

BOOK REVIEWS

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Law and Religion in a Secular Age

**Rafael Domingo, The Catholic University of America Press,
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Rafael Domingo holds the Álvaro d’Ors Chair of Law at the University of Navarra, Spain, and has also worked extensively at the Center for Law and Religion of Emory University, Atlanta, GA, USA, with John Witte, Jr to whom he pays a handsome tribute. Most chapters of the book have been previously published in law journals, including this journal, or as book chapters in symposia. The second part of the book contains six nicely executed biographical-intellectual case-studies of exemplars (e.g. Robert Schuman and Pope John Paul II) and mentors (e.g. Álvaro d’Ors and John Witte, Jr). With another couple of studies (Harold J. Berman could be one) this section could have been a separate volume. As a non-native English-speaker and writer, Domingo’s prose style is excellent. The bibliography is impressive.

The present work is an ambitious composite essay in the philosophy of law. It reflects the confluence of philosophy, ethics and theology as applied to law. As such it is much needed to counter the prevailing functionalist and instrumentalist approach to law in many states, which are constantly legislating without regard to higher principles. Following Montesquieu, the author is drawn to the idea of ‘the spirit of the laws’, a spirit or ethos that inspires good laws and at the same time transcends them. *Law and Religion in a Secular Age* is a sequel to Domingo’s *God and the Secular Legal System* (Cambridge University Press, 2016). The author’s call for an expanded dialogue between legal theorists and theologians (I would add, ethicists), given the significant overlap of their worlds of discourse, is well-taken. ‘Concepts like law, justice, marriage, sacrament,

oath, obedience, authority, power, tradition, redemption, punishment, intercession, mercy, and confession' (he points out) overflow the disciplinary boundaries between law and theology (not to mention ethics) (p. xvi). I will comment briefly on three key areas of the work: the understanding of the secular that is in play; the central agenda concerning the spiritual dimension of law; and the claims made for natural law.

With regard to secularity, a constellation of related but differentiated terms defines the arena of discussion: 'secular', 'secularization' and 'secularism'. Unlike many writers who should know better, Domingo soundly distinguishes between 'secularization' and 'secularism'. He points out that secularism is an ideology, an aggressive worldview and agenda of exclusion, which promotes and validates the process of secularization in society, effecting the marginalization of religious belief and practice from the public square (thus also triggering concern in many quarters about freedom of religious expression). However, when it comes to 'secularization', his working definition is incomplete. In his opening sentence, Domingo defines secularization as 'a process of differentiating political from religious institutions' which, he adds, generally results in the privatization of religion. It is not only political institutions that in modernity are structurally differentiated from religious ones, but also economic, educational and medical institutions, together with other aspects of civil society, that are cut loose from their pre-modern moorings in religion. The secularization process tends to leave religious institutions (normally churches and the communities of non-Christian religions) struggling for purchase on the practical realities of national life. In other words, the scope of secularization is broader than Domingo indicates and its consequences are even more severe for religion.

The phrase 'secular law', which constantly recurs in this book as a synonym for modern law, is perplexing given the author's main argument. For example, his statement, 'the limits of secular law in governing fundamental matters of conscience, belief, education, and charity' is puzzling in two ways. First, it would be universally accepted that no law can 'govern' or bind one's conscience and personal beliefs; they reside in the inviolable sanctuary of the heart. But the overt and public expression of conscientious convictions and beliefs may be another matter and laws pertaining to public actions may indeed impinge on education and the voluntary sector. So that statement mixes apples and pears. Second, if law (as the author claims) rests on a theistic underpinning and has a spiritual dimension or hinterland, and if all law implies certain ethical positions, how can it be merely 'secular'? But again, and for the sake of argument, if all modern law is regarded as 'secular', so that secularity is intrinsic to law as we know it, the word 'secular' is redundant, because such law is secular by definition. I think the author wants to argue that law is inherently non-secular, even sacred, at its deepest level; if so, the term 'secular law' is misleading. If he is using 'secular law' as opposed to 'canon law' (which he also discusses), that is a different usage of secular to its sense in his title—which obviously echoes Charles Taylor's *A Secular Age* (2007)—and throughout the book.

One thing that Domingo believes can be done to remedy the marginalization of religion through secularization is to rediscover the spiritual dimension of law. Spirituality is the 'ontological' realm of value, love and communion which

should inform the framing of laws (p. 14). ‘Value’ and ‘intention’ are key ethical bridges between spirituality and law (pp. 18–19). Because love essentially seeks the well-being of the other, laws should be made in the light of love (p. 17). As he puts it: ‘Properly pursued, the spiritualization of law promotes the *dematerialization* of the legal system, encourages the limitation of domination, inspires the reduction of coercion, stimulates communion and consensus in society, and increases respect for the law and legal systems’ (p. xiii). By *dematerialization* I think Domingo means freeing the legal system from the clutches of positivism, functionalism, instrumentalism and reductionism (p. 33). Nevertheless *dematerialization* seems an eccentric term to use and his explicit embrace of ‘dualism’ seems contrary to his main concerns which are confessedly holistic.

Many positivist legal scholars argue that the concept of a natural law raises more questions than it answers. Natural law is hard to pin down because human nature and social mores vary enormously across societies and across history; moreover human reason is fallible and vacillating when it comes to defining absolutes. But Domingo argues that ‘God, creation, nature, reason, and morality are inseparably connected’. He continues: ‘The created universe testifies to God’s laws and communicates moral knowledge. The natural and the supernatural are ... interconnected’ (pp. xii–xiii). This claim is true to Scripture and to all mainstream theology until the twentieth century. For Thomas Aquinas, John Calvin and Richard Hooker, for example, nature, reason and natural law were one reality, subsisting in harmony and grounded in the being of God. To conform to them was the way to harmony in society and to well-being in oneself. It is refreshing to find this truth reaffirmed today. Natural law may be fuzzy at the edges, but it is unrivalled in its capacity to challenge elements of injustice in positive laws. It is what enables us to say of a law which contravenes the basic principles of justice that it is no proper law (p. 53). What Domingo calls ‘sacred natural law’ operates as a meta-legal concept, illuminating the business of law from above, providing it with a horizon of values and moral criteria (pp. 143–144). Sacred natural law is grounded in the biblical doctrine of the image of God in humankind and so is relevant to all persons, not only to Christians. There is a trajectory here to the church as the sacrament of our union with God through Christ and thus the sacrament of the unity of the human race created in the divine image (p. 171).

The register of this stimulating work is largely that of assertion and affirmation. The tone is rather oracular and tending to the visionary. Key concepts, such as ‘secular’, ‘love’, ‘sacred natural law’, ‘supra-rationality’ and ‘spiritualization’ need expansion. The prose is clear, but some key ideas remain rather opaque. As we read, we wish the author would elucidate further his central idea of the spiritualization of law. By the end of the book, some questions remain unanswered and we look for more. But he has certainly whetted our appetite with this radical, counter-cultural agenda.