Unity and Plurality: The Case of Compulsory Oaths

Yale Journal of Law & the Humanities

Volume 2
Issue 1 *Yale Journal of Law & the Humanities*

Article 7

3-22-2013

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One of the characteristic functions of modern government is to administer declarations of attachment. Many of these declarations are compulsory, and they span a wide range. In order to receive some social benefit—a license, citizenship, education, employment, a right to cohabit—one must declare one's allegiance to a person or entity. Declarations of attachment are often backed by the force of law. Membership in private organizations, including fraternities, religious groups, and clubs, may also be conditioned on compliance with requirements of this sort.

Compulsory oaths have been a prominent source of controversy in the latter half of the twentieth century. Consider, for example, recent debates over the pledge of allegiance, loyalty oaths, the marriage vow, and oaths of citizenship for new Americans. Civil libertarians have criticized compulsory declarations in some or all of these settings on the ground that they impose requirements of uniformity and obedience that are inconsistent with important principles of pluralism and individual freedom. Defenders of compulsory declarations respond that oaths serve important unifying, educative, and even celebratory functions, inculcating in participants a sense of the solemnity and importance of such central institutions as citizenship and marriage. In this view, otherwise plausible principles of freedom and pluralism should not be permitted to override the legitimate functions performed by compulsory oaths. Indeed, freedom and pluralism may ultimately depend on the social cohesion brought about by institutions that perform precisely those functions.

My goal in this essay is to explore the diverse social functions of compulsory declarations of attachment. The treatment will be tentative and speculative; it will also be largely descriptive rather than normative. I want to provide some preliminary answers to the following questions: What social tasks do compulsory declarations carry out? To what problems and needs, and to whose problems and needs, are they an attempted response?

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* This essay is a revised version of a presentation at the conference on "Language, Law, and Compulsion," sponsored by the *Yale Journal of Law & the Humanities*. I am grateful to Lisa Ruddick for helpful comments and to Marc J. Porosoff and D. Gordon Smith for valuable research assistance.

In answering these questions, I make three basic claims. The first and perhaps not entirely surprising claim is that compulsory oaths are often designed to produce social unity by denying or delegitimating the existence of heterogeneity. Here the purpose of oaths is to negate or even to erase dissensus and difference. Compulsory oaths often arise when the legitimacy of certain forms of dissensus is producing significant social stress, and it is under such conditions that compulsory oaths become especially controversial.

At the same time, compulsory declarations of attachment represent an attempt to constitute a tradition, one that extends across both time and geography. For some people, it is important that the tradition can be characterized as unitary, substantive, and praiseworthy. For others, of course, the tradition will be pluralistic or highly contestable; and it is for this reason that they will find compulsory oaths objectionable.

Ironically, however, the very existence of compulsory oaths, and the insistence on their public declaration, reveal that the fact to which they attest (unity, "indivisible," "under God," or "with liberty and justice for all") is a matter of sharp contention, or even an untruth. The fact that it is necessary to attest to the relevant claim demonstrates that there is social dissensus about it. When the facts can be taken for granted, they are invisible, and there is no need to ensure that people declare their commitment to them. In this respect, the terms in compulsory oaths belong in a large category of words and phrases that are said precisely because they are quite plausibly false, or, to put it more cautiously, because they have been drawn into social question both normatively and descriptively.[1]

My second proposition is that compulsory oaths of a different sort operate to disturb rather than to create social unity, by asserting and legitimating the existence of heterogeneity. Here the oath represents an explicit recognition of the overlooked or even suppressed fact of dissensus, or of a deviant tradition or set of connections. In cases like this, the alliance recognized and constituted by the compulsory oath runs counter to and perhaps threatens the more general tradition.

My third proposition is that compulsory oaths, and the deep feelings that they tend to call up, are a response to three different but related problems of narrative continuity across space and time. These problems implicate closely related issues involving both human mortality and the existence and meaning of social traditions: continuity within a community of living people, continuity with the past and future, and continuity across a lifetime. All of these kinds of continuity are fragile. An important function of compulsory declarations is to help establish them.

