

THE OATHS AND VOWS THAT BIND OUR SOCIETY TOGETHER

David J. Webb

David J. Webb studied Chinese and Russian at Leeds University, where he was involved in Marxist politics. He has since become a conservative writer, contributing to *The Salisbury Review* and *Right Now!*, and more recently contributing extensively to the Libertarian Alliance. He lived for four years in China (Tianjin, Kunming and Chengdu) and now writes freelance on Chinese politics and economics. He is also a student of the Cork dialect of Irish and runs the Cork Irish website at www.corkirish.com. This essay is a slightly revised version of one that first appeared in the August 2012 issue of *The Individual*, the journal of the Society for Individual Freedom (www.individualist.org.uk).

Legal Notes No. 53
ISBN 9781856376563
ISSN 0267-7083 (Print)
ISSN 2042-258X (Online)

 **Libertarian
Alliance**

For Life, Liberty, and Property

© 2012: Libertarian Alliance & David J. Webb

The views expressed in this publication are those of the author and not necessarily those of the Libertarian Alliance, its Committee, its Advisory Council or its subscribers.

Dr Chris R. Tame (1949-2006): Founder
Dr Sean Gabb: Director
David Davis: Blogmaster & Scientific Adviser
Dr Nigel Gervas Meek: Publications Director
Mario Huet: LA Forum Listmaster
David Carr: Legal Affairs Spokesman

Suite 35
2 Lansdowne Row
Mayfair
London
W1J 6HL

Telephone: 07956 472199
Email: admin@libertarian.co.uk
Website: www.libertarian.co.uk

THE OATHS AND VOWS THAT BIND OUR SOCIETY TOGETHER

David J. Webb

The purpose of oaths

The penchant for discussion of the Queen's Coronation Oath on conservative websites, and also the habit of the 'Freemen on the Land' of asking to see judicial oaths of office, have recently reminded me of the Christian basis of our Anglo-Saxon civilisation. Our constitution is held together by a series of oaths, oaths that mean something to people because they are solemn vows in the sight of God and before the people of this country to perform various duties. I am not sure how seriously an oath can be regarded in the days when religion is scoffed at. It may be that conservatives could still favour the retention of unshakeable, unshirkable and unretractable vows, regardless of any views on the existence of a Supreme Being, seeing such oaths as a foundation stone of our civilisation. Nevertheless, it is clear that most people who make oaths today are not expecting to have to fulfil them and break them with impunity. Is it any wonder that the fabric of our society has become less secure?

Anglo-Saxon society and Oaths

The prohibition of oath-breaking was an important principle in early Anglo-Saxon law, which is the ultimate foundation of English Common Law to this day. The importance given to oaths, and their ritual, religious basis, is shown in the prehistory of the word "oath", which can be traced back to proto-Germanic and even proto-Indo-European forms:

*The reconstructed lexicon of the prehistoric language called Proto-Indo-European provides the linguist with a limited window on Indo-European concepts of law. From the Proto-Indo-European judicial lexicon Proto-Germanic preserved some interesting words. The one which concerns us in this essay is the word *aiþaz, the ancestor of modern English oath and the verb which is connected to this noun, namely *swaranaⁿ. The Proto-Germanic form *aiþaz has cognates in Old Irish oeth, Greek οἴθος and Tocharian B aittañka but it only has the lexical specialisation "oath" in the western languages, e.g. Germanic and Celtic. In the early twentieth century scholars assumed that the Germanic word was loaned from Celtic, because they thought that the Celts had a higher level of civilization than the Germanic peoples in the early northern European iron age. Nowadays it is acknowledged that both*

*the Celtic and the Germanic word can go back to Proto-Indo-European and there is no need to assume borrowing from one language into the other. The mentioned cognates ultimately go back to Proto-Indo-European *h₁óitos which is derived from the root "to go" *h₁ei (cfr. Latin ire and Greek εἶμι and Gothic iddja), which points to a meaning "a ritual walking". Cultural attestations of Indo-European oath-taking by walking between slaughtered animals perhaps colour the etymology somewhat more and [are] reasonably plausible because of the Old Swedish attestation ed-gång meaning "oath-walking". The earliest Germanic attestation is Gothic aiþs (glossing Greek ὄρκος) from Wulfila's fourth-century Bible translation.*

... An other interesting cognate to Gothic aiþs is Gothic aiþei "mother" (glossing Greek μήτηρ) which is also found in Old High German fōtar-eidi "nurse", Old Icelandic eiða "mother" and Middle High German eide "mother". This would mean that this word for mother literally meant "the one with the oath" which probably distinguished the lawful wife from the concubines.

... In the Beowulf epic the combination "to swear an oath" is also used, suggesting that the word was part of the poetic register of the Anglo-Saxons [an extended citation from Beowulf is then given, including hē mē āþas swōr, "he swore oaths to me", in line 473]... In the Beowulf also the nouns āðsweord "oath-sword" and āðumsweoras "father-in-law and son-in-law" are attested. The first probably refers to the swearing of oaths on weapons, a custom we know was combated in Francia by the church. The second compound, like Gothic aiþei, also refers to oath-taking that accompanied the marriage-bonds between kinship groups. Apparently the bond and the obligations to abandon feuding that a marriage brought along for two kinship groups had to be confirmed by oath-taking. In Old High German another term is found, eidum meaning "son in law".¹

That oaths were culturally important in both early Germanic and Celtic societies makes them fundamental to Anglo-Saxon society (a superficially Germanic society with a Celtic ethnic substratum), a fact later reflected in

English law. King Alfred played a crucial role in formalising laws on oath-breaking:

When the king of Wessex turned to listing the actual laws of the domboc, he began with the commandment he considered to be “most necessary” for every Anglo-Saxon man to keep, a law that proved to be fundamental to the preservation of English society: Alfred insisted that every Anglo-Saxon man keep his oaths and pledges. Instead of a prohibition of murder, treason, or some other heinous crime, the king saw oath-breaking as the greatest threat to the endurance of his kingdom. Although this prioritization of the keeping of oaths may seem strange to the modern mind, to the Anglo-Saxon it was clear that keeping one’s word stood at the foundation of a civilized society.

... One can remember the habitual treachery of the pagan Vikings, whose unctuous pledges of peace were disregarded by the Danes within hours of making the pledge. It seemed to Alfred that oath-keeping truly was the virtue that most clearly distinguished a Christian nation from a pagan nation.

The significance of a man being faithful to his word was not just apparent in confrontations with other nations; it was essential for preserving domestic peace as well. In the courts of Alfred’s day, guilt or innocence was not determined by the presentation of evidence and witnesses. Instead, the accused needed only to produce a certain number of “oath-helpers,” men willing to swear alongside the defendant that he was innocent of the charges brought against him. This may seem naive, since it would seem easy for a guilty man to find several friends to come and swear an oath to his innocence. By giving so much weight to truthfulness in oath-making, however, Alfred helped to ensure that no man could break his oath without dire consequences. If a man was found to have sworn falsely, he would be ostracized from society, losing his right to weapons, to property, and even to testify to his own innocence in court. Thus, the men of Alfred’s day took great care to ensure that they did not make careless oaths or pledges.²

Oaths and the fabric of society

Anglo-Saxon society was, and, as we are the representatives of the Anglo-Saxons today, arguably is still bound together by a web of vows, pledges and untractable obligations. Some may draw distinctions between oaths and vows (such as the marriage vow), but for my purposes the sworn obligations are analogous, as indicated in the etymological discussion above showing that marriage and kinship were understood to

be relationships linked by oaths. My discussion will therefore begin with the *Coronation Oath*, as sworn by the Queen in 1953, and the *Accession Declaration* made prior to that.

