

Loyalty by Oath

An Essay on the Extortion of Love

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Pendle Hill Pamphlet 94

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ISBN: 978-0-87574-896-2
ebook design by the [Quaker Heron Press](#) – 2014

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Nothing is more mysterious than loyalty. To be loyal is to love, to be true to something. Who knows what prompts the movings of the spirit? Who knows what makes a man ready to lay down his life? If a man were able to know even himself, and the frame of his own love and loyalty, he would know more than most of us do.

The times are dangerous. We are engaged in a great world war, a war that tests the foundations of our society, economy, and government, against a power that threatens values we believe are precious. Our competence to deal with the forces that play upon us never seemed less certain. The risks we run in the name of freedom never seemed more grave. We are held together by a common view of man and how he ought to live—or else we are not held together at all. In such times it is easy to understand our passion to know whether we can trust our fellow citizens.

Why not ask people what they believe in, if you cannot trust them unless you know? Why not make people say what they do not believe in, if our safety requires that they will not follow the faith that belongs to our enemies?

So we come to oaths. They are as old as social organization because they are directed to a problem that men have always faced. Some of the best men in the Old Testament swore them. We have them preserved among the most ancient surviving statutes of England. The oath of office for the President of the United States is in the Constitution itself.

Oaths are old; they have been seized upon by men trying to meet the uncertainties that arise whenever men must trust each other. They have been simple and elaborate, long and short, promises to believe, and promises to disbelieve. They have been used by kings and robbers, democrats and oligarchs, societies open and secret.

But they have never worked. They have never guaranteed loyalty, or protected those who demanded them from disloyalty. They are contrary to the nature of man and to that view of the good society on which our Republic stands. This, I shall try to show.

First we ought to look at some historical examples.

The Repetitions of History

Henry VIII had Parliament pass “An Act for the Establishment of the King’s Succession.” This act validated his marriage with Anne Boleyn and limited the heirs to the crown to his issue by her. The act prescribed an oath. The oath was to cause Henry’s subjects to renounce their belief in the Roman Catholic Church and its hierarchy, to renounce their allegiance to the children of his first wife, and to guarantee their allegiance to whatever should come of his second marriage. Englishmen had adhered to the Church at Rome for many hundreds of years, and had fought over the laws of succession for at least as many. The oath was supposed to bring about an abrupt and radical shift in men’s thoughts and loyalties. No ordinary declaration could be expected to do so much. The oath is

extraordinary, worthy of study in its original text and spelling:

Ye shall swere to beare faith truth and obedience alonely to the Kynges Majestye and to his heiress of his body or his moost dere and entierly belovyd lauffull wyfe Quene Anne begotten and to be begotten. And further to the heires of oure said Sovereign Lorde accordyng to the lymytacion in the Statute made for suretie of his succession in the crowne of this Realme mencioned and conteyned, and not to any other within this Realme nor foreyn auctorite or Potentate; And in case any othe be made or bathe be made by you to any persone or persones, that then ye do repute the same as vayne and adnihillate; and that to your connyng wytte and utter moste of your power without gyle fraude or other undue meane you shall observe kepe mayntene and defende the saide acte of successyon, and all the hole affectes and contentes thereof, and all other actes and statutes made yn confirmacion or for execucion of the same or of any thyng therein conteyned; and this ye shall do anenst all manner of persones of what estate dignyte degree or condicion so ever they be, and in no wyse do or attempte, nor to your power suffre to be done or attemptid, directly or indirectly any thinge or thinges prively or appartlye to the lette hindrance damage or derogacion thereof or of any parte of the same by any maner of meanes or for any maner of pretence; so helpe you God all Sayntes and the Holye Evangelystes.

Having thus fixed the succession, and assured the loyalty of his subjects, Henry proceeded within two years to do away with Anne Boleyn. What now? Nothing simpler. He amended the acts, the oath, and his subjects' loyalty by changing "Quene Anne" to read "Quene Jane."