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1. It would be most useful to have a term to describe words that are said precisely because they are false, or because their truth is in question. Conventions sometimes described as "social skills"—statements of affection, connection, comfort, or lack of offense—provide many examples.

I

A

I begin with a simple proposition, intended as a rough and perhaps uncontroversial statement about the problem. Compulsory declarations of attachment—most conspicuously in the context of a declaration of attachment to a state or country—are characteristically a response to the problem of social heterogeneity. It is in the face of heterogeneity that such declarations frequently arise, and declarations tend to become especially important when social heterogeneity is causing social stress.[2] In particular, the stress tends to be produced by the presence of a group (Communists, Southern rebels during and after the Civil War, racial or religious minorities, heretics of various sorts) whose existence, self-understanding, and substantive claims threaten the stability, meaning, value, and existence of a unified or unitary community or tradition. Declarations become most controversial as a normative matter in the face of social heterogeneity.[3]

From these points it does not merely follow that compulsory declarations serve to create categories of insiders and outsiders, or the excluded and the included. That is true and important, but the point is somewhat broader. Compulsory declarations, and the cultural symbols that they reinforce, are often used to prevent, eliminate, or delegitimate social heterogeneity, which is itself causing serious difficulties. These difficulties tend to be emphasized by groups whose position and (perhaps even more important) self-conception are threatened by recent social movements.

It follows from this that it is necessary to establish the substantive points in compulsory oaths only when those points have already been proved in some sense false. No pledge of allegiance is necessary in a fully unified country; no loyalty oath is required when loyalty is not in question; marriage vows are unnecessary when fidelity (among the many other things associated with such vows) is a matter of course. The insistence on the public declaration reveals that its contrary is visible, thinkable, or a live option. The statement contained in the oath cannot be taken for granted or assumed to be part of the natural order. It is necessary to work actively on its behalf.

In this respect, compulsory declarations of attachment have many of the features of manners, conventions about politeness, and rituals generally. These are often adhered to most steadfastly among strangers, or people

2. *See, e.g.*, H. Hyman, Era of the Oath: Northern Loyalty Tests During the Civil War and Reconstruction (1954); H. Hyman, To Try Men's Souls: Loyalty Tests in American History (1960); J. Tyler, Oaths: Their Origin, Nature, and History (1835); D. Gardner, The California Oath Controversy (1967).

3. It is uncertain whether, in such circumstances, oaths will serve their intended function. "Getting there by pretending one is there already" is not always a sensible strategy for social reform, *see* J. Elster, Sour Grapes (1983), and attempts to achieve unity by asserting that it already exists may well backfire.

who are in fact distant or estranged. The conventions substitute for the reality. They purport simply to state a fact (of, for example, connection, intimacy, or warm feeling), but instead become necessary only when the stated fact is uncertain or even false. Compulsory declarations of attachment are in this sense also like "traditional values," about which it is necessary to speak only when they have already been seriously jeopardized. Here there is a close connection between compulsory declarations, efforts to restore tradition, and the recent movement to have English declared as the official language of the United States. In this sense, compulsory declarations and their various analogues serve a constitutive function.

The history of compulsory declarations offers many illustrations. Loyalty oaths, for example, have become an issue almost always in the face of perceived or real social dissensus. Both the Civil War and the perceived Communist threat in the 1940s and 1950s provided fertile ground for loyalty oaths. The loyalty oath is a conspicuous effort to overcome, erase, and delegitimate heterogeneity and dissent.[4]

The pledge of allegiance has a similar history. The pledge came into the public schools in the 1890s, and it was conspicuously an outgrowth of some of the stresses of the Civil War. It was important, for example, to use the word "indivisible" only because the question whether or not the country was divisible had recently been drawn into doubt and could no longer be taken for granted. Even more strikingly, the words "under God" were inserted into the pledge of allegiance in 1954 as a response (in part) to the recognition of social dissensus on precisely that point—dissensus that was to culminate in Supreme Court cases eliminating prayer from the public school classroom.[5] In the early 1950s, there had been increasing social recognition and legitimation of doubt about the existence of God. This phenomenon—together with the Cold War and McCarthyism—helped spur the "under God" amendment to the pledge. The history shows, in short, that the words "under God" and "indivisible" were both attempted erasures of forms of social heterogeneity.

