

Accepting Special Trust and Confidence

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I was breaking into a cold sweat...I was being solicited to entice my junior officers to betray their oath of office, their Code of Conduct, their country...

A Distinguished POW's Autobiography

You have held personal safety and comfort above duty, honor, and country, and, in so doing, have deliberately violated your oath as a citizen of the United States and as an officer of the United States Army.

A POW Reprimand Order

Ten years ago the American officer corps was told that it had lost its ethical bearing. James Webb has advised us to grab a piece of traditional flotsam when we are ethically adrift. Is the commissioned officer's oath such a piece of flotsam? Or would the profession be any worse off if the oath were just jettisoned?

The oath does carry an impressive resume. Today's officers take the same oath that officers have taken since 1884. As early as 1634, our forefathers pledged to be "true and faithful" to the government of the commonwealth. The very first item printed on a printing press in the American colonies was an oath. George Washington crusaded for an oath. And today's officers are required by the Constitution to take one.

But is this resume like that bathing suit that reveals a lot that is interesting while hiding what is important? Oaths seem to be born of a suspicion hardly befitting special trust and confidence; "civil blackmail," Kant called it. Historically, oaths are rooted in the magic of a self-imposed curse. When they have divine sanctions they are unnecessary. When they don't, they are ineffective. And what of that one "fixed star in our constitutional constellation?" Justice Jackson wrote in West Virginia v. Barnett that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...."

In this paper I ask three questions about the commissioned officer's oath. My answers propose a view of the oath as a piece of traditional flotsam. A brief afterword addresses the institutional climate of such an oath.

► When I take my oath, what do I solemnly swear to do?

Recently, I challenged the practice of attempting to determine a commissioned officer's sworn obligations by appealing

to his oath.<sup>1</sup> In particular, I argued that the oath itself cannot be the source of such professional obligations as those pertaining to public policy debates or to obedience of lawful orders.

Although the oath contains three classes that are sources of sworn obligations, neither clause is the source of a significant, distinctive and definite officer's obligation.

An officer swears "to bear true faith and allegiance to the" Constitution. However, if he was a naturalized citizen when he took his oath, he already had that sworn obligation; the naturalization oath set out in our Immigration and Naturalization Act contains a verbatim bear allegiance clause. The obligation is new only for a citizen by birth who rejects the view that his citizenship itself provides an allegiance obligation. Even then, the obligation has been no more significant for American officers who have simply accepted the civilian-military subordination without "giving the Constitution a second thought" than it has been for their European forefathers who, in the last 200 years, have faced decisions of continued allegiance only at a few "rare critical moments."<sup>2</sup>

It is easier to point out that the oath is the source of a sworn obligation to "support and defend the Constitution" than to specify what that obligation is. Is it the same obligation that arises from the support and defend clause of the naturalization oath? Is an officer's obligation to defend "against all enemies, foreign and domestic" the same as that of the FBI agent who takes the same oath? Is the officer's obligation the same as the one the support and defend clause of the enlisted oath provides?

However definite the two Constitution clauses are for the officer on the ground or in the cockpit, they provide too little for the cognoscenti--Sir John Hackett, Morris Janowitz, Richard Gabriel, and Thomas Reese--to adjudicate their disputes about allegiance: to the Constitution's text?, to its latest interpretation?, to its underlying values?, to the position or to the person of Commander-in-Chief?

Hopes that the oath's third clause--to "discharge the duties of the office"--provides distinctive sworn obligations are dashed once we acknowledge that the U.S. Code requires members of the Postal Service and Peace Corps volunteers, as well as officers, to take the same oath. One duty clause cannot be the source of three distinctly different duties attendant to three different offices.

The practice of appealing to the oath to determine an officer's sworn obligations overlooks the critical fact that the text we have been examining becomes a commissioned officer's oath only after "the duties of the office upon which I am about to enter" have been defined.<sup>3</sup>

The Officer's Commission charges an officer to "discharge the duties of [his] office...by doing and performing all manner of things...during the pleasure of the President." To know what those "things" are is to know what makes our text a commissioned officer's oath. To know that is to know what sworn obligations an officer has.

