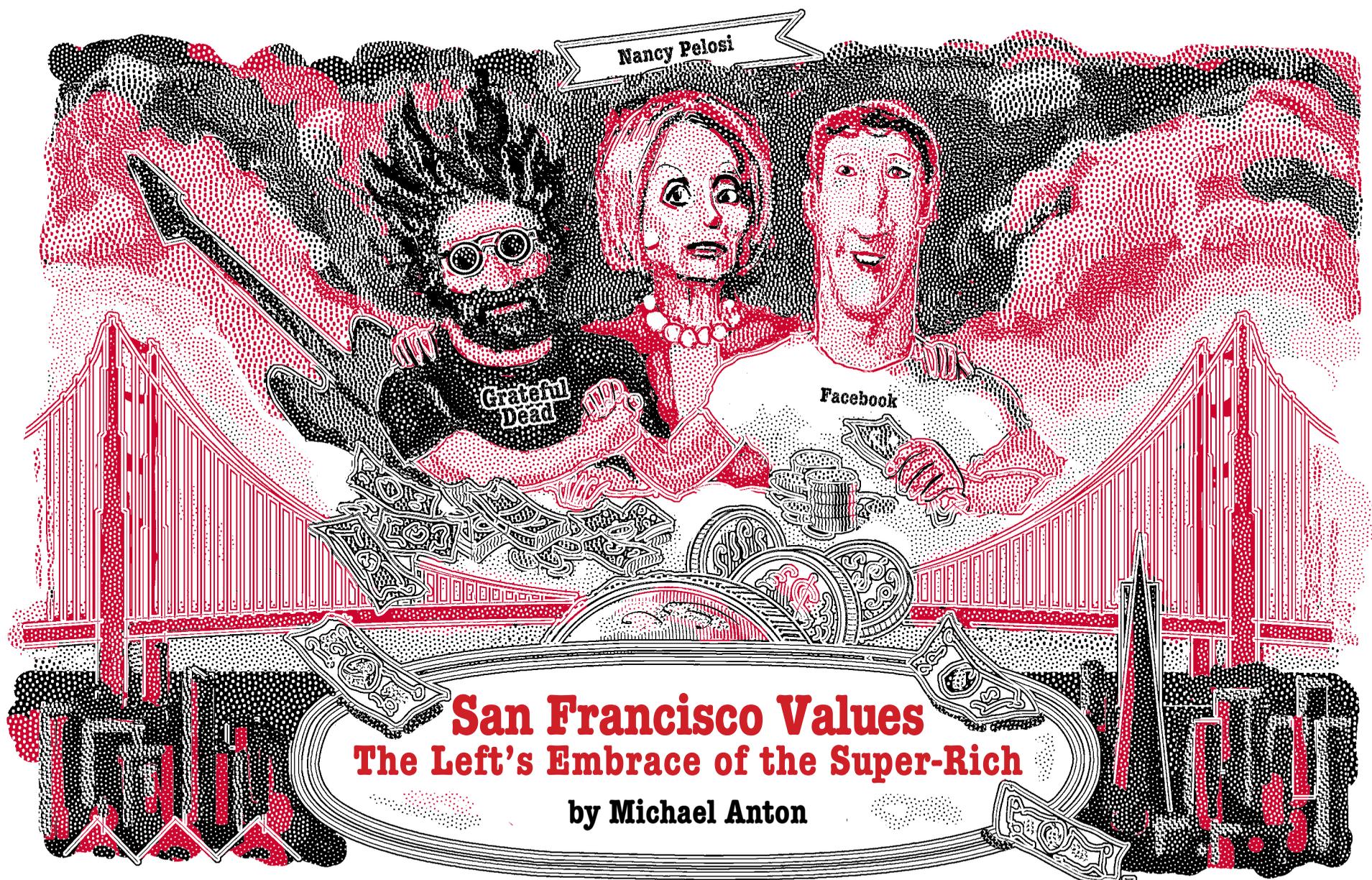


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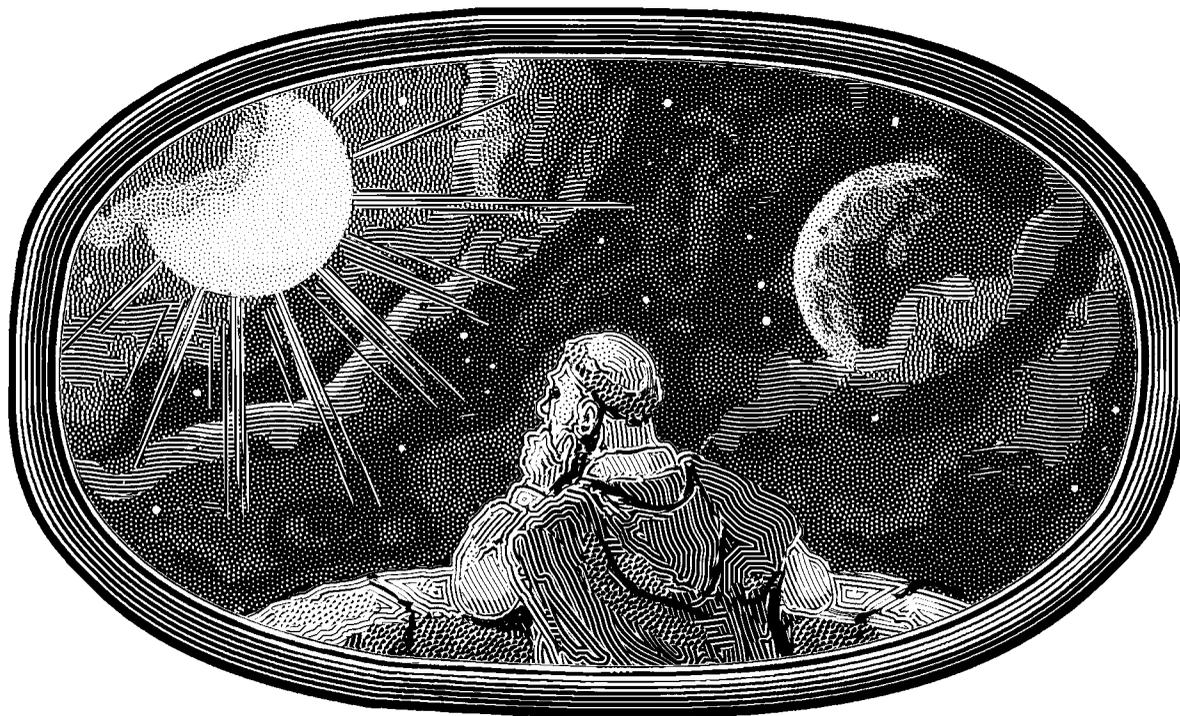
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Book Review by Douglas Kries

DEEP CONSCIENCE

Commentary on Thomas Aquinas's *Treatise on Law*, by J. Budziszewski.
Cambridge University Press, 520 pages, \$110



IT IS SAID THAT ON DECEMBER 6, 1273, Thomas Aquinas witnessed a vision, after which he simply stopped writing. As a result, his three-part masterwork, the *Summa Theologiae*, was left unfinished when he died three months later. Before his writing suddenly ceased, however, he had already completed 512 of the *quaestiones* that make up this influential classic, each question in turn subdivided into multiple *articuli* or articles. Scholars poring over the *Summa* with an eye for political and legal matters soon seized upon 19 of these questions (qq. 90-108 in the first part of the second part of the *Summa*)—especially those eight that treat law in general and the natural law in particular (qq. 90-97)—which have often been studied in isolation from the rest of the work and have come to be known as the “Treatise on Law,” though Thomas himself never used that title.