Most recently, political discussion of Willie Horton, a black man who raped a white woman during a furlough from prison, and the pledge of allegiance—the two dominant symbols in the 1988 presidential campaign—can be understood in similar terms. The fact that the Bush campaign used a single phrase to unite these symbols—"pledges and furloughs"—reveals that it was no accident that the two emerged at the same time. Both of these symbols were a straightforward and direct response to some of the stresses caused by the 1960s. The outbreak of nationalism and patriotism in the early 1980s, and the controversy over flag-burning in the

4. See the detailed treatment in H. Hyman, To Try Men's Souls: Loyalty Tests in American History (1960).

5. Engel v. Vitale, 370 U.S. 421 (1962); School Dist. v. Schempp, 374 U.S. 203 (1963).

late 1980s, were similar phenomena. Those stresses grew out of the legitimation and prominence of heterogeneous groups—raising issues of race, gender roles, sexual orientation, and so forth—that questioned the existence of a unitary or defensible American tradition. Both the Horton furlough and the Democratic ambivalence about compulsory flag salutes could serve to unify voters against people who seemed to symbolize sympathy or identification with the outsiders of the 1960s. The otherwise inexplicable and indeed startling use of the pledge of allegiance as a major issue in a national presidential campaign can only be understood against this background. Here the compulsory oath serves to assert the existence of social homogeneity, organized around a well-defined and unitary tradition that is worthy of respect or even reverence.

My basic point thus far—that compulsory declarations of attachment are an attempt to provide a statement of unity when there is in fact heterogeneity, and become necessary only when the statement is in an important sense false—is confirmed not only by practice, but also by the oddity of the phraseology in some of the oaths themselves. Consider the pledge of allegiance. The words "with liberty and justice for all" are a prominent part of the pledge; it is not clear whether the words are meant to refer to an aspiration or to an actual fact about the status quo. In the structure of the sentence, the words sound like a statement about reality, as if the country is already one in which the goal of liberty and justice for all is realized. In pledging allegiance, then, one is not just pledging attachment, but also declaring one's belief in a particular, substantive, controversial conception about the nature of the thing to which one is becoming attached—a conception that is shared, or to be made to be shared, by all citizens. The reality-constituting aspect of the pledge is smuggled in through a mere prepositional phrase at the conclusion; what appears on the surface to be a simple statement of attachment thus serves to impose a particular view about the status quo.

I should emphasize that an attempted act of social unification always entails a kind of delegitimation or even erasure of certain kinds of independence. Marriage is a particular example, and the process occurs differently for men and women. In most of its historical manifestations, the act of marriage merges the wife with the husband but not quite vice versa (she says "obey," he does not; the man and woman are traditionally pronounced "man and wife"; she loses her name and her property, he does not; other aspects of the ceremony and its aftermath make the same point). In religious oaths, unification under a divine order entails a kind of obliteration of the separate self. Something quite similar is at work in oaths of attachment to a nation. All this accounts for the deep, sometimes primal feelings called up by the ceremonies that accompany oaths of attachment.