The shape of those "things," to adapt an evocative image, is an inverted triangle with fuzzy edges. The text of the oath alone establishes little more than that the sworn obligations "to

render unconditional obedience to Adolph Hitler" and "to be devoted to my last breath to my Soviet Motherland" are outside this triangle of an officer's professional duties. An Ensign's glimpse at the triangle's tip may provide something like a sketch of a dramatic part awaiting him. So when that Ensign reports that he has "no idea what it really means to be a naval officer," we admire his candor and honesty. Commanders and captains see enough of the triangle to dispute public policy responsibilities. They disagree because, from start to finish, the edges of the triangle remain fuzzy.<sup>4</sup>

When an officer takes his oath what does he swear to do? What are his sworn obligations? To "discharge the duties of [his] office by doing . . . all manner of things (in his professional triangle) . . . during the pleasure of the President" or until he resigns his commission.

Perhaps we should be asking more fertile questions.

► When I say "I do solemnly swear that I will...", what do I do?

David Hume's philosophical legacy includes a series of questions that continue to repay serious thought. Hume might have noted that after I say "I do solemnly swear..." (in the right circumstances) I then have certain obligations that I did not previously have. But, he would have asked, why do I have those obligations? No stranger to common sense, Hume would have accepted the obvious answer: 'simply because I freely uttered those words'. Still, he would have persisted, just what is it

about saying those words that creates the obligation? Hume considered two options as answers.<sup>5</sup>

The option Hume himself accepted begins with the observation that the swearing of the oath is an essentially social act. On a Humeian account, when I took the oath, I entered into certain relationships with others. Now they can expect me and rely upon me to do certain things. In a word, I promised. A promise, said Hume, is a "human invention, a certain form of words ... by which we bind ourselves to the performance of an action." By promising, I obligate myself to some promisee who then holds a right of expectation. Because of this right the promisee can demand, if necessary, that I do what I have promised to do.

I do not take my oath in an institutional vacuum. With various implicit and explicit promises of its own, the profession also obligates itself to me; it makes me a promisee who also holds certain rights of expectation. On this account, when I say "I do solemnly swear..." I exchange mutually conditional promises with my profession. We enter into a contract.<sup>6</sup>

According to Hume's second option, when I say those words an obligation arises from my "mere will and consent." Any social setting is incidental and I am bound only by my own solitary consent.

However, Hume rejected the idea that my solitary act of intending to be obligated can actually create an obligation out of thin air. It is a "manifest absurdity" and "may even be compared to transubstantiation or holy orders," the theological doctrine

"whereby a certain form of words, along with a certain intention, changes entirely the nature of a human creature."

I will propose an answer to the question "What do I do when I say 'I do solemnly swear...?'" that incorporates both of Hume's options. When I leave my commissioning ceremony, my social act of swearing has set into motion the machinery of obligations, rights, and demands generated by the promise of Hume's first option. When I arrive at my ceremony, I bring something like the solitary "mere will and consent" of Hume's second option. That solitary something will provide a canvas on which to paint a moral landscape that looks distinctly different from the terrain of promissory obligations. The description of my candidate for this solitary something involves the following three concepts.

Intentions When I arrive at my commissioning ceremony I bring my intention to become an officer. Intentions can be relatively trivial; for example, I intend to watch the superbowl this year. They are also essentially solitary or nonsocial. Although you are now privy to my superbowl intention, my intentions are mine and are usually never communicated to anyone else. Every intention also involves some degree of commitment; if my practical life is to take shape, my superbowl intention commits me to buy a ticket, not schedule a conflict, etc.

Every intention involves two times. If I now intend to become an officer, there was an earlier time when I started to intend to be an officer. There is also that later period of time during which I intend to be an officer--"during the Pleasure...."

Vows I also arrive with a vow to be an officer. The term 'vow' here refers to something less trivial than an intention, but not to anything especially honorific. For example, last year I vowed to stop smoking. Like my superbowl intention, my smoking vow is now out of the bag. Nonetheless, vows are as solitary and nonsocial as intentions. My vows are mine to communicate only if I wish. And even when I do elect to express a vow, I create no vowe.

