



F.A.C.S. REPORT

FOUNDATION for the ADVANCEMENT of CHRISTIAN STUDIES
P.O. Box 547, Ferny Hills QLD 4055

Vol. 13, No. 7,

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July, 1994

"Thou shalt fear the Lord thy God; him shalt thou serve, and to him shalt thou cleave, and swear by his name." (Deut. 10:20)

"It right deeply offends God, that a man break oaths or pledges;...we should with all might and main, alike seek, love and worship the eternal merciful God, and eschew all unrighteousness. . . ."¹

"A lawful oath is a part of religious worship, wherein, upon just occasion, the person swearing solemnly calleth God to witness what he asserteth or promiseth; and to judge him according to the truth or falsehood of what he sweareth."²

CONTEMPORARY WESTERN society presently faces a tremendous number of well-rehearsed and inter-related constitutional, political and social dilemmas. These dilemmas have in turn been the subject of many and varied academic and journalistic discussions.³

While our space is too limited to canvass sufficiently the vast number of such problems, it is generally true to say that they can be summarised in the following questions:

- Should religion and law or religion and politics mix? If so, how?
- What is the foundation for the morality of law?
- What is the foundation for obedience to the law and submission to authority?
- What is the foundation for the legitimacy of the State and the sanctions which it executes?
- What is the foundation for social coherence and the social bond?
- What is the foundation for limited government, "checks and

Oaths in Society

by Nicholas Aroney B.A., LL.M.

balances" and the separation of powers?

- On what basis do we expect and obtain honesty and just conduct from citizens, witnesses, lawyers, court officials, judges, political officials, clergy, and so on?

I believe that the answer to these questions lies very much in a rediscovery of the meaning and proper function of *oaths* and *covenants* in political and social life.⁴

What is an oath? The Westminster Confession of Faith says that it is an act of religious worship in which the oath-taker solemnly calls God as witness and judge that what he says is true or what he promises he will perform.

The Oath Encapsulates the Link Between Religion, Politics and Morality

THEREFORE, at the outset, we should note that the *oath* links religion to political and judicial life: obviously, oaths are an integral part of the administration of the law and the performance of public office, but as noted by the Westminster Confession of Faith, oaths are also an important part of religious worship.⁵ The oath, therefore, shows us how law and religion *mix*, each day, in everyday life. They mix every time a witness takes an oath in court, every time a new citizen takes an oath of allegiance and every time

a judge or politician takes an oath of office.

Indeed, the oath presupposes the absolute sovereignty of God and the requirement that *all* things be done under God and to His glory. As Luther noted:

Therefore you swear by the name of God if you relate that by which you swear to God and grasp it in the name of God. . . . By such swearing you safeguard your service to God alone and are not drawn toward godless work or oath. . . . When, therefore, He desires oaths to be made by the name of God and no other, the reason is not only this, that for the truth (which is God) the confirmation of no one should be introduced except that of God Himself, but also this, that man should remain in the service of God alone, learn to relate everything to Him, and to do, possess, use, and endure all in His name.⁶

Furthermore, in supplying a bridge between religion and law, oaths also encapsulate the link between human behaviour and divine standards of morality. In an age of flagrant immorality and anti-nomianism, oaths point to God as the foundation of the legal system and the ultimate authority on whom justice and the administration of justice is based. As such, oaths point to God as the fount or source, and His law as the meaning or substance, of justice.