B

I have not yet explored the question why it is necessary to have people *say* the words that are contained in oaths of attachment. One of the most distinctive features of a compulsory declaration of attachment is that someone is being asked to say something—a perhaps jarring phenomenon in a liberal republic that prizes voluntarism. There are two possible accounts here. On one view, loyalty oaths are in fact closely connected with the voluntaristic aspects of the liberal tradition. Declarations of attachment can be seen as part of an effort to link political obligation with the active consent of the governed.[6] But Nietzsche offers a competing and bleaker perspective on this development, seeing oaths as a form of compulsion amounting to an exercise in social control. On Nietzsche's account, compulsory oaths amount to a kind of physical inscription on the body of the citizen.[7]

However this may be, oaths are frequently parts of public ceremonies in which people are required to make the relevant commitments with or before a large audience. The act of saying something in public operates in practice as a kind of precommitment device. One who has made a public declaration is probably unlikely to violate it, even in private moments.[8] In this respect, an oath operates as a peculiarly public statement of commitment, one that exerts a powerful hold on participants. This outcome may be partly a product of notions of honor and partly a function of the cognitive dissonance produced by saying something (especially in public) and then doing something else. A violation of a public oath seems a distinctive kind of betrayal. But the explanation probably goes deeper. The religious connotations of seemingly secular oaths play a role in giving compliance a kind of moral urgency. There remains a connection of the sacred and the divine with public declarations, and a sense of sacrilege in their violation, even in their most secular forms.[9]

C

The two flag salute decisions of the Supreme Court—*Gobitis*[10] and *Barnette*[11]—represent the classic encounters between the legal system and oaths of attachment.[12] Both cases presented the question whether a state could compel Jehovah's Witnesses to say the pledge of allegiance notwith-

6. *See* D. Herzog, Happy Slaves 186-93 (1989).

7. *See* F. Nietzsche, *The Genealogy of Morals* (1887), in The Birth of Tragedy and The Genealogy of Morals 192-98 (F. Golffing trans. 1956).

8. *See* J. Elster, Ulysses and the Sirens (1981) (discussing precommitment strategies).

9. Compare the discussion of the Constitution as a kind of civil religion in S. Levinson, Constitutional Faith (1988).

10. Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940).

11. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

12. Loyalty oaths also were at issue in Adler v. Board of Educ., 342 U.S. 485 (1952); Elfbrandt v. Russell, 384 U.S. 11 (1966); Keyishian v. Board of Regents, 385 U.S. 589 (1967).

standing their religious objections. In both cases, then, a subgroup of society sought to exempt itself from an attempt to inculcate a form of national unity. In *Gobitis*, Justice Frankfurter wrote the opinion for the Court, explaining that a compulsory daily salute to the American flag did not violate the Constitution. Justice Frankfurter defended the compulsory flag salute as a means of "promot[ing] national cohesion. We are dealing," he continued,

> with an interest inferior to none in the hierarchy of legal values. National unity is the basis of national security. . . . The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. We live by symbols. The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution.[13]

According to Justice Frankfurter, the Court should not disparage government efforts to "[i]nculcat[e] those almost unconscious feelings, which bind men together in comprehending loyalty."[14]

In this opinion, one finds an unambiguous depiction of the compulsory declaration of attachment as a response to the problem of heterogeneity. Indeed, *Gobitis* might well be taken as the only Supreme Court opinion powerfully resonant of Rousseau: intermediate organizations, even religious ones, are seen as threats to national unity. Here, too, one can see how an oath or pledge is valued as a means of creating a unitary tradition, extending across both time and space.

But in spite of these straightforward features, Justice Frankfurter's opinion has a distinctly tortured quality. The term "*unconscious* feelings" fits at best awkwardly with his more rationalistic reference to the citizens' "comprehending loyalty." The word "comprehending" is quite jarring in the context of Justice Frankfurter's tribute to the anti-rationalistic, spiritual character of patriotism. It was probably necessary for him to use the word "comprehending" because of the otherwise extremely unpalatable and potentially totalitarian connotations of the passage—written in 1940, when countries with whom the United States was about to enter hostilities had called up national feelings through self-conscious methods of inculcating patriotic fervor. Notable, too, is Justice Frankfurter's uncharacteristic emphasis on "feelings" throughout this opinion, as well as the opinion's heavily Burkean flavor.