J. Budziszewski’s *Commentary on Thomas Aquinas’s Treatise on Law* covers these first eight questions on the law. A professor of government and philosophy at the University of Texas at Austin and one of the most visible advocates of Thomistic natural law working today, he has as his chief goal “simply to explain what St. Thomas means.” Of course,

as he himself admits in his introduction, he is hardly the first to do so. Budziszewski says that modern authors who have pursued the same task can basically be divided into two groups: those proceeding through the manner of “analytic reconstruction” and those pursuing “freewheeling thematic discussion.” Though acknowledging that each of these two approaches has its advantages, he prefers to offer instead what he calls an “amplified classical commentary.” This has the virtue, he says, of allowing Thomas himself to speak “without static and background noise.” It also respects the reader “by allowing him to decide for himself, freely and without manipulation, whether he agrees.”

THE READER BUDZISZEWSKI HAS IN mind is not necessarily a specialist, although he hopes his book will be useful to scholars. He is “resolute that it should also be accessible to students, general readers, and other serious amateurs.” The commentary, perhaps unavoidably, is likely at first to strike readers of all stripes as somewhat unwieldy. The presentation of each question begins with a multi-page section that is titled “Before Reading Question [X].” Then an Eng-

lish translation of a portion of Thomas’s text appears side by side with a rather free paraphrase by Budziszewski. Then come copious notes that are the heart of the commentary. Budziszewski, however, does not stop there, but provides an online address that will link the more curious to a *Companion to the Commentary*, which consists of more thematic remarks on Thomas’s teaching. He describes his approach with a folksy analogy: “One might say that the ‘Before Reading’ sections prepare us to enter the forest; the paraphrase helps us walk among the trees; the line-by-line analysis helps study each tree closely; and the *Companion* helps step back and consider the grove in its setting.”

The text of Thomas upon which Budziszewski comments is the self-proclaimed “literal” translation of the Fathers of the English Dominican Province that is now more than a century old. It has long been in the public domain and is widely available on the internet. To his credit, he not infrequently points out in his comments where this translation is inaccurate or less than literal, but one wonders whether it would not have been better to print a corrected, or even new, translation in the first place. Budziszewski’s commentary is



not likely to impress specialized scholars. He usually doesn't vigorously pursue the questions emerging from the most opaque or obscure passages in the text; nor does he often explain rigorously Thomas's grappling with the various authoritative and non-authoritative sources he employs in his carefully constructed articles. Budziszewski's remarks are least helpful when he compares other philosophical authors to Thomas.

STILL, AS A WORK INTENDED FOR NON-specialists and beginners, it surely has its strong points. Budziszewski's prose is direct and engaging, and he is particularly good at providing down-to-earth examples aimed at simplifying difficult concepts, thus rendering the text more accessible to those unable to make progress on their own and to those who do not have access to a flesh-and-blood teacher. For scholars who already know their way around these eight questions, the most interesting part of the commentary project is probably the *Companion to the Commentary* available online. There, Budziszewski is more "freewheeling," writing on topics such as "Natural law and natural rights" and "Conscience, conscience, and conscience."

Even in the *Companion*, though, he doesn't wrestle as mightily as one might like with the deepest tensions in Thomas's treatment of natural law, and one wonders how successful his labors will be if the problems that have beset that position—especially in the modern period—are not answered thoroughly and completely. Chief among these is the question of the intelligibility of the natural law. Thomas's claim that human beings ought to act in accord with the highest demands and longings of their nature is an old one, but the originators of that position thought that it would take a lifetime of study in order to sort out those demands and longings, and to identify which were truly highest. According to Plato's famous allegory of the cave, only a few human beings ever come to know themselves in such a way, for escaping from the cave is a difficult undertaking involving arduous studies. In Thomas's view, however, the fundamentals of the natural law are clear to all human beings through a basic part of their intellectual powers known as *synderesis*, or "deep conscience," as Budziszewski terms it. In order for natural directives to become natural law, they have to be promulgated to everybody, and the way the natural law is promulgated is through this deep conscience.

