

2004

A Secular Theory of Natural Law

Lloyd L. Weinreb

Recommended Citation

Lloyd L. Weinreb, *A Secular Theory of Natural Law*, 72 Fordham L. Rev. 2287 (2004).
Available at: <http://ir.lawnet.fordham.edu/flr/vol72/iss6/1>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

LECTURE

A SECULAR THEORY OF NATURAL LAW

*Lloyd L. Weinreb**

I appreciate the invitation of the Fordham Natural Law Colloquium to make this presentation. My topic is certainly within the Colloquium's jurisdiction, which is to say, it concerns natural law.¹ I shall ask you to put aside another version of natural law, with which you are likely much more familiar: the version expressed by Thomas Aquinas in the thirteenth century, which, since the fourteenth century, has been an integral part of the doctrine of the Catholic Church. It is not part of my purpose to question that doctrine or to argue that it is not properly called natural law. It is also true, however, that Thomistic philosophy did not arise in the thirteenth century out of thin air. If it was a new beginning, nevertheless it emerged out of a long tradition that had developed over more than 1,500 years and continued to develop after the fourteenth century in other directions. If Thomism represents the high point and greatest flourishing of natural law, that larger tradition has also to be considered.

I set the church doctrine of natural law aside because it is integrally, inextricably bound up with the Catholic faith. Natural law did not lead Thomas to that faith, which was unquestioned. His view of natural law proceeded from that faith and depended on it. It would be presumptuous of me, not sharing that faith, to speak about it to you. My topic is not religious but intellectual. That is not to suggest that natural law as a matter of faith is not also a matter of reason. It was, after all, Thomas's great achievement to show that faith and reason need not be altogether separate. But my topic is intellectual only, intellect unaided by faith.

The questions I want to address are first: Is there any theory of

* Dane Professor of Law, Harvard Law School; Visiting Professor, Fordham University School of Law, Fall 2003.

1. This Lecture was originally prepared as a talk for the Natural Law Colloquium, sponsored by the Law School and Department of Philosophy of Fordham University. The talk was presented at the Law School on December 1, 2003.

The material for the talk was drawn from two books: Lloyd L. Weinreb, *Natural Law and Justice* (1987) [hereinafter Weinreb, NL&J], and Lloyd L. Weinreb, *Oedipus at Fenway Park: What Rights Are and Why There Are Any* (1994) [hereinafter Weinreb, OAFP]. This Lecture is a largely unaltered transcription of the talk. References to the books on which it is based have been added.

