

**Professor Bryan Turner's remarks at the launch of *So help me God: a history of oaths of office*
Parliament House, Sydney
10 June 2021**

I want to thank the PM Glynn Institute for this interesting and important history of the oath primarily in its legal context.

I am neither an historian nor a lawyer, and so perhaps I can make some general comments – speaking as a sociologist - on the social context and meaning of the oath.

Interestingly the oath has not been a common topic of either anthropology or sociology. However, in *The Sacrament of Language: An Archeology of the Oath* (2011), the great Italian philosopher Giorgio Agamben wrote:

“The oath is a sacrament of power, and, as such, is found where religion and politics come together. The function of this sacrament is to guarantee the truth and efficacy of language”.

I think however we must not forget the human body or at least bodily expression when we consider the oath. Oaths of loyalty and fidelity required a lowered head, a submissive stance, and the bended knee. In other words, bodily subjection. Has the body disappeared from the oath?

Have we lost the necessary physical embodiment of the oath – with bended knee, lowered head, a look of seriousness, fear and trembling?

No hand shakes, blood letting, spitting on hands, and other signs of submission to a superior being?

Today we are thinking about '*oaths of office*', but the oath comes in many forms although they all share common characteristics.

At its most elementary, an oath is a *solemn promise* invoking a divine being in which an individual commits him or herself to truth telling, trustworthy behaviour, and social responsibility.

The document before us provides an account of the decline and transformation of the *traditional oath* and its role in law.

It is a history both of attrition and change. As a result, perhaps we need to ask ourselves – is there anything left of the oath? Are individuals no longer trustworthy when they make a promise or an affirmation?

This leaves open the question about the force and the credibility of the oath or any similar promise of allegiance, trust, and truth-telling.

Can any substitutes replace it – a simple affirmation for example?

The early oath was often an act to confirm or cement fealty, submission, or loyalty to a superior power – the king, the bishop, the landlord.

From memory I have only sworn one oath of office when I became a professor at the University of Utrecht to the Queen or at least to a picture of the Queen. My other oaths have been about citizenship and marriage.

Perhaps today we rarely find ourselves swearing loyalty to an actual individual such as a king or queen, but of course the wedding ceremony in a religious context is in fact an oath and to a specific person – the bride or the groom.

The Roman Catholic Latin Rite says:

“May the Lord with his goodness strengthen your consent and fill you both with his blessings. What God has joined, men must not divide”.

Or the Church of England *Sarum manual* has the bride say “to love, cherish, and obey”

Given high divorce rates in modern societies, does this mean we are less trustworthy or that the religious ceremony has lost its force?

Data for 2019-2021 are difficult given Covid19. In 2018 there were 50,000 divorces – which is more or less a standard annual figure. Marriage is popular but so is divorce.

Are couples less trustworthy? We don't know.

But what we do know is that ‘no-fault divorce’ in the *Family Law Act of 1975* has made divorce a lot easier by making it less painful.

Demography – median age at marriage for men is 31 years and for women 29 years. Life expectancy in Australia is now 83 years, so the average marriage can in principle last over 50 years.

Plenty of time for things to go wrong. In any case, people change over the life course. The person we married 50 years ago may have changed in many ways: beliefs, psychology, religion, body, politics.

However, in legal terms, we might speculate that the *oath has always been in trouble*. The basic underlying problem is whether an oath can be trusted – was it promised meaningfully, honestly, sincerely? Perhaps we will never know. Oaths that addressed God for help in making a truthful obligation or commitment were expected to impress the oath giver with the majesty of God and the seriousness of the oath. But how could we ever be sure?

Edward A. Thomas writing in *The North American Review* vol. 135 (No 310) in 1882 had a lot of critical observations to make about oaths: They are often used to harass individuals not of the Christian faith.

Oaths are often prescribed in a language none could conscientiously agree to.

A ‘politician who cared no more for the sanctity of an oath than for a puff of smoke, would have been permitted to swear as rapidly as an officer could administer the oath’

An article in the *American Law Register, University of Pennsylvania* in 1903 complained that, because self-interest is the fundamental fact of human nature, a man who will never misrepresent himself is extremely rare’.

The author after a long legal career concludes his lengthy article of some 50 pages that ‘The proposition to abolish the use of the oath altogether is not a new one. Aside for the influence of religious people, who do not believe in swearing, many legal minds have for more than one hundred years conceived that this ceremony has outlived its usefulness’.

He cites the great Jeremy Bentham – the great utilitarian philosopher and legal mind - who said that the oath of an atheist was no better or worse than from a devout Christian. Writing in his 7 volume *Evidence* and in an article from 1813 entitled *Swear Not at All* argued that the Promissory Oath was Anti-Christian, needless and mischievous.

There is a certain parallel here between the role of confession and oath making in law.

Traditionally judges wanted to see a tearful, humble, dejected, and remorseful person making a confession – not a brazen or proud confession. There had to be a certain fit between how the body of the person confessing matched the content and seriousness of the words uttered.

Contemporary Australian law I gather makes a distinction between confession and admission. For me the problem remains: how much trust can be assumed in oaths, confessions, admissions, and affirmations?

What major social changes may have undermined the oath?

1. Secularization – there is considerable sociological evidence regarding declining church membership, declining belief in the basic elements of the Christian creed, declining recruitment to the priesthood. The counter argument is that many people claim to be ‘spiritual’ but not religious. But it would be difficult to allow for ‘spirituality’ as a guarantee of the truthfulness of an oath, an admission, a confession.
2. Sociological research in Australia shows a slow decline in the belief in God by generation.

70 years and over – 61%

Baby Boomers – 53%

X generation – 46%

Y generation – 31%
3. Growing social, religious, and cultural diversity. In addition to having Hindu, Buddhist and Confucian Australians, many new migrants will come from societies where the law is corrupt, the government doesn’t function, and the people are oppressed.

This issue raises a wider problem, which is noted in the document, that we are evolving into a low trust society – endless scandals on the part of politicians, and in general people in authority – also has an impact on the oath/affirmation.

The openness of the media which we have traditionally prized in a democracy is also now an open channel for fake news, conspiracy theories, salacious accounts of sexual deviousness in Canberra.

4. Can an oath of allegiance to the Crown and country still have any force?

With the sad death of the Duke of Edinburgh, for how much longer can the Queen fulfil her duties? Can a member of her family eventually take over?

Of course, like political life the royal family has been rocked by crisis and scandal. The abdication of Edward VIII, the death of Lady Diana, marital infidelity, offshore tax havens, the exposures from Megan and Harry to the global media.

This might be another obvious opportunity for Australia to become a Republic – possibly with a different form of the oath of fealty. At least for the foreseeable future, I don't know whether an Australian – or any other President or Prime Minister – could quite have the gravitas of Elizabeth II despite the many mistakes she has made.

In conclusion and in the spirit of the publication – *So Help me God* – we cannot do without the oath in its various forms, but we cannot do without it either.