The religious nature of oaths was apparent in the three *Oaths of Supremacy, Obedience and Abjuration* sworn at various points in history by priests and bishops of the Church of England and by parliamentarians, judges and others with roles in the state. Even today, state personnel from the prime minister down to soldiers and policemen are required to swear *Oaths of Allegiance, of Office* and the *Judicial Oath*. Naturalised citizens take the *Oath of Citizenship*.

Judges and magistrates take oaths, as do members of *court juries* and *people giving testimony in court*. *Affidavits* of various kinds are also used in court procedures. Finally, there are the vows that ordinary people may enter into that are not directly connected with the affairs of state. Chief among these is the *marriage vow*. Baptism and confirmation services include vows, and *godparents* also take on responsibilities towards their godchildren.

From an anthropological point of view, oaths forge connections between people in a way that creates social bonds. Once the Church has recognised the monarch, the ecclesiastical hierarchy has sworn oaths of allegiance to the Crown and the monarch has sworn the *Coronation Oath*, the nature of the interlocking obligations in society becomes clear. It is a distortion to claim that England has no constitution simply because there is no hallowed piece of parchment that claims to define social bonds for all time. Such a document could only be valid if it could be shown that those drawing it up had the right to do so and the right to impose their social set-up on society, a test that is failed by all written constitutions.

The English constitution is rather organic, arising out of the natural bonds of society, which should be seen, not as a relationship with a yellowing piece of paper, as in the US, but rather as a relationship between living people. Just as oaths of allegiance forge the bond between rulers and ruled, so the marriage vow creates kinship between people previously unrelated. Permanent obligations are created by these oaths and vows. The way in which oaths of allegiance (essentially the feudal bond established by homage) creates bilateral obligations that cannot be *unilaterally* cancelled was pointed out early on by the thirteenth-century jurist, Henry de Bracton, in his *De Legibus et Consuetudinibus Angliae* (“On the Laws and Customs of England”), an early codification of English Common Law:

What is homage? Homage is a legal bond by which one is bound and constrained to warrant,

*defend, and acquit his tenant in his seisin against all persons for a service certain, described and expressed in the gift, and also, converseby, whereby the tenant is bound and constrained in return to keep faith to his lord and perform the service due. Homage is contracted by the will of both, the lord and the tenant, and is to be dissolved by the contrary will of both, if both so wish, for it does not suffice if one alone wishes, because nothing is more in conformity with natural equity etc. The nexus between a lord and his tenant through homage is thus so great and of such quality that the lord owes as much to the tenant as the tenant to the lord, reverence alone excepted.*³

The requirement to take oaths is often dispensed with, as where a judge allows a witness to “affirm” the truth of his testimony in court. In the House of Commons, Members of Parliament are allowed to be sworn in using non-Christian religious books, arguably making a mockery of our Constitution – because the Queen’s authority is based on the acknowledgement of the Christian church, which has deep roots in our history and culture – and therefore compromising the validity of the oath. Not only are oaths often replaced by affirmations, our law-courts and statutes also claim the right to set aside oaths, as in the claim by constitutional lawyers that the Coronation Oath is “modified” by subsequent legislation, and so is ultimately meaningless. Judges also claim the right to abrogate the marriage vow, an act that unpicks social bonds. Yet the reason why any of these oaths is taken in the first place is that an oath cannot be set aside. The legal efficacy of an oath may or may not be removed, but the oath itself – its binding moral force – cannot be cancelled retrospectively.

Furthermore, the swearing of an oath, a morally binding act, means that failure to fulfil the oath is *perjury*. There is an interesting distinction between the crime of perjury and other crimes: crimes in law require malice aforethought. Could it therefore be thought that no perjury has been committed where an oath, subsequently broken, was made in good faith, and only later on did the forswearer decide to give false evidence? From this it is clear that the nature of an oath is to create an *ongoing* obligation, one that a person of honour could not renege from, and that an oath made on one day binds the swearer forever afterwards, creating the continuing possibility of perjury if the oath is broken, regardless of the fact that no false intention was held at the very time the oath was taken.

Back in the days of Alfred the Great, the difference between Englishmen and the Vikings was seen in the fact that the Vikings broke their oaths: such people were not to be trusted. Consequently, oath-breaking,

in other words, perjury, has always been contrary to Common Law, although the first Act of Parliament dealing with perjury appears to be the 1540 Maintenance and Embracery Act. De Bracton indicated that perjury was against the Common Law as understood in his day:

*The punishment of those convicted in the aforesaid assises will be this: first of all, let them be arrested and cast into prison, and let all their lands and chattels be seized into the king’s hand until they are redeemed at the king’s will, so that nothing remains to them except their vacant tenements. They incur perpetual infamy and lose the lex terrae, so that they will never afterwards be admitted to an oath, for they will not henceforth be oathworthy, nor be received as witnesses, because it is presumed that he who is once convicted of perjury will perjure himself again.*⁴

Sir Edward Coke, chief justice under James I, pointed out that the statute law against perjury introduced under Henry VIII provided for milder punishments than those provided for in Common Law, as the severity of the common-law punishments meant that few or no juries were convicted.⁵ The law on perjury is interested only in the oaths administered while giving evidence in court; prime ministers who violate their oaths of office cannot be charged with “perjury”. Coke stated that the breach of an oath outside the judicial setting was not perjury in law, although it was still perjury in truth, in that a general oath had been forsworn:

*For though an oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury punishable either by the common law, or by this act, because they are general and extra-judicial, but serve for aggravation of the offence, as general oaths given to officers or ministers of justice, citizens, burgesses, or the like, or for the breach of the oath of fealty or allegiance, &c. they shall not be charged in any court judicial for the breach of them afterwards. As if an officer commit extortion, he is in truth perjured, because it is against his general oath: and when he is charged with extortion, the breach of his oath may serve for aggravation.*⁶

Although extra-judicial breaches of oaths are not covered by the law on perjury, in many cases breaches of oaths of allegiance and oaths of office would be covered by the laws on high treason and sedition. The fact that *the offence of high treason is based on the prior allegiance of subjects to the crown* – a prior relationship of fealty that cannot be unilaterally terminated – is shown by the ancient law on petty treason. *Petty treason* (or *petit treason*) was a common-law offence occasioned by the

betrayal of an oath of fealty to a superior by a subordinate. This common-law offence was brought into statute law by the Treason Act of 1351, before being abolished as a separate offence from murder by the Offences against the Person Act of 1828. Before 1828, the killing of a husband by his wife, the killing of a bishop by a clergyman subordinate to him, and the killing of a master or the master's wife by his servant were regarded as more serious offences than general murder, owing to the bond of obligation that existed between superior and subordinate. Originally, in the Common Law, a servant's committing adultery with his master's wife or daughter was considered petty treason too, although this was not adopted in the 1351 statute. Evidently therefore the substance of high treason lies in the bond of fealty, sworn by oaths (in the case of the officers of state), that exists between monarch and subject.