Every vow includes two intentions. A vow to be an officer includes an intention to be an officer. In addition, a vow also includes a second intention not to change (or to impose limits on changing) the first intention. If I now have a vow to be an officer "during the Pleasure...", I also now intend not to change my mind "during the Pleasure..." about my intention to be an officer.

With my vow I intend to keep on intending. With a vow comes resolve. I bind myself with a vow. If I vowed last year to quit smoking and I haven't smoked since, it is only a little Pickwickian to say that I have remained loyal or faithful to myself.

(With only the solitary acts of intending and 'intending to intend'--vowing--we have already arrived at something resembling "an intention to be bound in conscience to the faithful performance of certain acts," which is how one dictionary defines 'oath'.)

Solemn vows If my intentions to continue not smoking or to remain an officer are important enough to me, then I bind myself



with a vow; I resolve not to change my mind later on about those things. If my resolve to be bound is earnest, sincere or following from deliberate, serious thought then it is solemn. 'Solemn', according to the OED, can refer either to that which is "associated with religious rites" or to that which is "of a serious, grave, or earnest character."

By accepting both of these definitions, we allow that a solemn vow may be either sacred or secular. In either case, the individual appeals to his conscience in his own way. In neither case is a vow solemn because of anything "formal, public, or ceremonial."

My candidate for that Humeian solitary something that arises from my "mere will and consent" is my solemn vow.

When I arrive at my commissioning ceremony I will bring a solemn vow. At the ceremony, I will be offered a commission. I will then take my oath.

When I take my oath, I publicly reveal my previously solitary solemn vow--and in doing so I make a promise--to "discharge the duties of [my] office...by doing...all manner of things...during the Pleasure of the President" or until I resign my commission.

I arrived with a vow. I left with both a promise and a revealed vow.

With this statement of what I swear to do and of what I do when I solemnly swear, with this account of what happens when I take my commissioned offer's oath, we are in a position to address our final question.

► Why do I opt to take my oath?

Some very good answers to this question follow the fact that taking the oath does create a promise. The swearing is a social act made in a certain institutional context. After I take my oath, others can rely upon me to "discharge the duties of [my] office..." so they then issue my first duty station orders. In turn, I can expect to begin drawing second lieutenant's pay. Because I opted to take my oath, I leave my ceremony with a contractual agreement.

But is this the whole story? Any solitary intentions I may have had at the time played no part in this first answer. If those intentions had no part, the officer's oath would be like a courtroom oath. Consider a witness caught lying under oath. If the witness pleaded for exemption from perjury on the grounds that when he took his oath he did not intend to really tell the whole truth--he had his mental fingers crossed, he would be laughed out of court. In a courtroom, all that matters is exactly what Hume said matters: saying the words and creating the expectations.

A second cluster of answers to our initial questions points out that I arrived at my ceremony with a vow, and that I opted to take the oath in order to reveal that vow. These answers regard the social act of swearing as the revealing of the "mere will and consent" and solitary intent of that vow.

All these revealed-vow answers are anchored in a critical institutional fact once spelled out by Vice Admiral Gerald E. Miller at a change of command ceremony:

Having been offered a commission by virtue of the special trust and confidence which the President has chosen to place in them, these officers have then faced the option of either accepting or rejecting the commission.

Major General Kenneth L. Peek, USAF, in a commander's brief, reiterated the same idea in these words:

Congress confers upon an individual a military officer's commission but the status that accompanies that commission--the honor of serving our Nation as an officer--is gained solely through the individual's acceptance of and commitment to patriotism, valor, abilities, and fidelity.

Because the officer's oath is an oath of acceptance, it could not be more wrong to say that the "Federal Government forces those who are seeking employment (including members of the armed forces) to take an oath of allegiance."<sup>7</sup> The officer's oath is an oath of acceptance, an oath of consent.

