Let us assume too that the picture is not so fine that its destruction would impact in any appreciable way on the history of art. That a non-masterpiece meant to give enriching experience should enjoy such protection no matter how great the emotional cost (and in principle regardless of how many people might have to suffer the cost)—thoroughly naturalistic considerations!—is strongly counterintuitive to me.

My argument is not that naturalists cannot justify moral absolutes in some cases. Consider lying: for Finnis lying is absolutely prohibited because it is to act against the basic good of knowledge. A naturalist could argue for this absolute prohibition on structural and teleological grounds: that to permit any lying whatsoever would provide ground for doubting the utterances of all, and the institution of interpersonal discourse that relies on being able to trust what others say would thereby be undermined. In the case of aesthetic experience there are not, however, such structural and institutional considerations, and thus this naturalistic basis for the absolute prohibition is not available. My ability to

35. Finnis, *Natural Law and Natural Rights*, p. 120.
36. Finnis, *Natural Law and Natural Rights*, pp. 118–25.
37. Finnis, *Natural Law and Natural Rights*, pp. 92–95.
engage in the practices of aesthetic appreciation need in no way be affected adversely by the fact that there exist those who might act against aesthetic experience. Indeed, my aesthetic experiences might even be heightened by my appreciation of the vulnerability, and inherent destructibility, of the work of art before me.

Since naturalistic factors appear not to uphold the absolute prohibition against Dorian destroying the picture, there are grounds for suspecting the presence of non-naturalism here. Some preliminary remarks can now be made.

First, it seems to me that non-naturalism fits with Finnis’s construal of the Pauline Principle. I have already characterized non-naturalism as giving rise to a secular analogue of the divine command theory. The ease with which Finnis’s theory generates a plethora of moral absolutes involving any of the basic goods, regardless of the cost these might incur in terms of the natural features of human life, and with the foundations of the impositions of obligation from without the agents themselves, has a divine command structure to it. Even if this is insufficient to prove that Finnis relies on non-naturalism, it is an important consideration in support of the charge.

Second, it is clear that Finnis is unable to use the naturalistic strategy he used to establish the basic goods to defend the absolute prohibition on either destroying paintings of aesthetic merit or lying. That strategy is based on self-evidence elicited in appropriate circumstances; but the absolute prohibitions are far from self-evident. While few I think would disagree with Finnis that the basic goods he puts forward are goods central to personal flourishing, it is a commonplace that most in society reject absolute prohibitions on acting against at least some of them.

A strategy to help determine if Finnis’s construal of the Pauline Principle depends to some extent on non-naturalism is to consider the assumptions underlying, and necessary for, Finnis’s construal of the principle, and to examine if these assumptions can be upheld on naturalistic grounds and/or if they imply non-naturalism. If any of the assumptions are found to depend on non-naturalism, it follows that Finnis’s position also relies on non-naturalism.

The assumptions underlying and necessary for Finnis’s construal of the Pauline Principle that I will examine are:

(i). Since the values of the different basic goods are incommensurable, it follows that they are incomparable.

(ii). Immoral acts of commission are by virtue of being acts of commission always intrinsically morally worse than their corresponding immoral acts of omission.

I will explain and examine each of these assumptions in turn. I will argue not only that (i) and (ii) cannot be justified on naturalistic terms, but that they both suggest non-naturalism.

38. On the case of lying, for example, see Christopher O. Tollefsen, Lying and Christian Ethics (Cambridge: Cambridge University Press, 2014), pp. 1–8.
39. David Luban also focuses on these assumptions in his analysis of Finnis. See David Luban, ‘Incommensurable Values, Rational Choice, and Moral Absolutes’, Cleveland State Law Review 38.1-2 (1990), pp. 65–84.
I will first examine (i). As the extended quotation above from Finnis on the Pauline Principle makes clear, incommensurability is central to his understanding of the principle. If there is incommensurability across the basic goods, as Finnis contends, then there is no common standard by which one can compare directly the value of increase in any basic good X in relation to the decrease of a different basic good Y resulting from actions involving the intentional damaging of Y. This is to reject the basis for a calculus to justify the gain in X at the cost of damaging Y that could be used to reject Finnis’s construal of the Pauline Principle. This is to assume that incommensurability implies incomparability.40

There are two grounds for asserting that the thesis that incommensurability implies incomparability implies non-naturalism. First, the thesis fits well with non-naturalism; and, second, naturalism is unable to account for the thesis. I will look at these in turn.