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13. 310 U.S. at 595-96.
14. *Id.* at 600.

In *Barnette*, written just three years after *Gobitis*, the Supreme Court changed its mind, offering a powerful argument on behalf of individual conscience even against national efforts to promote cohesion and unity. The Court's language appeared to be a self-conscious response to the spectacle provided by American adversaries in World War II: "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings."[15]

Justice Frankfurter's dissenting opinion amounts to a self-conscious endorsement of the virtues of ensuring national attachments that transcend ties to intermediate organizations, including religious groups. In an extraordinary personal statement, Frankfurter wrote,

> One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. . . . But as judges we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores.[16]

What is most notable here is that in this formulation, social equality is depicted as a result of disinterest, defined as the absence of ties to groups situated between the individual and the nation. (Consider the reference to the diverse times of arrival in this country, a notorious source of discrimination against Jews and others.) In *Barnette*, Justice Frankfurter—an assimilated Jew, the only dissenter in the case, the author of *Gobitis*, the only Jew on the Court and indeed only the second in its history—voted to uphold the compulsory flag salute statute precisely because of the simultaneous risks to equality and cohesion that, in his view, are posed by heterogeneity. On this account, assimilation into the nation as a whole, and the weakening of other forms of membership, are guarantors of equality and powerful protection against social exclusion. Here it is the Justice for whom social unity is not quite a fact, and hardly part of the natural order, who insists that the oath is permissible.

II

Thus far I have suggested that compulsory declarations of attachment can be understood as a response to the problem of social heterogeneity through an attempted delegitimation or erasure of difference and dissent.

15. 319 U.S. at 641.
16. *Id.* at 646-47.

But sometimes compulsory declarations are a product of something altogether different: the desire to bring about (or explicitly to recognize) differentiation by creating a subcommunity, one that stands in opposition to the dominant group. In such cases, compulsory declarations establish or acknowledge heterogeneity in the face of what seems to be stifling social cohesion. Here the goal is not to erase social difference, but to make it visible.

The clearest examples here involve the creation and setting off of subgroups (for example, fraternal orders, labor unions, racial or women's groups,[17] and religious organizations) so as to establish unified, substantively oriented entities that were formerly nonexistent, delegitimated, or erased by their submergence within a loosely unified, apparently homogeneous culture. Sometimes these groups impose a requirement of an oath of allegiance. The taking of the oath is designed as a foundational event, one that signals the creation or emergence of an independent new entity. In this respect it resembles other ceremonies serving broadly analogous functions, including those involving both birth and death.

In cases of this sort, the oath becomes necessary or useful not when and because it is a lie, but when and because it is an overlooked and suppressed truth. The oath serves as a mechanism both to legitimate and to constitute difference and heterogeneity. The compulsory declaration demarcates separation rather than unification.[18]

This point suggests that the declaration of attachment raises asymmetrical considerations in different settings. Sometimes a compulsory declaration is an effort to suppress differences on the part of the socially marginalized or despised (Communists, immigrants, atheists, members of dissident religious organizations, Southern rebels, and so forth); sometimes it is an effort to recognize or legitimate differences on their part. Indeed, an oath might be required in an effort to recognize or reestablish an old tradition whose existence and meaning are in jeopardy. Alternatively, it might represent an effort to recognize and create a new tradition that is a self-conscious deviation from the past.

In some cases, then, oaths serve to conceal the fact of heterogeneity, and by virtue of their necessity reveal that social unity is fragile or a lie; but in other cases they disclose the previously invisible but true fact of heterogeneity, one that had been suppressed by the existence of social silence. In these latter cases the oath brings out into the open a set of alliances and enmities that had previously been overlooked. In the former cases, the

17. Notably, however, oaths do not appear to be a source of solidarity among women's groups; I have been able to find no examples of oath-making among such groups after an admittedly casual survey. The fact—if it is a fact—that oaths characterize male but not female groups may have interesting implications for oaths in general; I cannot discuss them in this space.