The Coronation Oath

The Coronation Oath is the very foundation of our constitution, as it creates the bonds of allegiance on the basis of which law-making and the determination of justice operate. Just as de Bracton pointed out that acts of homage create *reciprocal* obligations between the lord and his vassal, so the Coronation Oath is a contract with the monarch and the nation, requiring the monarch to uphold English Common Law and the rights of subjects of the Crown. First of all, this means that the monarch's "inheritance" of the right to govern by primogeniture is far from being an absolute right: under English Common Law (reflected in pre-Conquest practice); it is public acceptance of the monarch that makes him a monarch, and not the abstract bloodline. L.G. Wickham Legg in his authoritative *English Coronation Records* explained the Coronation Service:

The object of the coronation service was the confirmation of the elected prince as King. Until the person elected had been anointed and crowned he was not King. The title given by Hoveden and his fellow historians to Richard I before his coronation illustrates this well; [footnote in the original source: he is called Duke, not King] and the custom, more frequent on the Continent than in England, of crowning the eldest son of the King during his father's lifetime had as its object the destruction of the interregnum and its opportunities for disturbance consequent on the death of the father. The theory that the reign began on the day of the coronation lasted in England down to Edward I, who is the first King to date his reign from the death of his father, as indeed he was compelled to do under the circumstances in which he was placed owing to his absence in the Holy Land in 1272.

But not only was the prince confirmed in the position to which he aspired, he was also actually elected; and the ceremony still remains in the modern coronation. On entering the church the archbishop addresses the people, inquiring if they be willing to accept the prince as their sovereign. The form of election thus still remains, though it is now a mere ceremony.⁷

Legg explains in a footnote that Archbishop Hubert Walter was dubious of the character of King John, and so insisted on King John's being elected in order to absolve himself of the responsibility for crowning such a man. That an "election" is held indicates that what Legg described as "mere ceremony" implies the right of the people, represented by the nobility and the Church of England, to refuse to elect an inappropriate monarch.

Secondly, it is quite erroneous to hold that the Crown, or Parliament, or Parliament with the consent of the Crown, can do anything at all; such an interpretation of the constitution is convenient for the Establishment today, and is indeed the interpretation supported by the courts at present, but does not in any way dovetail with the origins of our constitution. This is shown in the traditional text of the Coronation Oath. Legg explains that six recensions of the Coronation service are known: the Pontifical of Egbert, Archbishop of York; the services of Ethelred II, Henry I, Edward II and James II; and that used since the Glorious Revolution. The fourth recension was introduced for Edward II's coronation on February 25th 1308 and used virtually unchanged for centuries until it was butchered to reflect James II's religious views. The text is given in Latin in the *Liber Regalis* service book, although Edward II is known to have taken his oath in French, and from 1603 English monarchs have taken their Coronation Oaths in English. The English-language version of the traditional oath, as taken by Charles I is as follows:

Sir, will you grant and keep, and by your oath confirm, to the people of England, the laws and customs to them granted, by the kings of England your lawful and religious predecessors; and namely the laws customs and franchises granted to the clergy by the glorious King St. Edward your predecessor according to the laws of God, the true profession of the gospel established in the Church of England, and agreeable to the prerogative of the King thereof, and the ancient customs of this realm?

I grant and promise to keep them.

Sir, will you keep peace and godly agreement, entirely according to your power, both to God, the holy Church, the clergy, the people?

I will keep it.

Sir, will you to your power cause law, justice and discretion, in mercy and truth, to be executed in all your judgements?

I will.

Will you grant to hold and keep, the laws and rightful customs, which the commalty of this your kingdom have; and will you defend, and uphold them to the honour of God, so much as in you lieth:

I grant and promise so to do.⁸

The Stuart version of the oath in English purported to be a direct translation of the Latin of the Liber Regalis, but some changes can be found, changes that led to allegations during the upheaval of the 17th century that the monarch had subtly altered the text. Firstly, the reference to “the laws, customs and franchises [=liberties] granted to the clergy” omitted the reference in the Latin that indicated those laws, customs and franchises were not just those of the church, but of the people too: *presertim leges et consuetudines et libertates a glorioso rege Edwardo clero populoque concessas*. Secondly, the oath to uphold “the laws and rightful customs, which the commalty [=community] of the Kingdom have” altered the traditional text, *concedis iustas leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, quas vulgus elegerit secundum vires tuas?*⁹, which contained a promise to uphold *future* laws that would be accepted by the people. For example, John Milton complained that Charles I had “razed out” the requirement to uphold laws *quas vulgus elegerit*, “that the common people would choose”.¹⁰ Edward II took his oath in old French and the original French text has: *Sire, graunte vous a tenir et garder les Loys, et les Custumes droitureles, les quiels la Communaute de vostre Roiaume aura esleu, et les defendrez et afforterez, al honur de Dieu, a vostre Poer? Jeo les graunte et promette.*¹¹ Here *esleu* is the mediaeval French for the modern *élu*, “elected, chosen”, and *aura esleu* refers to the laws and statues that the community at large would in the future *choose to accept*.

It is clear that English monarchs were traditionally not allowed to accede to the throne unconditionally; they had to promise to vouchsafe to the Church and to the people of England their traditional rights. Milton argued that *vulgus* refers to the House of Commons: within the context of the battle between Parliament and King, Milton argued that the king had sworn to uphold all laws approved by Parliament. But the Latin

word *vulgus* does not refer to the political elite, but to the common people. The nineteenth-century American libertarian, Lysander Spooner, argued that the traditional text of the Coronation Oath reflected the fact that common-law juries were free to nullify statute law:

This oath not only forbids the king to enact any statutes contrary to the common law, but it proves that his statutes could be of no authority over the consciences of a jury; since, as has already been sufficiently shown, it was one part of this very common law itself, — that is, of the ancient “laws, customs, and liberties,” mentioned in the oath, — that juries should judge of all questions that came before them, according to their own consciences, independently of the legislation of the king.

It was impossible that this right of the jury could subsist consistently with any right, on the part of the king, to impose any authoritative legislation upon them. His oath, therefore, to maintain the law of the land, or the ancient “laws, customs, and liberties,” was equivalent to an oath that he would never assume to impose laws upon juries, as imperative rules of decision, or take from them the right to try all cases according to their own consciences. It is also an admission that he had no constitutional power to do so, if he should ever desire it. This oath, then, is conclusive proof that his legislation was of no authority with a jury, and that they were under no obligation whatever to enforce it, unless it coincided with their own ideas of justice.¹²

The substance of the Coronation Oath is to maintain the “the law of the land”, understood as the Common Law (not statute law), fundamentally the laws and customs of the pre-Conquest England of St. Edward (King Edward the Confessor). That this is the case, and that *a breach of the Coronation Oath by the monarch constitutes perjury* (that is, perjury in fact, albeit not perjury in law), was indicated by James I in the following account, written in 1681, by John Somers (later Lord High Chancellor from 1697 to 1700):

King James, in his speech to the judges, in the star-chamber, Anno 1616, told them, “That he had, after many years, resolved to renew his oath made at his coronation, concerning justice, and the promise therein contained for maintaining the law of the land.” And, in the next page, save one, says, “I was sworn to maintain the law of the land; and therefore had been perjured, if I had broken it: God is my judge, I never intended it.”¹³

The Coronation Oath was updated to include reference to the Protestant church in the 1688 Coronation

Oath Act, but otherwise much of the text remains unaltered from ancient times. Accordingly, the text of the Oath taken by Elizabeth II on June 2nd 1953 was as follows:

Will you solemnly promise and swear to govern the peoples of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, The Union of South Africa, Pakistan and Ceylon, and of your possessions and the other territories to any of them belonging or pertaining, according to their respective laws and customs?