Several aspects of Henry's oath deserve to be noted, because it contains all the elements of a "loyalty oath." A loyalty oath is not alone a declaration of an intention to fulfill some duty or keep some promise; it is also a disavowal, an agreement to be not-loyal to some power or opinion that the sovereign does not like. One must to the "utter moste" of his power, and with his "connyng wytte" promise "faith trust and obedyence" to Henry; he must also deny allegiance to "any other within this Realme" and "any foreyn auctorite or Potentate." If he has previously made other promises, he must forswear them. He must call upon the most frightening and potent forces to witness his declaration, and expect the most grievous penalties, both sacred and secular, if to the faith thus professed he shall be false in any particular.

The Powers of Darkness

Despite the precautions they took to clothe the ceremony of swearing with the trappings of belief and superstition, the old monarchs did not leave the truthfulness of swearers to God alone. Henry VIII made the penalty for false swearing the same as that for treason. He had not only to contend with the possibility that God would not enforce the oath, but with his doubts about the formulation of his incantation. The Papists, who continued secretly to give their allegiance

to the Church at Rome, propounded doctrines of equivocation. They argued that one could swear the King's oaths, including the elaborate promises of disloyalty to the Pope, provided one did so in a proper frame of mind. If one were a true Catholic the Pope would forgive false swearing, since the King had usurped an office that should have been the Pope's to bestow. What was said to the King was not important. What counted was what was said to God in secret.

In 1672 an "Act" was passed "for preventing dangers which may happen from Popish Recusants." Since the Protestants believed that the doctrine of the incarnation of the body and blood during the mass was essential to Catholic belief, the new acts aimed at this belief. By 1678, the formula for testing disbelief had become even more elaborate. In part, it read:

I A.B. doe solemnly and sincerely in the presence of God professe testifie and declare That I doe believe that in the Sacrament of the Lords Supper there is not any transubstantiation of the Elements of Bread and Wine into the Body and Blood of Christ at or after the Consecration thereof by any person whatsoever; And that the Invocation or Adoration of the Virgin Mary or any other Saint, and the sacrifice of the Mass as they are now used in the Church of Rome are superstitious and idolatrous.

And I doe solemnly in the presence of God professe testifie and declare That I doe make this Declaration and every part thereof in the plaine and ordinary sence

of the Words read unto me as they are commonly understood by English Protestants without any Evasion, Equivocation or Mentall Reservation whatsoever and without any Dispensation already granted me for this purpose by the Pope or any other Authority or Person whatsoever or without any hope of any such Dispensation from any person or authority or without thinking that I am or can be acquitted before God or Man or absolved of this Declaration or any part thereof although the Pope or any other Person or Persons or Power whatsoever should dispence with or annull the same, or declare that it was null and void from the beginning.

It was this kind of oath that George Fox and William Penn refused to take. They, and hundreds of other Quakers, went to jail because they would not swear, even though they believed the statements about the transubstantiation the oath would have required them to make. They would not be compelled. They declined to promise to believe tomorrow even what they believed today. They had given themselves wholly to the leading of Truth, as revealed to them through worship and waiting for the spirit of God. If their understanding of the will of God should direct them in the future to accept the doctrines of the Catholic fathers, no promise to any man must bind them. The higher loyalty to God prohibited their unreserved loyalty to any man.

But chiefly, they would not be compelled. For them, God did not give man the right to extract a promise by force. Force was brought against them, but they persevered. In the end, because they were unafraid, and their cause appealed

to the sense of justice in their fellow Englishmen, the oppressive laws were repealed.

In Los Angeles in 1948, the City passed an ordinance that is a very model of a full-scale loyalty oath. It made the swearer state:

...I do not advise, advocate or teach, and have not within the period beginning five (5) years prior to the effective date of the ordinance requiring the making of this oath or affirmation, advised, advocated, or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California and I am not now and have not, within said period, been or become a member of or affiliated with any group, society, association, organization or party which advises, advocates, etc., and further, I will not, while I am in the service of the City of Los Angeles, advise, advocate, or teach, or be or become a member of or affiliated with any group, association, society, organization or party which advises, advocates, or teaches, or has within said period, advised, advocated or taught, the overthrow by force, violence, or other unlawful means, of the Government of the United States of America or of the State of California...