Non-naturalism asserts the existence of value as transcending the natural domain in some way. Thus, for the non-naturalist, the value of a basic good X might include a component of intrinsic value possessed by the basic good that has no reference to the natural. This facilitates the assertion of incomparability in two ways. First, it opens the possibility that each basic good possesses its own sui generis value wholly distinct in type from each other, and thereby without any ground for comparison of value across different basic goods. Second, it rejects a reduction of the value of the basic goods to the natural, which could then supply the basis for comparison of different basic goods—for example, basic good X is of greater value than basic good Y because X would enable persons to flourish (understood naturalistically) more than Y would. The non-naturalist might accept much of this account of X and Y, but nevertheless assert that such considerations are not the whole story, that there remains a component of value of the basic goods that resists allowing such comparison. This, I believe, is sufficient to establish the charge of non-naturalism at Finnis.

The naturalist can also supply a negative case against (i) as naturalistic. For the naturalist the value of the basic goods is in terms of what is natural, such as how the basic goods impact on the range of concerns of those for whom the basic goods have value. In the case of human beings, this would include physical and emotional well-being, quality of agency and selfhood, virtue, aesthetic experience, pleasure and enjoyment, and whatever other natural qualities are of ethical relevance. These natural factors provide a means by which different basic goods can be compared. Naturalism therefore lends itself to the view that incommensurability does not imply incomparability, just as the incommensurability implies incomparability thesis suggests non-naturalism.

Consider, for example, a barrister in the middle of a serious trial who uncovers important information relevant to the final outcome of the case, whose use by him in court would require him staying up late at no other cost than his mood and energy levels for a few days. Let us also assume that the barrister is defending his best friend and that the outcome of the case would have a major impact on the life of the friend; and let us assume that the barrister in question enjoys general working conditions that protect him from being exploited and having to work late: the current issue of whether to stay up late

40. For an extended defence of the view that incommensurability does not imply incomparability, see Ruth Chang, Making Comparisons Count (Abingdon: Routledge, 2002).
is a one-off due to taking on a case that involves defending a close friend.\textsuperscript{41} This would be to sacrifice intentionally an instance of the basic good of life (due to negative, albeit minor, impacts on the barrister’s health) for the basic goods of sociability (friendship) and knowledge. Yet, even without knowing any coherent plan of life the barrister might have, and admittedly working with assumptions about the role of friendship in human beings and assuming these apply to the barrister, it would I think be justified (unless there are special circumstances) to claim that the barrister is morally obliged to stay up to prepare adequately in the light of the new information. If so, then incommensurable goods need not be incomparable.

But might (ii), the commission/omission distinction, in particular that immoral acts of commission are intrinsically morally worse than corresponding immoral acts of omission, come to Finnis’s aid? This distinction supports Finnis’s construal of the Pauline Principle that one must never act to damage intentionally a basic good (act of commission), even if this is to fail to promote a basic good or protect it against damage (act of omission).

For present purposes I am willing to accept that Finnis can justifiably hold that it is within the nature of the basic goods and our interactions with them that there is a morally relevant commission/omission distinction; and as part of this we experience that there is in general something intrinsically morally worse about immoral acts of commission than corresponding immoral acts of omission. It seems highly plausible to me that, for example, to fail to save the life of a child on the other side of the world through not giving to UNICEF (act of omission) is less morally problematic than to send lethally poisoned food to a child on the other side of the world (act of commission).\textsuperscript{42} This can be explained in wholly naturalistic terms: the act of commission shows contempt for life to the degree of initiating a causal chain aimed at ending life; whereas the act of omission need not show such contempt, but, perhaps, an insufficient regard for life.

The problem for Finnis’s construal of the Pauline Principle is that it relies on the commission/omission distinction as an absolute, as \textit{always} involving a difference in moral gravity, which can be used to justify courses of action/inaction that might be very costly in terms of outcomes. Consider, however, an example designed to bring the moral gravity of acts of commission and acts of omission as close together as possible: Compare from a moral perspective (a) someone faced with the free option of pressing a button that would cause a child to die; and (b) the same person faced with the free option of pressing a button which would cause a child to be saved from death. To this one can add details to heighten the issues, for example, that the person does not suffer a personality disorder rendering him psychologically unable to experience sympathy and to understand the needs of others; and that the person makes eye contact with the distressed child pleading to live in both scenarios, (a) and (b), and so not to save the child’s life in the face of such pleading would involve an explicit contempt for life. Assuming the person is fully

\textsuperscript{41} The barrister example comes from Luban, ‘Incommensurable Values’, though I have modified it.