I solemnly promise so to do.

Will you to your power cause law and justice, in mercy, to be executed in all your judgements?

I will.

Will you to the utmost of your power maintain the laws of God and the true profession of the gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the bishops and clergy of England, and to the churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?

All this I promise to do.

The Coronation Oath is made during the Coronation, often at some remove from the monarch's accession. Consequently, an earlier Accession Declaration is made to Parliament in accordance with the Accession Declaration Act of 1910, which eliminated the previous long, somewhat bizarre declaration that the monarch did not believe in the transubstantiation of the elements during Holy Communion and did not support the worship of the saints. The current text of the Accession Declaration is:

I, N, do solemnly and sincerely in the presence of God, profess, testify and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments to secure the Protestant Succession to the Throne of my realm, uphold and maintain such enactments to the best of my power.

The contract between monarch and people depends on our being governed according to our laws and customs – substantially, the Common Law, with amendments

by Statute to update ancient customs for modern circumstances but without overturning our ancient rights – with justice and mercy dispensed through the Royal courts, and the Christian religion maintained. On each point, the Coronation Oath has been badly traduced under the royal perjurer Elizabeth II.

The fact that Common Law is the fundamental law of the land, as indicated in the Coronation Oath, was long recognised in courts of law. Neither the Crown nor the Crown in Parliament had the right to impose laws that flagrantly contravened the Common Law. The most famous example of a court decision upholding this principle is the case of *Thomas Bonham v. the College of Physicians*, normally known as Dr Bonham's Case, where the chief justice, Sir Edward Coke, ruled in the Court of Common Pleas in 1610 that

And it appears in our books that, in many cases, the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void; for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such an Act to be void.¹⁴

This is not some doctrine of judicial supremacy, allowing judges to strike down all Acts of Parliament that do not accord with their views – that is, after all, what we have ended up with today – but rather a strong presumption that age-old rights that have persisted since time immemorial should not be removed by Crown, by Parliament or by the Royal courts of justice. It is the doctrine of untrammelled supremacy of the Crown in Parliament that provides for tyranny, overturning, as it does, the bilateral obligations of the Coronation Oath. We seem to have turned full circle and are back to Sir Walter Raleigh's absurd contention that "the bonds of subjects to their kings should always be wrought out of iron; the bonds of kings unto subjects but with cobwebs".¹⁵

The religious Oaths of Supremacy, Obedience and Abjuration

The installation of the king is based, not on some abstract doctrine of the right of inheritance of supreme power by primogeniture – a concept not recognised in pre-Conquest England – but, ultimately, on the willingness of the people of England to accept the monarch, as is shown in the role of the Church of England in the Coronation service. Various kings have lost their crowns after acceding to the throne in the ordinary way, including Edward II, Charles I and James II. So what the network of oaths underpinning the English constitution amounts to is an interlocking set of binding obligations: where kings have failed to live up to their Coronation Oaths, they have lost their thrones,

and similarly subjects who have failed to show loyalty to the king have been punished for crimes including treason, sedition and violation of the law of *praemunire*.

Praemunire is an ancient law forbidding the assertion of foreign supremacy against the English crown, whether Papal or secular. While *praemunire* means “to fortify” in Latin, the use of this word derives from a corruption of *praemonere*, “to forewarn”, as violations of the law led in English history to the issuance of a writ of *praemunire*, warning the person to appear before the Royal council. The first statute of *praemunire* was that of 1353, in the reign of Edward III, but it is the second statute of *praemunire*, passed in 1393 under Richard II, that formed the basis for English law on the subject for centuries, until repeal in 1967. Blackstone explained the meaning of *praemunire* as follows:

*This then is the original meaning of the offence, which we call praemunire; viz. introducing a foreign power into this land, and creating imperium in imperio, by paying that obedience to papal process, which constitutionally belonged to the king alone.*¹⁶

Consequently, just as the king made his Coronation Oath, subjects, and in particular the clergy of the Church of England, had oaths of their own to swear. Henry VIII imposed the *Oath of Supremacy* on the clergy of the Church of England in the Act of Supremacy 1534, reinstated after the Marian reaction by the Act of Supremacy 1558 under Elizabeth I. The oath was as follows:

I, A. B., do utterly testify and declare in my conscience that the Queen's Highness is the only supreme governor of this realm, and of all other her Highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal, and that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority ecclesiastical or spiritual within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the Queen's Highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges and authorities granted or belonging to the Queen's Highness, her heirs or successors, or united or annexed to the imperial crown of this realm. So help me God, and by the contents of this Book.

This oath was required of the clergy, judges and mayors, and the Supremacy of the Crown Act 1562 ex-

tended the requirement to members of the House of Commons, all people in holy orders, holders of any university degree, schoolmasters and people engaged in practising law. The first offence of refusing to take this oath was declared in 1562 to be *praemunire*, and the second offence high treason.¹⁷

In 1605, the failure of the Gunpowder Plot to assassinate King James I led to the imposition of an even lengthier religious oath, described in the statute establishing it as an *Oath of Obedience*, which contained elements of oaths of allegiance to the king, of recognition of the king's supremacy and of abjuration of the Pope's authority, and so was frequently sworn in the place of the Oath of Supremacy:

I, A. B., do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world, that our sovereign Lord King James is lawful and rightful King of this realm, and of all other his Majesty's dominions and countries; and that the Pope neither of himself nor by any authority of the church or see of Rome, or by any other means with any other, hath any power or authority to depose the King, or to dispose any of his Majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him or his countries, or to discharge any of his subjects of their allegiance and obedience to his Majesty or to give licence or leave to any of them to bear arms, raise tumults or to offer any violence or hurt to his Majesty's royal person, state or government, or to any of his Majesty's subjects within his Majesty's dominions.

Also I do swear from my heart, that notwithstanding any declaration or sentence of excommunication or deprivation made or granted or to be made or granted by the Pope or his successors or by any authority derived or pretended to be derived from him or his see against the said King his heirs or successors or any absolution of the said subjects from their obedience: I will bear faith and true allegiance to his Majesty his heirs and successors, and him and them will defend to the uttermost of my power against all conspiracies and attempts whatsoever which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration or otherwise, and will do my best endeavour to disclose and make known unto his Majesty, his heirs and successors all treasons and traitorous conspiracies which I shall know or hear of to be against him or any of them.

And I do further swear that I do from my heart abhor detest and abjure as impious

and heretical this damnable doctrine and position that princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects or any other whatsoever.

And I do believe, and in my conscience am resolved that neither the Pope nor any other person whatsoever hath power to absolve me of this oath or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me and do renounce all pardons and dispensations to the contrary.

And all these things I do plainly and sincerely acknowledge and swear according to these express words by me spoken, and according to the plain common sense and understanding of the same words without any equivocation or mental evasion or secret reservation whatsoever: and I do make this recognition and acknowledgement heartily willingly and truly, upon the true faith of a Christian.

*So help me God.*¹⁸

These clunky religious texts were edited down somewhat in the 1688 Bill of Rights and replaced by a single combined oath of supremacy and allegiance, with the 1688 Oaths of Supremacy and Allegiance Act requiring all bishops, peers, public-sector officeholders, university masters and fellows, and officers in the army and navy to swear the following:

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Their Majesties King William and Queen Mary. So help me God, &c.