When the Los Angeles oath was enacted, a number of employees declined to sign it. Fifteen of the objectors carried their opposition to the U.S. Supreme Court. There the oath was upheld as within the Constitution.

In judging the validity of the oath, the Court had to answer some hard questions.

Query: What if an employee had not known the organization he belonged to had criminal purposes? The Court decided ignorant membership could not be penalized; but it decided that “knowing membership” was understood to be the meaning of the oath, even if the ordinance didn’t say so.

Query: Wasn’t the ordinance an *ex post facto* law—one that made some past act a crime, even though it had not been a crime when committed? No, said the Court, because a State statute enacted in 1941 had made it criminal to “advise, teach or advocate violent overthrow,” so the oath only made people swear they had not been doing what would have been wrong for them to do when they did it.

Query: Doesn’t an employee’s work have to put him into a position where he might actually endanger the State by his “advising, advocating, or teaching?” Doesn’t some intent to act, or some incitement, or at least some possibility of acting dangerously have to exist before the State can exact from its employees such an oath? No, said the Court; the oath was merely one part of a permissible set of “qualifications” for personnel hired by the government. Every jurisdiction has the right to establish such qualifications.

Justices Frankfurter, Black and Douglas dissented from these judgments, but the majority subscribed to them. In California, the parade of oaths was on.

What makes King Henry and the Californians believe that these words, extracted from the swearers under the necessity of getting and keeping their livelihoods, will improve the loyalty and trustworthiness of their employees? What they want is clear. They want the love of their subjects; they want to be sure of the future.

Circumstances force them to need love and fidelity: Henry is bringing off a revolution, and the Californians are up against a “foreyn Potentate” who justifies any means by the end. Both Papists and Communists have been known to plot the violent overthrow of the established government; if untrustworthy or ill-willed men can reach positions of power, Henry’s revolution, or the government of California, is threatened.

What is wanted is honesty, trustworthiness and love. Henry VIII sought and the state of California seeks to elicit them by invoking fear. Henry thought to do it with his phrase “So helpe you God all Sayntes and Holy Evangelystes.” The current fashion is to use the threat of penalties for perjury. The guarantee of the truth of the statements sworn rests on the dread or fear in which these consequences of false swearing are held by the swearers.

How is it with people? Do threats make them into lovers? Does fear induce fidelity?

The continued use of oaths is evidence that men need to trust each other, and that enough men tell lies and break their promises to make all men suspect. It is also evidence that men insist on believing in the magic of fear, despite the steady failure of fear to promote trust or truth.

What is truth? It is, at the least, the description of reality. Some reality is not too hard to describe in terms acceptable to most of us. These are not the truths about men, for men are various and complicated. Men must live in the midst of mystery about themselves and their fellows, for the reality of men is never more than partially described. Our senses serve us fairly well when we seek to discern the shapes and forms of objects; they can even be relied upon to depict the course of human events. But our faculties for perceiving what men are, and what makes them so, are imperfect; yet men must act, and they must act in doubt.

Curing Doubt: The Lure of Magic

It was the passionate need to know what is not known that led to science; the passionate desire to know what cannot be known that led to an elder sister of science: magic. Nobody escapes the wish to wield a magic wand, and everybody wants to cast some spells. As long as we can recognize these wishes as normal, but irrational, we don't get hurt. When too many of us begin to think that magic works, truth comes into disrepute.

It is not excessive to equate the wish to guarantee loyalty by oaths with a belief in magic. The resemblance between an oath and casting a spell is unmistakable. The man who makes another swear a loyalty oath is trying to eliminate uncertainty. If he could open up men's heads and read their secret minds, if he could test them against all the possible blandishments and pressures they might ever encounter, then he might judge them so well he would never be surprised or disappointed. But he cannot. To deal with this

real fact, he turns to unreality. He uses an incantation. By making another man perform a magic ritual, he believes he has made sure of what that man will do, in what he will have faith, and whom he will love. Because men can be made to march and work and dance and crawl by fear, the oath invokes the most fearsome force available. If men can be made to fear what will happen to them when they tell lies, or go back on their promises, then men can be made to swear truly, and to keep their word.