18. In one sense this is true of the oath in the national context as well. Unification of the nation means a setting off of the nation from other entities and people.

oath often has a defensive, preventative character; in the latter, the celebratory, joyous, even explosive functions of the oath and its various surrogates are especially conspicuous.

III

As an effort to create a kind of unity across heterogeneous groups in society, compulsory declarations are connected to familiar notions of citizenship and membership. Hegel, for example, wrote that in a pluralistic nation, it is necessary to have a king.[19] In Hegel's conception, the king is entirely or almost entirely nonsubstantive. He is a symbol of unity that cuts across separateness and differentiation; and he symbolizes unity itself, not anything in particular. In this respect, the king serves some of the same functions as the flag. (One can in this regard distinguish between oaths that have substantive functions and those that do not.)

In these circumstances, the compulsory declaration connects past, present, and future, and also unites people separated in geographical terms. There is both a "vertical" component in the attempt at linkage, extending over time, and a "horizontal" component, extending across space. (Acts of altruism—encompassing both duty and fellow-feeling[20]—are often produced or fueled by perceptions of linkage of this sort.) Through the effort to unite past, present, and future, the compulsory declaration is closely connected with the problem of human mortality. The individual who declares attachment obtains an alliance with a community extending far into the future—all the more so with oaths that have theological connotations.

The most striking example of the temporal extension of oaths is that of the Israeli soldiers who, upon entering the Army, must walk to the top of Mount Masada—where Jews had committed suicide so as to avoid being slaughtered by the Romans—and give an oath of allegiance. In this respect, oaths connect the viewer and speaker with those who have come before and those who will come after. Here one can see the relationship between oath-taking and membership in a community that extends over time. Moreover, at least some oaths make explicit references to both birth and death.

But the work of unification in the face of heterogeneity is not just interpersonal; it is intrapersonal as well. Symbols and rituals of this sort have the emotional force they do, not only because they connect each person with others now living, and not only because they provide continuity with people long dead, but also because they help to provide some continuity over a lifetime. The problem of intrapersonal heterogeneity arises as a result of the large number of possibly different "selves" extending across a

19. *See* G.W.F. Hegel, The Philosophy of Right 180-90 (Knox trans. 1952); *see also* Yack, The Rationality of Hegel's Concept of Monarchy, 74 Am. Pol. Sci. Rev. 709 (1980).

20. *See* Beyond Self-Interest (J. Mansbridge ed. forthcoming 1990).

span of years. Oaths of attachment and similar ceremonies sometimes help provide a kind of anchor. In this sense as well, the problem of human mortality is very much in the foreground here. The controversies introduced by compulsory oaths of attachment might be seen as countless local examples of disputes over Burkean understandings of continuity, membership, and community.

IV. Conclusion

Oaths of attachment are most naturally understood as a response to the problems of membership and citizenship in the context of social heterogeneity. Sometimes the purpose of oaths is to delegitimate heterogeneity by asserting unity. When this is so, the very existence of the oath tends, ironically, to confirm the existence of the problem. Sometimes the purpose of oaths is to acknowledge, ratify, or create heterogeneity by asserting that the claim of unity is false. Here the oath is an assertion of a previously unrecognized truth.

In any case, the existence of a unitary and worthy tradition, connecting previous as well as existing members of a community, is the issue to which oaths of attachments are an attempted response. The conventional modern antipathy to oaths of attachment—invoking liberal beliefs in individual immunity from communal ties—tends to be too cavalier about the various functions that the oaths perform.

Compulsory oaths of attachment have a bad name among many of us, and for quite good reasons; but it would not be easy to live in a world without them, or at least without surrogates doing some of the social work that they do.