1. *Charter of Canute, Secular Dooms*, cited in W. Stubbs, *Select Charters and Other Illustrations of English Constitutional History*, (Oxford, 1884), p.76. Canute reigned in England c.1016-1035.
2. *The Westminster Confession of Faith*, (Edinburgh: Blackwood & Sons Ltd, 1973), Ch.XXII (I), p.34.
3. Many of these dilemmas are well canvassed in Graham Walker's provocative *Moral Foundations of Constitutional Thought: Current Problems, Augustinian Prospects*, (Princeton University Press, 1990). Walker, drawing heavily on Cochrane's *Christianity and Classical Culture*, suggests that what he calls the major "impasses" of recent constitutional thought can best be resolved if we would revisit some of St. Augustine's most important and profound theological and political insights.
4. On the legitimacy of oaths, see Ex.22:10-11, Deut.6:13, 10:20, Ps.63:11, 110:4, Is.45:23, Jer.4:2, Mt.26:63-4, Rm.9:1, I Cor.15:31, Phil.1:8, Heb.6:16-18, 7:20-22, 28, Rev. 10:5-6 and compare to Lev.19:12, Mt.5:34-7 and Jms.5:12; Kaiser, W., *Toward Old Testament Ethics*, (Zondervan), pp.65, 88, 106; John Calvin, *Brief Instruction for Arming All the Good Faithful Against the Errors of the Common Sect of the Anabaptists*, "The Seventh Article. On the Oath", (1544), in B.W. Farley, (ed.), *Treatises Against the Anabaptists and Against the Libertines*, (Grand Rapids, MI: Baker Book House, 1982).
5. Calvin confirms this view: *Institutes of the Christian Religion*, (Westminster Press), Book IV, Ch.VIII (23), p.389.
6. Luther, *Deuteronomy*, p.73, quoted in R.J. Rushdoony, *The Institutes of Biblical Law*, (Philadelphia: Presbyterian & Reformed, 1977), p.25.

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of CHRISTIAN STUDIES

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Ferny Hills QLD 4055

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Editor: Ian Hodge

An oath calls down God's judgment on the oath-taker. If he has spoken truth, he seeks God's blessing and confirmation; if he has spoken a lie, he calls down God's curse. Accordingly, since God's judgment is just, the oath points to God's perfect justice and infallible judgment.

The Oath Reminds us that Human Judgment is Provisional and Imperfect

THUS, AN OATH also reminds us of the limits of human knowledge and judgment on one hand, and of the omniscience and perfect justice of God on the other. No human judge can be absolutely sure whether a witness speaks the truth or whether a promisor honestly intends to keep his promise. Therefore men require oaths of one another to cause human relations to more closely approximate a measure of certainty upon which they can rely.⁷

Judges, in relying on testimony given under oath, in effect are saying: while I cannot be certain that you are telling the truth and while my judgment is therefore fallible and provisional, I require you to take this oath, which places you directly before the judgment seat of God, who sees the secret intent of the heart and who will surely pronounce an infallible, eternal judgment concerning you.⁸ As such, all human judgment necessarily mimics divine judgment and when the administration of justice adopts the oath it

self-consciously recognises its own limited and derivatory nature.

The Oath Controls the Exercise of Power by Calling Down God's Perfect Judgment

FLOWING OUT OF THIS, oaths provide a basis upon which we entrust the organs of legal and political power into the hands of individuals. Oaths or vows have historically been expected (explicitly or implicitly) of citizens, witnesses, lawyers, other court officials, judges, monarchs, other political officials and clergy.⁹ Individuals given these responsibilities are expected to give their oath to fulfil the duties of office under the fear of God.¹⁰

Thus the very significant powers given to judges and political officials are circumscribed by the oath, and the oath protects us by solemnly reminding the official that his power comes from God and that he is answerable to God for the way in which he wields the power given to him. The oath implicitly says: may God do to me, and more so, if I abuse this trust. Even the child's playground oath "cross my heart, and hope to die, stick a needle in my eye", while foolish and immature, threatens the dire consequences implicit in all oaths. The oath reminds the oath-taker of the fearfulness of God's judgments: that men should fear God, who is able, having killed the body, to cast the soul and body into hell. It therefore circumscribes the exercise of civic power by reminding men of the good reasons to fear God and keep their oaths.

Moreover, it should not be forgotten that God truly hears the oath and actually judges it should it be false. Untrue oaths inevitably lead to God's judgment. Thus the benefit of oaths should not be argued primarily on the basis that people take oaths seriously and that oaths cause people, generally, to tell the truth. Rather, the primary benefit of the oath is that it actually calls down God's just judgment. Unfortunately, it is here that the secular mind-set has deeply influenced the Church.