The Roman military oath was distinctively an oath of consent to be bound. The Latin term for oath, 'sacramentum', is translated as 'engagement' or 'the act of binding oneself'. With their personal pledges, Roman's bound themselves to their commanding generals, legionary standards or, in some cases, "soldiers voluntarily took [it] upon themselves" to bind themselves to each other. In each case they also bound themselves to discharge some particular duty: to reassemble, not to quit the ranks, not to steal in camp.

Tertullian was the first theologian to write in Latin and he drew from Roman stoicism. ("Seneca is often one of us.") Therefore, we should not be surprised that he was the first Christian writer to consistently use the (profane) Latin term

sacramentum. For Tertullian, the Christian sacraments, much like the Roman military oath, include a commitment, allegiance, or engagement and a willingness to accept a new binding relationship. Today, in the definition of 'baptism' as 'the binding of oneself to Christian doctrine', we encounter the same Roman ideas.

We may or may not follow Hume and dismiss the sacraments of transubstantiation and holy orders as "monstrous doctrines." Still, we have a contemporary, secular counterpart of the Roman military oath which sprang from consent and resulted in a tie that bound with a "cohesive force of incalculable strength."

The French put it best with se marier avec, 'one marries oneself with someone else' (with a chaplain as witness). To say 'I got married by a chaplain' suggests a ceremony different from one in which each person consents to be bound to the other by the revealing of a vow.

The Roman military oath, the concept of the sacraments, and French expression all show that we do "mere(ly) consent" to be bound to others with whom we then stand in certain normative relations. As architects of our own moral fate, we do bind ourselves into some of our most important relationships. Our religion, our spouse, our profession and sometimes, our country are ours by consent.

Our relationships to all of these include, but cannot be reduced to, a promise or contract. Each one involves a gift that creates the relationship and makes it flourish. That gift cannot be extorted; it can only be offered with consent.

When I take my oath I reveal or express my consent to be bound to stand with others. I do the sort of thing I do when I marry or become a naturalized citizen. I use my oath as "words that bind."

After I take my oath I see myself as an officer. In 1890, Justice Brewer wrote: "The taking of the oath of allegiance is the pivotal factor which changes [by which one himself changes] the status from that of civilian to that of soldier." This change need not be the "change of the entire nature of a human creature" that Hume rejected. Still, after I take my oath I regard myself transformed in some way that is not captured by the language of "roles" and "socialization." A former Marine bristles at being called an ex-Marine because he considers himself to be a former Marine.

After I take my oath I profess to be an officer. 'To profess', according to the OED, is 'to declare openly oneself to be something'. Edmund Pellegrino has elaborated: "The central act of profession is an active, conscious declaration [revealed vow], voluntarily entered into and signifying willingness [intention] to assume the obligations ["do all manner of things"] necessary to make the declaration authentic." More directly: "this uniform commits us...." Every time I present myself in my uniform I profess to be an officer.

Why do I opt to take my oath? The commissioned officer's oath is an oath of acceptance. I opt to accept my commission because I wish to reveal my consent to be bound to others with whom I then stand in a normative relationship as I "discharge the

duties of [my] office...by doing all manner of things." I then regard myself to be an officer. And I profess that I am an officer.<sup>8</sup>

### Afterword

Those Mental Crossed Fingers The data collected since 1970 seems to boil down to the result that three of four young officers are more cavalier about this oath affair--and its impact on officer professionalism--than I suggest. The following comments concern an institutional climate for the other twenty five percent.

Two Voices The idea that the oath's moral landscape of revealed-vow normative requirements is different from the terrain of promissory obligations, rights and demands is as old as Aristotle's ethics of acts and ethics of character. Admiral Stockdale and Colonel Wakin have urged the military to heed such a distinction; John Ladd and William May have done the same for the medical profession. A central issue in current women's studies is the difference between a morality of rights and formal requirements and a morality of care and responsibility. A Great Ideas Syntopicon chapter explores the influence that a similar distinction has had on concepts of Duty.

The language of promises is rooted in individuals-as-selves; it is impartial, universal, and suited to strangers. Its negative, minimal, legalistic ground rules function like "rules of grammar." Transmitted by pre-existing rules; it is backed by

sanctions. Its rights and demands are last ditch stands; we go to lawyers when we are in trouble.