The ancient oaths called mostly on the names of gods to make them fearsome. The Bible and other books of religious doctrine refer to the awe and dread in which the name of God must be regarded. To take the name of the Lord in vain was to attach the name of God to something which was not true. Since God sees in secret and knows what is in the heart, a talent for deceiving men cannot make the swearer safe from his God. If the swearer believes that God will know and will punish, and if the punishment is certain and eternal, then the fear of ultimate justice will transcend the fear of immediate inconvenience and the swearing will invoke a force no mortal can ignore. In our day God is no longer widely feared and the men who would awe their fellows enough to make the word of the oath take flesh have had to turn to other forces.

The Fear of Justice

In our time, the appeal is only to the threat of prosecution for perjury. Sworn testimony, or an affidavit sworn or affirmed, is considered legally to be a statement under special circumstances. A person, according to this notion,

may not be trapped for his lies in ordinary conversation. But you can catch him once he declares he is telling the truth, and speaks the name of the State. He can then be penalized for speaking falsely.

To say that oaths have no power unless men are afraid of the name of God or the persistence of policemen is not to say oaths have no power. It is common in primitive societies that names are confused with things. In Australia, as this is being written, a young man who is not sick is reported to be dying. He says he is dying because of the death-words spoken by several old women at a ritual among an aboriginal tribe of which he is a former member. The assurances of doctors that there is nothing wrong with him have had no effect. He believes in the power of the words. His determination to die is too strong for the non-magical words of the scientists to dispel.

America is not a primitive society. Our priests of words work with more sophistication. They are to be found in advertising agencies; they are unholy ghosts worshipped by men who seek political office without knowing what to say. They are specialists in social science, who use pictures of pretty bosoms to attach the lusts of customers to their clients' products. They use words to persuade by emotion and misrepresentation.

Few Americans can be found who think God punishes with His thunderbolts those who take His name in vain, but many of us believe in incantations just as magical and unverified by experience. We still take words for things, letting words discolor the world until we cannot see it as it

is. The legislators who enact loyalty oaths do so when they claim oaths have power to secure the state against treason, or at least to provide the machinery for punishing traitors. The Senator who talks about “Fifth Amendment Communists” may not be fooled by these deceptive words, but many who hear them may be persuaded to equate Constitutional protection for the accused with proof of guilt. The state that kills a murderer in the name of rehabilitation, the statesman who makes peace by dropping bombs, the government officers who try to improve national security by making civil servants feel insecure, and the manufacturer who promotes rugged individualism by selling his products solely to the government, have all confused the words with events, and organize their lives by magic and illusion.

Let us see what events can tell us about the effectiveness of loyalty oaths in protecting the state. In Pennsylvania since 1952 every employee of every level of government has had to subscribe to the following oath:

I ____ do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth (of Pennsylvania) with fidelity.

And I do further swear (or affirm) that I do not advocate nor am I knowingly a member of any organization that advocates the overthrow of the government of the United States or of this Commonwealth by force or violence or other unconstitutional means or seeking by force or violence

to deny other persons their rights under the Constitution of the United States or of this Commonwealth.

And I do further swear (or affirm) that I will not so advocate nor will I knowingly become a member of such organization during the period I am an employee of the Commonwealth of Pennsylvania (or political subdivision thereof).¹

Any person employed by the Commonwealth or any political subdivision thereof at the time of the enactment of this oath who refused to execute it was required by the Act to be discharged “immediately.” Several were. They did not seem to be subversive.

It is important to understand what this oath (and the others like it in Illinois, New York, California, Oklahoma, and elsewhere) demands of the signers. What it demands, and all that it demands, is that the swearer must not speak in favor of, nor belong to any organization that plans or advocates, the commission of certain crimes. It is everywhere a crime to overthrow the government by force or violence. It is either a crime to *advocate* the forceful overthrow of the government, or the oath is unconstitutional. (The U.S. Supreme Court seems to have decided that such advocacy *is* a crime.)

If the Commonwealth of Pennsylvania had found out some dangerous persons by its oath, the advocates of protecting the State by extorting oaths from people who want jobs would have a case. But, aside from the few persons who

resigned when the oath was first passed (whom we shall consult shortly) nobody has been discharged from his job for swearing falsely, and nobody has been prosecuted for perjury.