I, A. B., do swear that I do from my heart abhor detest and abjure as impious and heretical that damnable doctrine and position that princes excommunicated or deprived by the Pope or any authority of the See of Rome may be deposed or murdered by their subjects or any other whatsoever.

And I do declare that no foreign prince person prelate state or potentate hath or ought to have any jurisdiction power superiority pre-eminence or authority ecclesiastical or spiritual within this realm. So help me God, &c.

This was later supplemented from 1701 by a third oath, the *Oath of Abjuration*, a long denunciation of the rights of the Jacobite claimants to the throne, required of all senior officeholders. The Oath of Abjuration

reached its final form on the death of the Old Pretender, as follows:

*I, A. B., do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world that our sovereign lord, King George, is lawful and rightful King of this realm and all other his Majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare that I do believe in my conscience that not any of the descendants of the person who pretended to be prince of Wales during the life of the late King James the Second and since his decease pretended to be and took upon himself the style and title of King of England by the name of James the Third or of Scotland by the name of James the Eighth or the style and title of King of Great Britain hath any right or title whatsoever to the crown of this realm or any other the dominions thereunto belonging: and I do renounce refuse and abjure any allegiance or obedience to any of them. And I do swear that I will bear faith and true allegiance to His Majesty King George and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against his person crown or dignity. And I will do my utmost endeavour to disclose and make known to his Majesty and his successors all treasons and traitorous conspiracies which I shall know to be against him or any of them. And I do faithfully promise to the utmost of my power to support maintain and defend the succession of the crown against the descendants of the said James and against all other persons whatsoever which succession, by an act intituled, 'An act for the further limitation of the crown and better securing the rights and liberties of the subject,' is and stands limited to the Princess Sophia electress and duchess dowager of Hanover and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear according to these express words by me spoken and according to the plain common sense and understanding of the same words without any equivocation mental evasion or secret reservation whatsoever. And I do make this recognition acknowledgement abjuration renunciation and promise heartily willingly and truly upon the true faith of a Christian. So help me God.*¹⁹

These ornate religious oaths went beyond the simple requirement of the Common Law that the subjects of the Crown recognise their allegiance to the Crown, just as the monarch upholds his side of the bond of fealty, represented by the Coronation Oath. While we are constantly told that such ceremonial oaths are "mere ceremony" today, they were intended to have a serious

and unshirkable meaning, just as all oaths create obligations that cannot be unilaterally abandoned. It is for this reason that nine English bishops, led by William Sancroft, Archbishop of Canterbury, refused to swear oaths of allegiance to William III and Mary II after the effective deposition of James II. By February 1690, two of the nine were dead, and the remaining seven non-juring bishops were deprived of their sees. A point of interest is whether the Church of England should have agreed to “elect” and then crown James II, given his adherence to a foreign prelate, but once oaths of allegiance were sworn to James II, these nine bishops found it impossible to abandon them.

The Oath of Allegiance, the Oath of Office and the Judicial Oath

These various oaths were once again collapsed into a single oath under the Oaths Act of 1858, and the Jewish Relief Act of 1858 allowed Jewish subjects of the Crown to omit wording relating to taking an oath on the true faith of a Christian. The Office and Oath Act of 1867 shortened and simplified the oath yet further. Finally, the Promissory Oaths Act of 1868 replaced the oath by three much shorter oaths: the Oath of Allegiance, the Official Oath and the Judicial Oath, oaths that remain in force today.

Detailed religious context that accreted over the years was sensibly removed from the modern oaths laid down in 1868, but it was still the case in 1880 that Charles Bradlaugh, an atheist, was not permitted to take his seat in the House of Commons (representing Northampton) after announcing that he would utter the words of the Oath of Allegiance as a “matter of form” only. He was repeatedly re-elected, but only permitted to swear the oath and take his seat in 1886. The issue he highlighted led to the passage of the Oaths Act of 1888, which allowed all oaths, including oaths in court, to be affirmed. The Oaths Act of 1909 allowed the use of the Old Testament for Jewish swearers and the New Testament for Christians, and provided for oaths to be introduced by the apostrophe, “I swear by Almighty God that...” Affirmations are introduced by “I ... do solemnly, sincerely and truly declare and affirm that”, with the remainder of the text identical to the parallel oaths.

The text of the *Oath of Allegiance* is as follows:

I, (insert full name), do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God.

The *Oath of Office* is very similar in wording to the Oath of Allegiance, with the difference that the Oath of Allegiance is sworn to the entire royal line (the Queen

and all her heirs and successors), whereas Oaths of Office, sworn by holders of public office under particular monarchs, swear those oaths only to the monarch of the day:

I, (insert full name), do swear that I will well and truly serve Her Majesty Queen Elizabeth in the office of (insert office). So help me God.

The *Judicial Oath* is a longer variant of the Oath of Office:

I, (insert full name), do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth in the office of (insert judicial office), and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God.

Which oath needs to be sworn depends on the precise office held. Judges, magistrates, Members of Parliament and peers receiving the writ of summons to sit in the House of Lords are required to swear the Oath of Allegiance, but individuals who hold a particular office, including the prime minister and secretaries of state take the Oath of Office. Judges and magistrates swear the judicial oath in addition to the oath of allegiance. The abolition of the Oath of Supremacy means that archbishops, bishops, priests and deacons in the Church of England take the ordinary Oath of Allegiance.

The gradual insertion of politically correct nostrums into Oaths of Office is seen in the *oath taken by police constables*, as laid down in the Police Reform Act of 2002. The new text replaced the previous wording in the Police Act of 1996 to require the police to “uphold human rights” and “show equal respect” as follows:

I ... of... do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

Soldiers in the British Army and Royal Marines are required to swear the following oath, as given in the Army Act 1955:

I ... swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty

Queen Elizabeth the Second, her heirs and successors, and that I will, as in duty bound, honestly and faithfully defend Her Majesty, her heirs and successors, in person, crown and dignity against all enemies, and will observe and obey all orders of Her Majesty, her heirs and successors, and of the generals and officers set over me. So help me God.

Recruits in the Royal Air Force swear a similar oath (given in the Air Force Act of 1955), substituting “air officers” for “general”, although curiously sailors swear no oaths, as the Royal Navy exists under Royal prerogative and not Act of Parliament.

The *oath taken by Privy Counsellors* is also somewhat different. The text of the oath was previously regarded as secret, in line with the convention that proceedings of the Privy Council are secret, but the text has been given in response to a written question in Parliament:

You do swear by Almighty God to be a true and faithful servant unto The Queen's Majesty as one of Her Majesty's Privy Council. You will not know or understand of any manner of thing to be attempted, done or spoken against Her Majesty's person, honour, crown or dignity royal, but you will let and withstand the same to the uttermost of your power, and either cause it to be revealed to Her Majesty herself, or to such of her Privy Council as shall advertise Her Majesty of the same. You will in all things to be moved, treated and debated in Council, faithfully and truly declare your mind and opinion, according to your heart and conscience; and will keep secret all matters committed and revealed unto you, or that shall be treated of secretly in Council. And if any of the said treaties or counsels shall touch any of the Counsellors you will not reveal it unto him but will keep the same until such time as, by the consent of Her Majesty or of the Council, publication shall be made thereof. You will to your uttermost bear faith and allegiance to the Queen's Majesty; and will assist and defend all civil and temporal jurisdictions, pre-eminences, and authorities, granted to Her Majesty and annexed to the Crown by Acts of Parliament, or otherwise, against all foreign princes, persons, prelates, states, or potentates. And generally in all things you will do as a faithful and true servant ought to do to Her Majesty. So help you God.²⁰

It is clear that all of the Queen's present ministers are oath-breakers, as they all support the authority of foreign potentates (not least in the European Union) against the authority of the Crown in parliament.