Rather than argue that the oath should be required because it accurately reflects what really happens, we can tend to support the oath on the ground of the effect that it has on our behaviour. This is typical of much contemporary Christian social comment. Rather than arguing that Christianity is true, we tend to argue that

Christianity is "helpful" or that it has a salutary effect on society. This is a man-centred apologetics. We have forgotten the litany of real judgments of God through Church history (e.g., Herod, Judas, Ananias and Sapphira and Arius) and we have forgotten the power of the Gospel when it is faithfully preached such that it includes the threat of impending doom on evildoers.

The Oath is a Necessary Foundation of Civil Society

AS SUCH, OATHS also provide a basis for the social-civil bond (oaths are very closely related to covenants; and covenants in turn to federalism and constitutionalism). Conversely, false or profane swearing is subversive of social and religious institutions.¹¹ The civil bond relies upon mutual trust and co-operation, so that citizens are able to live together, and prosper together, in peace and harmony. They will work together on mutual projects, such as defence and the administration of justice; they will trade with each other, keeping their promises and bargains, knowing that their relationships are stable and trustworthy, and they will respect one another's property and privacy.

But in a fallen world where mutual distrust, disharmony, war and poverty is the norm, the civil-social bond is only developed by an exercise of Godly will to do what is right and to live in harmony and peace. Nevertheless, Christians must remember that it is foolhardy to trust the wicked. Being wise as serpents, Christians join into civil community on the only foundation upon which they can wisely put their trust: Jesus Christ. On a practical level, men look for a common submission of other men to Christ. The oath is the symbol of that submission on a civic basis (Isaiah 45:23), just as baptism is the sign and seal of that submission on an ecclesiastical basis. Thus the oath is the practical and religious foundation of the Christian social-civic bond. As Calvin noted:

If there were such a loyalty and firmness in us, all oaths would be superfluous. . . . For to tell the truth, the reason why we are led to swear is that since the whole world is so full of lies, cunning, sham, and disloyalty, there is no one who dares trust even his own brother.¹²

7. See R.J. Rushdoony, *The Institutes of Biblical Law*, p.125.

8. Compare G. North, *Victim's Rights*, (Tyler, TX: Institute for Christian Economics, 1990), pp.235-238 and passim

9. Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, (Cambridge: Harvard University Press, 1983), pp. 67, 250, 362-363, 399-403, 431.

10. See R.J. Rushdoony, *The Institutes of Biblical Law*, pp.111-112. Compare T. Robert Ingram, *The World Under God's Law*, (Houston: St. Thomas, 1962), pp.44-46, cited by Rushdoony.

11. Rushdoony, *Institutes*, pp. 106ff, 112.

12. John Calvin, *Brief Instruction for Arming All the Good Faithful Against the Errors of the Common Sect of the Anabaptists*, "The Seventh Article. On the Oath", (1544), in B.W. Farley, (ed.), *Treatises Against the Anabaptists and Against the Libertines*, (Grand Rapids, MI: Baker Book House, 1982), p.100.

It is notable therefore that — following the collapse of the Roman Empire, with its false and pagan oath of allegiance to a “divine” Caesar — both the early medieval feudal system and the medieval city developed explicitly on the basis of formal oaths. The centuries following the collapse of the Roman Empire introduced, at many times and in many places, extreme physical uncertainty and insecurity. Death and sickness, starvation and invasion were a regular feature of life. The only source of certainty and security was the Christian Faith as proclaimed by the Church. Accordingly, men joined together for mutual cultivation of the earth and protection from their enemies on the only basis available: an oath based on a common faith in Almighty God. This was one outworking of what St. Augustine styled “The City of God”.¹³

Today, while Western societies enjoy something of the security and certainty engendered by centuries of Christian faith and practice and while Western societies think that they no longer have need of the oath of the Lord, the fundamental problems of uncertainty and insecurity remain because the fundamental causes of those problems remain: the Fall and the Curse. These fundamental problems continue to point to the necessity of the oath and the necessity of a common Christian faith.