More than a few critics have thought that the Thomistic account of natural law places

more weight upon conscience than it can bear. Thomas himself seems to have recognized the problem; he replied that it is not the whole of the natural law in all of its details that conscience knows immediately and without fail, but only a few very basic and general dictates—the primary and the more immediate secondary precepts rather than the more distant ones. This reply seems plausible at first, but if such a trajectory of thought is pressed, one would wind up surrendering more and more of the ground the Thomistic account of conscience had fought so hard to gain. Presumably a mere handful of abstract directives will not be sufficient to get one out of the cave anyway, so why defend such a strong theory of conscience when the reward is such a paucity of precepts?

IN ADDITION TO CONCERNS ABOUT whether natural law is properly promulgated through conscience and hence law, there are also concerns about whether it is properly natural. That is to say, there are a number of critics who think that Thomas is smuggling concepts from Christian revelation into his treatment of natural law. Indeed, in first arguing for the very existence of a natural law in question 91, article 2, Thomas appeals to Romans 2:14, the famous text in which Paul writes, "When the Gentiles, who do not have the law by nature, observe the prescriptions of the law, they are a law for themselves even though they do not have the law." Since Paul does not actually use the phrase "natural law," Thomas also appeals to a *glossa* or standard medieval commentary on the passage; the gloss asserts that Paul is actually talking about the natural law. Of course, just because something is discussed in Scripture held by the Church to be holy and revealed, it does not follow that that "something" could not also be known by ungraced or natural reason alone. Nevertheless, not a few critics have thought that Thomas is going too far when he says that there exists a natural analogue for the divinely revealed Mosaic law, and that he goes too far precisely because of his faith.

Curiously, there are reasons to think that Thomas himself may have recognized that the natural law is not completely independent of Christian or Jewish faith, and hence not simply a natural or purely philosophical concept. To begin with, the *Summa Theologiae*, as the title implies, is a work intended for students of revealed Christian theology. In his earlier *Summa contra Gentiles*, apparently written es-

pecially against the errors of the Arabic philosophers who employed reason alone, Thomas tends to speak of natural right rather than natural law. Secondly, in his own commentary on Paul's Letter to the Romans, Thomas clearly says (as Budziszewski notes) that the passage from Romans in question may actually refer not to all Gentiles, but only to those who have been regenerated by supernatural grace. In other words, it may be the case that the natural law is written on the hearts only of those whose integral or unfallen human nature has been restored through faith. This might go far in explaining why Thomas says that some precepts of the natural law are known through "reason or faith" or through "reason informed by faith" (q. 100, a. 3, ad 1; q. 104, a. 1, ad 1).

ONE ALSO HAS TO CONSIDER THE whole structure of Thomas's treatment of law in the *Summa Theologiae*. Only a single question (q. 94) is devoted directly to the natural law, whereas the heart of the "Treatise on Law" is devoted to the Mosaic law (qq. 98-105) and the concluding section is devoted to the New Law of Christ (qq. 106-108). Given this structure, one has to wonder whether the principal function of the natural law within the whole of the Treatise on Law is not to provide an interpretive framework for the Mosaic law—which is what Paul was apparently up to in Romans 2:14 anyway. Budziszewski is himself aware that the Treatise on Law includes not only these eight questions but actually 19, and he recognizes that Thomas's treatment of the Old and New Laws in the remaining 11 questions is relevant to understanding what he says about natural law. Nevertheless, Budziszewski speaks of revealed law only to a small degree and primarily in the *Companion* to his main commentary.

Although such considerations detract from this ambitious commentary on Thomas's first eight questions on the law, Budziszewski would do well to consider extending his work to a second, or even third, volume. This would enable his readers to contemplate the whole problem of law—both revealed and natural—as it emerged within the fruitful tension between faith and reason that marked the political thought of the Middle Ages.

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