As mentioned above, violation of most of these oaths is not grounds for perjury, although treason and sedition charges may be preferred in some instances. However, whereas all subjects may be tried for high treason or sedition where they show disloyalty to the Crown, the issue of adherence to oaths of office is relevant only to those who occupy the senior offices of state. Such state officials (and others) may be impeached in Parliament, in an ancient judicial procedure where the House of Lords forms the court and the House of Commons forms something analogous to a jury. However, the last attempted impeachment of a judge was the attempted impeachment of Sir William Scroggs, Lord Chief Justice of England, in 1681. In the end, he was retired from the bench with a pension.

An alternative procedure, short of impeachment, was provided for by the 1701 Act of Settlement, which gave both Houses of Parliament the right to petition the Queen for the removal of a judge, a right now subsumed into the Senior Courts Act of 1981, which requires the Lord Chancellor to recommend to the Queen that the exercise of the power of removal be used. In England and Wales, the main focus of this essay, the procedure has never been used: the only recorded instance of the use of this power was the removal of Sir John Barrington from the Irish High Court of Admiralty in 1830 for misappropriating litigants' funds.²¹

Naturalisation and Allegiance

Oaths of allegiance are nearly always sworn by office-holders. Unlike in the US, where ordinary citizens frequently take the pledge of allegiance, ordinary members of the public rarely have to do so in the UK. We are, however, assumed to have a debt of allegiance to the Queen. This is important, because the ultimately feudal concept of allegiance is not abstract; it is not loyalty to a principle or even to an entire nation of tens of millions of people, but to a specified individual, held to represent the continuity of the nation, and justified in the final analysis by the Queen's undertakings in the Coronation Oath. One example of the taking of the Oath of Allegiance by ordinary people is the provision of the Nationality, Immigration and Asylum Act 2002 that naturalised citizens take the Oath of Allegiance fortified by a newly concocted bizarre pledge to uphold democratic values:

I... swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors according to law.

I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faith-

fully and fulfil my duties and obligations as a British citizen.

The rooting of citizenship in feudal allegiance meant logically that allegiance in English law was indelible. Before the Naturalisation Act of 1870, no British subject, whether so by birth or by citizenship, could give up his allegiance, except by an Act of Parliament or by a territorial change (such as British recognition of the independence of the United States). An example of the importance of this principle was shown in the 1812 war with the United States, when thirteen Irish-American prisoners of war were executed for treason by the British: as Irishmen they could not renounce their allegiance to the British Crown.

Oaths in court proceedings

For most ordinary members of society, however, allegiance is somewhat abstract, as the Queen is distant from each of us, and the purpose of Royal supremacy, the Coronation Oath and oaths of office takes on a real form only in the judicial system, where we continue to hope that the Crown, as Fount of Justice, will adhere to the Coronation Oath, and that judges will adhere to the judicial oath. *No judge has ever been required to swear an oath to uphold the primacy of statute law over Common Law, or the primacy of European law over British law.* As mentioned above, the current text of the judicial oath is “to do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will”. A reasonable argument could be made that the term “laws of the realm” refers primarily to English Common Law, and the term “the usages of the realm” undoubtedly refers to English Common Law. Judges who give primacy to European directives are clearly violating their oaths of office. Interestingly, the Ordinances for the Justices Act of 1346, showed that even Royal decrees could not override Common Law:

Because that, by divers complaints made to us, we have perceived that the law of the land, which we by our oath are bound to maintain, is the less well kept, and the execution of the same disturbed many times by maintenance and procurement, as well in the court as in the country; we greatly moved of conscience in this matter, and for this cause desiring as much for the pleasure of God, and ease and quietness of our subjects, as to save our conscience, and for to save and keep our said oath, by the assent of the great men and other wise men of our council, we have ordained these things following:

First, we have commanded all our justices, that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor, without having regard to any person, and without

omitting to do right for any letters or commandment which may come to them from us, or from any other, or by any other cause. And if that any letters, writs, or commandments come to the justices, or to other deputed to do law and right according to the usage of the realm, in disturbance of the law, or of the execution of the same, or of right to the parties, the justices and other aforesaid shall proceed and hold their courts and processes, where the pleas and matters be depending before them, as if no such letters, writs, or commandments were come to them; and they shall certify us and our council of such commandments which be contrary to the law, as afore is said.²²

Some might argue that the right of Common Law to override royal commandments is a different thing from allowing Common Law to override Acts of Parliament approved by the Crown in Parliament, but this is a sophistry, given that it is Royal Assent that makes Acts of Parliament law. The final proof that Common Law in fact is the fundamental law of the land is the right of juries to nullify laws:

For more than six hundred years – that is, since Magna Carta, in 1215 – there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.²³

The right of juries to nullify the law is rarely emphasised by trial judges, but it has been recognised for centuries, particularly since the 1670 case where jurors refused to find William Penn guilty of preaching a Quaker sermon. The judge tried to punish the jurors for their verdict – the passage quoted above from de Bracton could be held to justify a suit of perjury against jurors bringing in a false verdict, although it is arguable that the reinstatement by jurors of a Common-Law right in the face of statute law would not be a false verdict – in any case, the attempt to punish the jurors was overruled by the Court of Common Pleas. Consequently, all laws, include statute law, may be overruled by the people, leading Spooner to interpret *quas vulgus elegerit* in the mediaeval Coronation Oath as a reference to the right of the common people to accept or nullify law. Spooner was also of the view that law-suits on taxation should be subject to trial by jury, giv-

ing the common people the ability to nullify unjust impositions:

It was a principle of the Common Law, as it is of the law of nature, and of common sense, that no man can be taxed without his personal consent. The Common Law knew nothing of that system, which now prevails in England, of assuming a man's own consent to be taxed, because some pretended representative, whom he never authorized to act for him, has taken it upon himself to consent that he may be taxed. That is one of the many frauds on the Common Law, and the English constitution, which have been introduced since Magna Carta. Having finally established itself in England, it has been stupidly and servilely copied and submitted to in the United States.

If the trial by jury were re-established, the Common Law principle of taxation would be re-established with it; for it is not to be supposed that juries would enforce a tax upon an individual which he had never agreed to pay. Taxation without consent is as plainly robbery, when enforced against one man, as when enforced against millions; and it is not to be imagined that juries could be blind to so self-evident a principle. Taking a man's money without his consent, is also as much robbery, when it is done by millions of men, acting in concert, and calling themselves a government, as when it is done by a single individual, acting on his own responsibility, and calling himself a highwayman.²⁴

The involvement of ordinary people who are not officers of the state in the justice system requires them too to swear oaths or make the corresponding affirmations when serving as members of juries in court and when testifying in court. Affidavits are also used to give solemn affirmation of facts and circumstances relating to legal matters. As an oath is fundamentally religious in nature, the state has thus traditionally depended on religious commitment among the population at large to encourage truthfulness and honesty in judicial proceedings and legal submissions.

The oath sworn by members of a jury is as follows:

I swear by Almighty God that I will faithfully try the defendant and give a true verdict according to the evidence.