The breakdown in physical security (i.e., the increase in violent crime) and the increase in poverty in the West point to the failure to recognise the importance of the oath and all that is implied by the oath. If Western cities came together on the basis of oaths, they are today collapsing for breach and rejection of those oaths. Similarly, if both constitutional law and government and economic co-operation and prosperity developed through the oath-based feudal and manorial systems, such forms of government and economic organisation are fragmenting because the heart of those forms and systems, the oath, has been rejected. God is judging us as oath breakers, and uses our own follies and devices as the instruments of His judgment: “The Lord is known by the judgment which he executeth: the wicked is snared in the work of his own hands. Higgaiion. Selah.” (Ps.9:16)

The Oath is the Basis of the Legitimacy of the State and the Necessity of Obedience to the State

WE SHOULD REALISE then, that oaths also provide a basis for respect for and obedience to authority. In an age of disrespect, dishonour and disobedience, the question is commonly asked: why should I honour and obey the powers that be? In Ecclesiastes 8:2 we read the answer: “keep the command of the king because of the oath before God.”

The oath is the reason why we are bound to obey. In this connection, two closely related questions arise: firstly, is political authority in general legitimate and, secondly, why is any particular political authority legitimate? The answer to the first question lies in its ordination by God. I propose that the answer to the second question lies in the oath of citizenship and the oath of office. In Australia we owe allegiance to the Queen and her Ministers on the basis of the Coronation Oath, by which the Queen has promised to perform her prerogatives and duties of office under God, and by which our representatives have pledged homage and service.¹⁴ By oath, the Queen has acknowledged that she is a minister of God.¹⁵ Similarly, in a republic, the oath of office takes the form of the Presidential Oath. These oaths are in turn supported by Judicial oaths and Ministerial, Congressional or Parliamentary oaths, as the case may be. In all cases, the oath is the basis of the vesting of power and authority at the behest of the people. The oath points to the fact that civil government is instituted by God and it reminds us of our promise to obey the lawful commands of the civil government.

The Oath is a Foundation of Limited Government, Freedom of Conscience and Procedural Justice

MOREOVER, OATHS POINT to and depend on divine authority and justice. They quite clearly, although implicitly, indicate that God is the *ultimate* judge of human affairs and, as such, they indicate that ultimate sovereignty rests in God alone, and no human institution can rightly usurp those divine prerogatives. In

other words, oaths acknowledge man's inability to see into and judge the heart. They thereby indicate a dependence on Divine judgment. *This implies a fundamental and far-reaching limitation on human governments.*

If men cannot see into the heart and if men must allow room for God to judge then human government and judgment must be limited in its jurisdiction. Thus: “leave room for the wrath of God, for it is written, ‘Vengeance is Mine, I will repay,’ says the Lord.” (Rom.12:19) Oaths accordingly provide a basis for limited government, the rule of law, the separation of powers and the separation of Church and State.¹⁶ Oaths presuppose that the human administration of justice is only fragmentary, limited, temporary and preliminary, while God's judgment is complete, comprehensive, eternal and final. But when oaths are abandoned, the tendency is to seek to make human justice complete, comprehensive, eternal and final. And in doing so, individual rights and freedom of conscience are placed in extreme danger.