The Failure of Oaths

Oaths are thought to work because men are thought to be greatly afraid of God or policemen. Oaths are intended to guarantee promises, to make men truthful, or to test disbelief. Both logic and history show that oaths do not accomplish these purposes.

Some men will not tell lies because they love the truth. But making men swear oaths does not reveal their love of truth. Some men fear God, but making men swear oaths does not disclose their fear of God. Some men fear to be found out in their lies. The act of swearing does not show how much the penalties for perjury frighten the swearer.

Whatever the fear of prosecution for perjury, it is a fact that *in all the long record of loyalty-oath swearing, there is not a single case of judicial conviction for false swearing.*² Men who do not know this may fear prosecution for perjury; men who do not know this may take comfort in their belief that the threat of penalty for perjury is effective. But in both instances their beliefs are founded only upon their ignorance.

If no one is ever prosecuted for false loyalty-oath swearing, then the threat of prosecution for perjury is empty. If neither thunderbolts nor policemen scare people, the loyalty

oath cannot produce the intended results. The God-fearing and law-abiding have the habit of truth. The Godless and lawless may be habituated to lies. The oath cannot reform the one into the other.

The Unintended Consequences

To say that loyalty oaths do not accomplish the results intended is not to say they accomplish nothing. What they bring about are dangers to free men and the Republic.

The dangers are these: That they will make men into liars; that they will make men believe in unreality and give them the illusion of security; that they will corrupt the doctrine of the presumption of innocence; that they will make men timid; that they will drive some honest men from public service; that they will establish patterns of conformity that invite the demagogue and encourage the totalitarian.

Pierre Corneille said 300 years ago in *Le Menteur*, “A liar is always lavish of oaths.”

William Penn said at the head of his *Treatise of Oaths* (1675):

...when men grew corrupt, they distrusted each other, and had recourse to extraordinary ways to awe one another into truth-speaking, as a remedy against falsehood; else, what need had there been of an Oath, or any extraordinary way of evidence, when every syllable was freighted with truth and integrity? ...if swearing came in by perfidiousness, distrust,

dissimulation and falsehood, it is most just that it ought to go out with them; ...Honesty needs neither whip nor spur; she is security for herself; and men of virtue will speak truth without extortings; for oaths are a sort of racks to the mind, altogether useless where integrity sways.

No one can deny that oaths and protestations of truth-telling are likely to arise when lies are the common habit.

Quakers from the beginning have taken the Bible's word on swearing as their guide. "Let your Yea be Yea, and your Nay, Nay..." said Jesus, and since Friends were determined to try to live what Jesus had described as the good life, they felt they had to speak truly at all times. They wanted no double standard of truth. To set a special time for telling truth gave cause for suspecting that at other times one felt not equally responsible to speak the truth. If I swear now to testify truly, what will you believe, they asked, when I do not swear? So that they themselves could never think they need have a lesser regard for truth at any time, Penn and Fox and most Quakers since have insisted on not swearing: every time was a time for truth.

The early Quakers also took the Biblical injunction to "swear not at all" with equal seriousness. They thought they could get around the problem by using a different formula. When Penn established the government of Pennsylvania he eliminated the requirement of oaths, and permitted those called on for a statement to *affirm*. The custom spread. Now, in all oaths of office and public ceremonies in the United States, the declarer can "affirm"

instead of “swear.” He can accept the penalties for perjury and avoid saying the name of God. For Penn and most Friends this magical revision has relieved them of violating the Bible’s code.

To me, “affirming” is another name for the same act. If one of the troubles with oath-taking is that it sets aside a special time for truth-telling, then the words that make the occasion special are not significant. To use the same words as the oath, substituting merely “affirm” for “swear,” is to accept the doctrine of word-magic. What the honest man wants to say is, “I try to tell the truth at all times. You can expect me to try to do so now.” What he wants to avoid is, “Now, because of the fear of perjury, I WILL tell the truth, but at some other time you can’t trust me.”