Similarly, witnesses giving evidence in court swear as follows:

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

However, the requirement in English Common Law that judicial proceedings be conducted on the basis of sworn testimony has been watered down by the perceived need to cater for atheists and others who do not wish to take oaths. In the case of *R v. William Brayn* in 1678, a case that related to the theft of a horse, following the refusal of a Quaker witness to swear an oath

the court directed the jury to find the prisoner not guilty for want of evidence, and committed the Quaker, as a concealer of felony, for refusing an oath to witness for the King.²⁵

This led to the passage of an Act of Parliament in 1695 allowing Quakers to affirm in the following words:

I A.B. do declare in the presence of Almighty God the witness of the truth of what I say.

This affirmation was still religious in tone, reflecting the fact that Quakers believe in telling the truth, but are prevented by their understanding of the New Testament from swearing oaths. The Evidence Further Amendment Act 1869 extended to atheists a general right to affirm in court, and the Oaths Act of 1888 gave a general right to affirm in all circumstances, including oaths of office, but the latest text of affirmations (“I ... do solemnly, sincerely and truly declare and affirm that...”) relies on no fundamental religious sincerity. An oath binds the swearer, in the presence of God, to tell the truth in such a way that no believing person could then go on to provide false testimony; an affirmation imposes no such ongoing moral obligation.

It seems clear to me that the ability to affirm in court amounts to an overturning of English Common Law, as the truth of the testimony is merely asserted. UK law addresses this point by defining, in law, the giving of untruthful testimony by someone who has affirmed, rather than sworn an oath, as “perjury”. Such a person is subject to punishment by the state, but arguably the punishment is unjust, as someone who has not sworn an oath by very definition cannot have perjured himself. It is perjury in law, but not perjury in fact, whereas the oath-breaking of a prime minister is perjury in fact, but not perjury in law.

Finally, affidavits are a written form of oath, made before a solicitor in his capacity as “commissioner of oaths”, that can be used to supply information to a court or legal proceedings, and contain the text, “I swear by almighty God that this is my name and handwriting and that the contents of this my affidavit are true”. There is also a statutory declaration for those who do not wish to swear an oath in the form of an affidavit, and in the cases of both affidavits and statutory declarations giving false information is covered by the laws on perjury.

The Marriage Vow

We have so far discussed oaths in the context of the state, but the marriage vow is also a type of oath. The terms “vow”, “oath” and “pledge” may have slightly differing definitions. But for my purposes, the marriage vow is a solemn and sworn statement that intends to create a permanent connection between the parties to the marriage. The Church has always held that the bearing of children is one of the main purposes of marriage. The relationship of the couple to each other, through their children, makes them, in Biblical terms, “one flesh”. Clearly, however, not all couples have children, and so it is the vow itself, and its unbreakable nature, that makes them related to each other, truly “one flesh”, even before the bearing of children. The Church has always required the marriage to be “consummated”, however, and non-consummation was traditionally the only true grounds for dissolution of the marriage.

The Book of Common Prayer contains the 1662 marriage service that for centuries was the only legal marriage service in the Church of England. According to that text, the priest asks the man:

Wilt thou have this woman to thy wedded wife, to live together after God's ordinance in the holy estate of matrimony? Wilt thou love her, comfort her, honour, and keep her in sickness and in health; and, forsaking all other, keep thee only unto her, so long as ye both shall live? [The Man shall answer: I will.]

The man gives his troth to his bride with the following words:

I take thee N. to my wedded wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance; and thereto I plight thee my troth.

A similar vow is given by the bride (who promises “to love, cherish, and to obey” her husband). There is nothing here that suggests that the marriage vow is conditional or temporary. Leaving aside the grounds of non-consummation of the marriage, the only thing that brings the marriage to an end is the death of one of the spouses. Financial adversity, or sickness, or even the consideration that the marriage may later be considered to have been “for worse” provide no grounds for annulment or divorce. It is worth observing in passing that many weddings today use novel versions of the marriage vow – often excluding any vow by the bride to “obey” her husband – in a way that

calls into question the seriousness of the vows being sworn.

The word “troth” is not used in any other context in the English language today, but is etymologically related to the word “truth”. A troth is a pledge of truthfulness, and to plight one's truth is to pledge one's truthfulness in a matter. The important of the troth is seen from the fact that those engaged to be married were traditionally said to be “betrothed”, and this betrothal was almost as morally binding as the later marriage itself, at least in so far that no man of honour, having sought a woman's hand in marriage and obtained her consent (and her father's consent), could change his mind and marry someone else, were a better circumstance to present itself.

The permanent tie of obligation between a husband and his wife is just as essential to a healthy society as the ties of fealty between a subject and his sovereign. Some libertarians seem to believe that caddish behaviour is a libertarian right: it probably is, but *the encouragement thereof should not be state policy*. Instability in family life can be seen in societies such as England today as the flip side of state intervention in personal life, owing to the affects on child poverty, crime, juvenile delinquency and other issues that society rightly has an interest in. Freedom from the state does not mean that there ought to be no concept of duty and no bonds of obligation within the population; understood correctly, *a society with no sense of honour and duty is not going to be a free society*.

For these reasons, it is alarming that the state claims the right to be able to dissolve the marriage vow, often for trivial reasons, or even none. While courts do hand down decrees of dissolution, they cannot remove the moral force of the vows initially undertaken. The legal efficacy of the vows is removed by court order, but the vows themselves remain a matter of public record. Curiously, no court order can change the fact that a divorced wife remains the mother of her former husband's children, and so in that sense the couple remain “one flesh”, unable to give any real effect to their desire no longer to be related to each other.

The vows of godparents

The marriage vow is chief among the religious vows provided for by the Church of England, because it creates an obligation between people: the vow forms part of the ties that bind society as a whole together, with the family as its unit. Other religious vows include those in the baptism and confirmation services: in baptism, the priest asks of each of the godparents:

I demand therefore, dost thou, in the name of this child, renounce the Devil and all his works, the

vain pomp and glory of the world, with all covetous desires of the same, and the carnal desires of the flesh, so that thou wilt not follow, nor be led by them? ... Wilt thou then obediently keep God's holy will and commandments, and walk in the same all the days of thy life?

That this amounts to a solemn vow by the godparents is clear from the closing words of the baptism service (as given in the 1662 *Book of Common Prayer*):

Forasmuch as this child hath promised by you his sureties to renounce the Devil and all his works, to believe in God, and to serve him: ye must remember, that it is your parts and duties to see that this infant be taught, so soon as he shall be able to learn, what a solemn vow, promise, and profession, he hath here made by you. And that he may know these things the better, ye shall call upon him to hear sermons; and chiefly ye shall provide, that he may learn the Creed, the Lord's Prayer, and the Ten Commandments, in the vulgar tongue, and all other things which a Christian ought to know and believe to his soul's health; and that this child may be virtuously brought up to lead a godly and a Christian life; remembering always, that baptism doth represent unto us our profession; which is, to follow the example of our Saviour Christ, and to be made like unto him; that, as he died, and rose again for us, so should we, who are baptized, die from sin, and rise again unto righteousness; continually mortifying all our evil and corrupt affections and daily proceeding in all virtue and godliness of living. Ye are to take care that this child be brought to the bishop to be confirmed by him, so soon as he can say the Creed, the Lord's Prayer, and the Ten Commandments, in the vulgar tongue, and be further instructed in the Church catechism set forth for that purpose.