\textsuperscript{42} This example comes from Philippa Foot, ‘Killing and Letting Die’, in her \textit{Moral Dilemmas} (Oxford: Oxford University Press, 2002), pp. 78–87.
informed in both cases and the inconvenience to the person of pressing the button or not pressing the button is minimal (maybe a second or two of very mild exertion), I believe that we would look upon the action of the person in circumstance (a) who presses the button (act of commission against the basic good of life) with the same, or at least extremely similar, gravity as the person who fails to press the button (act of omission failing to promote the basic good of life) in circumstance (b). Both show an identical, or almost identical, contempt or indifference to life.43

This is to deny on naturalist grounds that the moral relevance of the omission/commission distinction is an absolute. Since, as previously mentioned, non-naturalism can be invoked when naturalism is unable to justify a particular ethical position, my analysis suggests that if Finnis is to maintain his view that the moral relevance of the commission/omission distinction is absolute, he must invoke non-naturalism. And, as with (i), here too I suggest that despite the secular context, the moral relevance of the commission/omission distinction as an absolute has a divine command-type tenor to it: imperatives without naturalist justification based on what is by nature external to persons. This is, as already argued, a marker of the presence of non-naturalism.

So, where does this leave Finnis’s theory? My arguments do not perhaps constitute proof, though it is unclear to me what could possibly provide demonstrative proof on such a metaethical matter, especially if the position I argue for is one that the author might wish to reject. I argued that Finnis’s theory is largely in keeping with naturalism, but that his construal of the Pauline Principle cannot be explained in wholly naturalistic terms and that the best explanation invokes non-naturalism. As I suggested in the Introduction, we need not automatically assume this to be a negative, even from a perspective sympathetic to the natural law approach. Further analysis would be required for such evaluation. But it does mean that Finnis’s theory, even if it merits being regarded as a natural law theory overall, still contains elements that are, regardless of evaluation, at odds with the natural law approach in itself.

If acknowledging and embracing an element of non-naturalism were not favoured, other options to uphold natural law credentials might be considered. Finnis could stick to his guns and assert that it is simply in the nature of the basic goods that it is absolutely wrong to damage any of them intentionally, and so non-naturalism need not be invoked. But recourse to such bald assertion would entail a high cost since Finnis seeks to provide a moral theory not only capable of providing detailed justification of norms, but which can impact positively on ethical discourse in the public square, a forum constituted by persons with diverse and often incompatible views. Furthermore, since Finnis’s theory claims to be able to establish the norms it puts forward without invoking the supernatural, this move is not open to him. But explicit commitment to theism could be a way to defend a construal of the Pauline Principle similar to Finnis’s without needing non-naturalism: for example Divine Providence could ensure that things

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43. The button example, which I have adapted, comes from Judith Lichtenberg, ‘The Moral Equivalence of Action and Omission’, Canadian Journal of Philosophy Supplement VIII (1982), pp. 25–26, and is used in Luban, ‘Incommensurable Values’, pp. 82–83.
work out so that it would never, not even in extreme circumstances, be justified to act against any of the basic goods.

**Conclusion**

I have argued that non-naturalism is at odds with the natural law approach in itself. This provides a theoretical criterion for assessing the natural law credentials of any natural law account. To illustrate the sort of fine-grained theoretical analysis needed, and also some of the issues that can arise from this, I analysed Finnis’s natural law theory. On the basis of this I argued against Paterson’s revisionist understanding of the natural law approach allowing extensive non-naturalism; but I also argued that non-naturalism in relation to the natural law credentials of particular ethical accounts can be more complex than a simple binary. This is an under-explored aspect of natural law ethics. Much of the literature works with an understanding of the natural law approach based on the lineage approach. I accept that the lineage approach has value; but I have hopefully shown some of its limitations and the need for a suitably nuanced theoretical understanding to complement it.