Oaths are thus an important bulwark against the tyranny of State, Church or Family. They bind the consciences of office holders and those who hold power in society. Oaths expressly invoke God's intervention; they provide terms of office and limits of power. They presuppose that God is over the office holder. They may also assume that the human agents involved in the oath (the administrators and witnesses of the oath) have authority to require conformity to the terms of the oath.¹⁷

In the same terms, oaths provide a basis for freedom of conscience. Implicit in all rule of the State is rule by force. While consent and willing obedience may also (and should) be involved, the incorrigible nature of the unregenerate heart requires a level of forced obedience.¹⁸

If a society denies the oath, and thereby denies the supernatural implications of the oath, that society also denies the view that God's judgment extends directly into human affairs. As such, that society must rely in principle *solely* on the authority and sanctions of the State to enforce social obedience.¹⁹ If it relies

13. St. Augustine, *The City of God*, trans. J. Healey, (Edinburgh: John Grant, 1610, 1909), particularly Bk.2, Ch. xxi, Bk.4, Ch. iv, Bk.5, Ch. xxi, Bk.19 Chs. xxi, xxiv; Vol. I, pp. 65, 117, 159, Vol. II, 235, 241.

14. See G. McLennan, *Understanding Our Christian Heritage*, (Orange, NSW: Christian History Research Institute, 1987.) See G. Booth, “Our English Heritage”, in McLennan, *op. cit.*, n.30.

15. J.E.A. Jolliffe, *The Constitutional History of Medieval England*, (New York: Norton, 1961), p.50.

16. Compare William Symington, *Messiah the Prince*, (Edmonton: Still Waters Revival Books, 1990), pp.241-245, 256-259, 279-282.

17. Compare Kelly, *The Emergence of Liberty in the Modern World*, *op. cit.*, pp.51-61 on John Knox's theory of resistance; George Buchanan, *De Jure Regni Apud Scotos; A Dialogue Concerning the Rights of the Crown in Scotland*, (Harrisonburg, Virginia: Sprinkle, 1982); Junius Brutus (ascribed), *Vindiciae Contra Tyrannos*, (Edmonton: Still Waters Revival Books, 1989).

18. Incidentally, we may note that not only force, but *capital* force or punishment, is implicit in the institution of the State or civil authority. Civil government necessarily presupposes the ultimate sanction of death. Even States which reject capital punishment per se, nevertheless, in their prison systems and in their prescribed methods for the apprehension of miscreants allow, ultimately, for the use of force, and *deadly* force, if necessary, for such imprisonment and apprehension.

19. When that occurs, political authority proceeds “out of the barrel of a gun”, to adopt Mao's apt, though perverse, expression. That the abandonment of the Christian

solely on State sanctions, it absolutises the State and its punishments, leaving no space for any principled and impregnable freedom of conscience before the bar of God's court. The result is that men replace God's authority and judgment of the conscience with the authority and judgment of the State. Thus, if "conscience" denominates the personal, internal "forum" in which an individual judges all of his own acts, words and thoughts, then, when the oath is abandoned, this forum or domain is in principle made subject to the demands of the State. Accordingly, when God's jurisdiction is denied, human authorities are free to rush in to fill the vacuum. As a result, the State increasingly seeks to rule the conscience and no principled reason remains upon which to exclude its tendrils.

Thus, while Western men were once benefactors of the principle that they were "free from man, but under God"; they are now increasingly made "free from God, but subject to man". This is seen in contemporary attempts to regulate or control our day-to-day interpersonal relationships and to control our thoughts and words, seen in the "political correctness" movement and in "anti-vilification" legislation. We are being told what to say and what to think, what not to say and what not to think.

Closely linked, therefore, to this loss of freedom of conscience is the loss of the traditional common law liberties of the accused. These liberties have included the right to remain silent and refuse to answer questions, the right to representation by an advocate and adviser, the right to legal professional privilege, the right to confront the complainant and to confront witnesses who testify against the accused and the right to trial in an open session before the ordinary courts of the land. Each of these rights presupposes Divine limitations on human judgment. But when human judgment rushes into the vacuum and presumes to itself the office of the eternal, comprehensive and final court of appeal then the drive for an ultimate resolution of the matter (designated "perfect justice"²⁰) requires an answer to all questions and a solution to all problems. As a result, the traditional rights of

the accused tend to be seen as so many obstacles to the final and complete determination of the matter. Alternatively, particularly in the criminal law of the United States, "perfect justice" requires formal procedural perfection ("due process" rights), which often subverts compelling testimony given on oath.