From the perspective of this article, a vow to God alone would be a private religious commitment, albeit one that may (or may not) play a role in fostering a good society, whereas *a vow creating social obligations* is part of the panoply oaths that underpin the Church and State in our constitution. For this reason, while normally regarded as mere pageantry, the promises made by godparents are of significance, because they create duties of people other than the child's parents to guide the child during his upbringing. In an age where many children appear to have little discipline and the state is called upon to monitor "parenting" ("parent" appears now to be a verb), we may well regret that friends and relatives of the family do not play a stronger role in a child's upbringing. This is, of course, but a minor footnote to the main religious vow of marriage, as the duty of parents to each other and to their

children is the key social bond on which the health of society stands or falls.

The English Constitution today

Our constitution evolved organically from the human relationships that bind a society together, whether between the king and his subjects, the king and the church and the officers of state, or between husband and wife. Real personal bonds of loyalty can only exist between people. Turning human societies into relationships based on political propositions ("support for democracy") or allegiance to pieces of paper (such as the US Constitution) makes the bonds of society abstract: after all, one only has to ask where these political ideas came from and whether their propounders had the right to propound them, and if so, whence came that right, in order to unpick the constitution of such states. An interesting example of an attempt to define allegiance in non-personal terms is the US Pledge of Allegiance, adopted by the US Congress in 1942:

I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Allegiance to a flag? But a flag is just a piece of cloth! It destroys any sense of the word "allegiance" to pledge allegiance to an inanimate object. Real allegiance is made on the basis of an oath of fealty between a lord and his vassal, which is why the republican concept of allegiance is empty. Just as, in feudalism, where a villein owed his loyalty, in the first place, to the lord of the manor via a process of subinfeudation, with only the largest landowners (the nobility) having direct contact with the monarch, to whom they directly swore fealty, so today it is officeholders under the Crown that pledge allegiance, where ordinary subjects need not do so, and so attempts in the US to force all schoolchildren to declare textile allegiance to a piece of cloth seem misconceived.

Our constitution is gradually being updated by a series of new laws that violate the Coronation Oath and claim the right to eliminate English Common Law. The religious nature of oaths has been undermined. Jury trials have been restricted in scope, and statutes allowing majority verdicts to be returned also reveal the intention to remove the guarantees of liberties provided by juries. The new police oath to "equality" and the casual way in which all the key officers of state violate their oaths of office by supporting European jurisdiction over our laws kick away a few more pillars of the constitution. The installation of a Supreme Court – removing the judicial function of Parliament that provided an ultimate guarantee that traitors and others

working against our society could be held accountable – is another important development.

It is undoubtedly the case that any attempt in the court system today to argue, as the Freemen on the Land do, for the primacy of Common Law over statute law will fail, as the judges are simply part of the wider Establishment that is seeking to overturn our laws. The point of seeing the central role of the Coronation Oath in providing us with guarantees of our liberties is therefore political: our fascinating Common Law heritage provides the basis on which we could campaign to restore a polity where Parliament (in other words, the political elite) could no longer govern us in such an untrammelled fashion, hedging our governors in again with traditional restraints.

It is in this light that I refuse to accept that oaths are mere pageantry. The Coronation Oath is the apex of our constitution, and its reinterpretation as mere ceremony robs the entire structure of its essential meaning, giving a green light to the technocracy to dissolve our liberties by statute and regulation. The fundamental cultural change facilitating this, however, is the cultural shift away from personal integrity. Whereas the Angles and the Saxons despised oath-breakers, the word and bond of most of us today is worthless.

Of course, there are many conservatives and libertarians who tired of our religious heritage some time ago. The alternative – the cynical technocracy – will be far worse than the inculcation of moral fibre in old England ever was. A society populated by people you cannot trust to keep their word is a different type of society – I would argue that it is not a society at all – and where society retreats, bureaucratic power rushes in to fill the void.

References

- (1) Peter Alexander Kerkof, “Swearing an Oath in Old Germanic Society”, Wanana sculon Francon, 2010, retrieved 23rd July 2012, <http://vroegemiddeleewen weblog.leidenuniv.nl/2010/10/08/swearing-an-oath-in-old-germanic-society>.
- (2) Benjamin Merkle, *The White Horse King: The Life of Alfred the Great*, Nashville, Tennessee: Thomas Nelson, 2009, pp. 200-202.
- (3) Henricus De Bracton, *On the Law and Customs of England, Volume 2*, translated by Samuel E. Thorne, Cambridge, Mass: Belknap Press, 1968, p. 228.
- (4) Henricus De Bracton, *On the Law and Customs of England, Volume 3*, translated by Samuel E. Thorne, Cambridge, Mass: Belknap Press, 1968, p. 346.
- (5) Sir Edward Coke, *The Third Part of the Institutes of the*

Laws of England: concerning High Treason, London: W. Clarke and Sons, 1809, ch. 74, pp. 163-164.

- (6) *Ibid.*, ch. 74, p. 166.
- (7) Leopold G. Wickham Legg (ed.), *English Coronation Records*, London: Archibald Constable & Co, 1901, p. xvf.
- (8) *Ibid.*, pp. 251-252.
- (9) *Ibid.*, pp. 87-88.
- (10) Charles Symmons (ed.), ‘A Defence of the People of England’, in *The Prose Works of John Milton*, Volume III, London: Luke Hansard, 1806, p. 310.
- (11) Eleanor Constance Lodge & Gladys Amy Thorton (eds.), *English Constitutional Documents, 1307-1485*, Cambridge: Cambridge University Press, 1935, p. 11.
- (12) Lysander Spooner, *An Essay on the Trial by Jury*, Boston: John P. Jewett and Company, 1852, pp. 102-103.
- (13) Lord John Somers, *The Security of Englishmen’s Lives; or the trust, power, and duty of the Grand Juries of England*, London: Effingham Wilson, 1821, p. 59.
- (14) John Henry Thomas & Fraser, John Farquhar (eds.), *The Reports of Sir Edward Coke, Knt, in Thirteen Parts, Volume IV, Part VIII*, London: Joseph Butterworth & Son, 1826, folio 118b, p. 375.
- (15) Walter Raleigh, *The Works of Sir Walter Raleigh, Kt, Volume VIII*, Oxford: University Press, 1829, p. 154.
- (16) Sir William Blackstone, *Commentaries on the Laws of England, Book the Fourth*, London, 1787, p. 115.
- (17) Henry Straus Quixano Henriques, *The Jews and the English Law*, Oxford: Oxford University Press, 1908, p. 222.
- (18) *Ibid.*, pp. 223-224.
- (19) *Ibid.*, pp. 226-228.
- (20) Question from Mr Baker MP to the President of the Council, Mrs Margaret Beckett MP, concerning the text of the Privy Counsellors Oath, 28th July 1998, retrieved 23rd July 2012, <http://tinyurl.com/c3ujonz>.
- (21) Judicial Office, ‘Judges and parliament’, 2012, retrieved 23rd July 2012, <http://tinyurl.com/c92mtnx>.
- (22) Anon. *Statutes of the Realm, Volume I*, London: Eyre and Spottiswoode, 1870, pp. 170-171.
- (23) Lysander Spooner, op. cit., p. 5.
- (24) Lysander Spooner, op. cit., p. 222.
- (25) Anon. ‘William Brayn, Theft’, *The Proceedings of the Old Bailey*, 1678/2012, retrieved 23rd July 2012, <http://tinyurl.com/d2prppl>.