

Inevitably the passage of time affects what it is one wants to write and speak about. I am still happy with the title that I sent in and its reference to Tom Shaffer's cautions about "idolizing" the law. But I now think that I want to concentrate on the carved-in-stone pediment over the entrance to the Harvard Law School Library: **NON SVB HOMINE SED SVB DEO ET LEGE (Not under man but God and Law)**. This, of course, was originally written by the 13th century English writer Henry de Bracton.

What interests me is far less what these words meant to Bracton at the time than what they might mean to a contemporary reader of them entering the sacred halls of the Harvard Law School? Are they to be taken seriously, so to speak, and what would it mean to do so? Not at all coincidentally, I began my reading course on the topic "Aspects of Sovereignty" at the Harvard Law School in the fall of 2016 by asking students to reflect on these words in the context of the other material that was assigned for the first meeting. That included, though was not limited to, the Akeda narrative regarding the binding of Isaac by Abraham, from the book of Genesis, the slaughter of Korah and his followers in Numbers, and the first chapter of Job. From Christian texts, I assigned the Lord's Prayer, Romans 13:1, and some of Jonathan Edwards's *Sinners in the Hands of an Angry God*. I also assigned some materials from the Qu'ran as well as the preambles to the Saudi, Iranian, and Pakistani constitutions. I concluded with the 2016 Republican Platform and the Christmas message from the National Republican Party: "[M]an-made law must be consistent with God-given natural rights." Is this an acceptable modern-day paraphrase of Bracton (and should this be taught to students at *all* law schools, including the University of Texas Law School). Similarly, the Republican National Committee issued the following Christmas message in December 2016: "Merry Christmas to all! Over two millennia ago, a new hope was born into the world, a Savior who would offer the promise of salvation to all mankind. Just as the three wise men did on that night, this Christmas heralds a time to celebrate the good news of a new King." I am offering a longer version of this reading course—which met for only six times, at the University of Texas Law School this semester, and the first assignment includes some material from Jean Bethke Elshtain's *Sovereignty: God, State, and Self*;

So what *is* the relationship between "law" and God? Does taking the question seriously presuppose both ontological and epistemological commitments? I.e., the ontological belief that God indeed exists, but also the epistemological belief that there are in fact ways of knowing what God might demand of us. (Would Pepperdine or Notre Dame students likely have a different response than, say, the students at Harvard?) Obviously the two principal conduits of God's will are reason and revelation, though an important difference between the two is that the former can be secularized—one need not be Catholic or an adherent of any religion in order to believe in natural law, though one perhaps one not describe it as a product of divine will at all—but the latter cannot. Perhaps it's also the case the the former can be subjected to "rational argument" in a way that the latter cannot. I.e., does a reliance on revelation almost inevitably lead to the priority of idiosyncratic "religious conscience," that makes assessment of the actual claims of that conscience difficult if not impossible? Might this help to explain why the notably Catholic Antonin Scalia raised the specter of "anarchism" in his opinion in the *Smithcase*?

In the United States, most of these questions arise within the context of Christian claimants for exemptions from otherwise applicable laws (assuming, as is subject to at least some controversy, that Jehovah's Witnesses and Mormons are "in fact" Christians). But, quite obviously, they can arise in many other

contexts as well, as the reference to *Smith* suggests. These can also include certain Orthodox Jews in Israel who make claims not only for exemptions (such as service in the armed forces) but also for ostensible duties of the state, of Israel, for example, not to fly its El Al planes on Saturday or to maintain gender-segregated buses or schools to honor prohibitions against mingling of the sexes. (Similar issues, regarding the latter, have arisen in both France and the United States regarding Islamic students.)

I am not particularly interested in exploring any of the relevant caselaw in any of the countries involved. Rather, I want to address the theoretical questions of “sovereignty” that are indeed raised by them. That is, if one does in fact acknowledge a Divine Sovereign who makes commands—and whose commands are discernable, of course—then isn’t it entailed that those commands take priority. (Otherwise, what does “sovereignty” mean?) I will be discussing Rabbi Doniel Hartman’s fascinating book titled *Putting God Second*. His central thesis is captured in the title, which obviously might be objectionable to many. But the central point he makes is that civil peace can be maintained, in a pluralistic system, if and only if there is a general agreement by believers to “put God second.”

But, to revert to some of the materials cited earlier, can any “sovereignty” or “King” easily accept this kind of “constitutionalization,” as it were, that renders God permanently subordinate to Caesar? And, similarly, can faithful servants of the law, without some difficulty, pledge their full devotion and fealty unless they are confident—but why would they be—that the law will never in fact conflict with God’s commands? I will conclude by referencing a long-ago exchange I had with Tom Shaffer about whether Justice Brennan was guilty of the sin of idolatry in pledging just such complete fealty when testifying before the Senate Judiciary Committee considering his confirmation to be a Justice of the United States Supreme Court.