Thus, having concluded that the earthly court is the sole venue for a final conclusion to the matter, all limits are cast aside in order to achieve that goal. And indeed, when the logic is carried to its conclusion, State officials seek all necessary powers to ensure that all information is elicited from the accused. Special tribunals are created and traditional common law immunities are suspended. Simultaneously, testimony on oath ("a man's word") is increasingly seen as inadequate. Other means of extracting the "truth" are resorted to: psychological analysis, hypnosis, "truth drugs", interrogation and inquisition. Indeed, torture is the logical and evil result of all such legal systems when allowed to find their logical resting ground.

When courts reject the oath, they are compelled by the logic of "perfect justice" to invade the mind and heart, and to resort to torture. In rejecting the oath they proclaim themselves the ultimate tribunal of justice which must by all available means elicit the "truth" from those who appear before them.

The Oath is the Basis of Covenantal "Sphere-Sovereignty" as against Totalitarian Collectivism and Anarchistic Individualism

IN THIS CONTEXT, we note that oaths and the supernatural implications of oaths have fallen into disuse and disrepute in contemporary Western society. The serious consequences indicated above are a dire portend of the future. We are rapidly taking steps towards that end. "Specialised tribunals" are replacing the common law courts in many fields (industrial relations, "human rights", "anti-discrimination", etc.) The new procedures are rejecting the traditional rights of the accused. And another less noticed step, in Australia at least, is that the *affidavit* (a statement made under oath and recorded

in writing) has been replaced in some contexts by the *statutory declaration*; and the oath has been succeeded by the *solemn affirmation*.

These new forms (arguably, including "religious" objections to the oath) respectively point (if taken as "ideal types") to the sovereign authority of the *totalitarian State* and the sovereign authority of the "word" of the *anarchistic individual*. In the statutory declaration, the declarant declares that he speaks the truth in fear of the sanctions imposed by the State through legislation. In the solemn affirmation, the witness "solemnly affirms" on his own word that what he speaks is the truth. In the former case, the sanction is supplied by the State; in the latter case, no external sanction is applied, the individual is a "law unto himself". He refuses to place himself under the sanctions of God and the State; he asserts that he is independent of such authorities and that no-one has a right to require an oath from him or to question his word. These two forms, therefore, contravene the commandment in Deuteronomy 10:20 by requiring men to swear by persons other than God.

By stressing the sovereignty of God, oaths steer a middle course between these two extremes of totalitarianism and anarchism. Oaths are expected of citizens as individuals and of office holders as representatives of corporate entities such as churches, families, cities and nations. Thus oaths point to a multifariousness of covenantal institutions amongst which the authorities and powers exercised by men are divided.

The non-Christian alternatives of the statutory declaration and the solemn affirmation point to the State or the Individual as the sole repository of true power and authority. The result is a "dialectical" tension between these two extreme positions. In the case of the "state-utary declaration", the solemnity of the act of declaration points to the quasi-religious nature of the event, indicating the presence of a kind of civil religion which claims that the State is God and denies that it is subject to the true God.

oath leads to government by force was recognised in the "Letter by David" (David being the pseudonym of a contributor to the *Massachusetts Gazette* in 1788) reproduced in Storing, *The Complete Anti-Federalist*, (Chicago: University of Chicago Press, 1981), IV, p.247, cited in G.North, *Political Polytheism: The Myth of Pluralism*, (Tyler, TX: Institute for Christian Economics, 1989), pp.440-1.

20. Macklin Fleming, *The Price of Perfect Justice*, (New York: Basic Books, 1974), p.4: "The law cannot be both infinitely just and infinitely merciful; nor can it achieve both perfect form and perfect substance. These limitations were well understood in the past. But today's dominant legal theorists, impatient with selective goals, with limited objectives, and with human fallibility, have embarked on a quest for perfection in all aspects of the social order, and, in particular, perfection in legal procedure."