The language of the oath's revealed-vow normative requirements is rooted in individuals-as-related; it befits more permanent and personal relations. Maximal and positive; it concedes the diversity of proximate situations and works like suggestions for "sublime and elegant style." Shown by example, it exhorts and challenges with rewards and expresses disdain for unbecoming conduct. "When men are friends they have no need of justice." (Aristotle, NE 1155a)

Insidious Creeping Legalism The duty to do "...all manner of things" includes a duty that can be "positively strangled" (Stockdale) and involves an aspiration that is "flattened out" (Leon Fuller) with the displacement of the individual's normative requirement by the requirements of promissory obligations.

Gyges' Ring Without swords, revealed vows are still revealed vows. Socrates put that vow in the soul. Colonel Heinl's classicus locus calls for an institution that reposes it in the individual officer.

Imprecating Heavenly Vengeance "If I ever break my solemn pledge may I be punished severely by Soviet law, universal hatred and contempt of the working people." This paper's initial two quotations point out that, in addition to violating the UCMJ or the Code of Conduct, an officer can also "violate" or "betray" his oath. Officers are no longer cashiered out fast and ignobly, but the Marine Corps Manual describes a climate in which "special trust and confidence...is jeopardized by the slightest

transgression [and] any offense...will be dealt with promptly, and with sufficient severity...." Current (December, 1988) news accounts report that following a tragic event, the Marine Corps now plans to court martial a lieutenant and has relieved two other officers of their commands. A fair reading is that all three failed to do "all manner of things," that the lieutenant violated some UCMJ contractual obligations of his oath, and that the other two officers violated the vow of their oath by failing to do some special trust and confidence "things."

Michael Corleone Was a Catholic, a member of the mafia, a husband, and a Marine Corps captain all by "mere will and consent." Every military call for 'complete loyalty' or 'ultimate commitment' betrays provincialism. "Even if it were intelligible" that we could create normative requirements with our solitary vows, Hume again persisted, how do we know those requirements are objective and not simply ones we think we have? Lewis Coser reminds that ours is a "greedy institution."

BGen Savage (Gregory Peck, Twelve O'clock High) "It's easy to transfer out of a group; its pretty hard for a man to transfer out of his obligation [and still harder to transfer out of his vow] but then every man has to play it the way he [with his vow] sees it." This statement describes an institution attentive to dissent (of Seigfried Sasson, for example).<sup>9</sup>



## Notes

1. In the U.S. Naval Institute Proceedings, Dec. 1988, p. 92. (Throughout I will play loose with citations. "Ethical bearing" is attributed to Gabriel and Savage, for example. Quotations are drawn from the references, unless noted.
2. Edward Coffman (Parameters, Sept. 1987) presents the American case; see Edgar Denton's Limits of Loyalty for the European claim.
3. The conclusion that the text itself has little impact on actual practice explains why a naval captain, an army major general, and a former Commandant of the Maine Corps are among those who have mistakenly cited the oath's text in recent public record.
4. The triangle is borrowed from Donald Baucom (Air University Review, Sept./Oct. 1983). The (religions) idea of commitment to a picture--used by Wittgenstein--is presented in Ch. 3 of Roger Trigg's Reason and Commitment.
5. The questions are from Hume's Treatise, Book III, Sec. V, Part II. My answers elaborate the views of Michael Robins (cited in the References).
6. Socially based accounts of promising dominate contemporary philosophy (see Robins). They include appeals to fairness and gratitude, and reference to a socially accepted convention simply to keep a promise.
7. The quotation is a paraphrase with emphasis added from Levinson, p. 1452. This passage aside, I am indebted to his thesis that an oath's function can be to bind.
8. Studies of military professionalism continue to overlook the fact that an enlisted Marine's first promotion warrant begins: "...reposing special trust and confidence...."
9. James Webb (Naval War College Review, Winter 1988) refers to Seigfreid Sasson's resignation in World War I as "a moral aspect of strategy." See also James McClung, "Leadership, Followership, and Dissent" (Marine Corps Gazette, Aug. 1986).

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