The man who establishes the habit of truth is the man who can be expected to speak truly. The man who feels a lesser obligation to speak truly, unless he faces some special penalty, has not acquired the habit of speaking the truth. This is why the habit of oaths endangers the habit of truth-telling. This is why Penn thinks oaths and perfidiousness “ought to go out” together.

The Illusion of Security

“A loyal American,” I have been told, “has no hesitation about stating his loyalty; anyone that doesn’t want to take one of these oaths must be disloyal.”

Loyalty oaths manufacture for a great many people the illusion of security: If all the employees of California have

taken a loyalty oath, *they must be loyal*. Such an idea can come only from a misunderstanding of loyalty and a misunderstanding of why people take loyalty oaths.

Loyalty is a matter of love. Love is volunteered; it cannot be bidden. By their nature loyalty oaths depend on fear and force. Unwilling people sign them because they have to, in order to keep their jobs or in order to avoid the suspicions of their neighbors.

1864. Before us stand a widow and her child. The widow is hungry. So is her child. We say, “If you will swear that you are true to the Union, and are not now and have never been loyal to the Confederacy, we shall feed you.” What will the mother say? Suppose she is a Confederate sympathizer; will she starve her child?

People who are poor and hungry should be fed because they are people. They should not be degraded as the price of their meals. They should not be tempted to lie. At one time during the American Civil War just such an oath was required of widows and orphans with every meal ticket. One could not declare one’s loyalty today and expect the declaration to be good until tomorrow. Tomorrow was another day, and before breakfast, another loyalty oath.

People who are hungry or who want to work or keep their positions are vulnerable. They can be made to swear loyalty oaths. What is proved by this is that they want to eat, or work, or keep their positions. Their loyalty is not proved. The men who think they have proved the loyalty of all the employees of the State of California by making every

employee take an oath to keep his job are deceiving themselves.

Janet Gray used to be four years old. She was, and is, beautiful. She was so lovely that art students at John Muir College in Pasadena begged her to pose for their life class. After Janet had spent several hours before the class, the professor told her mother she would be paid for posing. Gladys Gray, Janet's mother, went to the accounting office to pick up the check; there she was told she could have the money as soon as Janet had taken the Loyalty Oath. Gladys explained that Janet was four. "Oh, that's all right," explained the clerk, "you can take it for her." Now Gladys was a Quaker; she was offended by the oath on principle, but she was offended by it even more because she loved the truth. "How," she asked, "can I swear about my daughter's behavior of the last five years, when she is only four years old"?

Janet could not swear, since she was a minor and not legally responsible. Gladys could not swear because she could not compromise her principles, nor could she attest what she did not know. The school system could not give any money to anybody who could not swear. California still owes Janet \$3.75. The State has been secured against paying its lawful debts. It is hard to see how it has thus been protected against foreign agents.

But what about the people who like to take loyalty oaths? Some men say they enjoy every opportunity to make a public declaration of their loyalty. For them, the loyalty oath is not the creator of the love of country; it may be a

chance to speak that love, but if it is, it is a strange tongue. The language of love is affirmative. What lover sighs to his beloved, “I love you, and always will and hate those other people, and always will”?

Love does not feed upon suspicion; it grows strong on trust. Those who insist that they would be happy to take a loyalty oath every morning before breakfast must not know what they are doing. They are agreeing to measure their loyalty and their affection by their protestations. Loyalty to country can be judged by deeds: words can never make it so. “That love is merchandized whose rich esteeming the owner’s tongue doth publish everywhere.” (Shakespeare, Sonnet 102) The secret agent who plots the overthrow of the government will be eager to merchandize his honor and his faithfulness and to disguise his disloyalty with oaths.

Silence is Guilt

The test oath strikes at a principle of law that is the heart of the American system of justice. We have always said: a man is innocent of any crime unless he is proved guilty of it. We have always held proof to be more than accusation.

The California oath, for instance, requires the swearer to say “I do not advocate the overthrow of the Government of the United States of America by force, violence, or other unlawful means...”

If any person refuses to make this declaration, it will be claimed that he must be guilty of advocating the violent overthrow of the government. He must, to guarantee that he

will not be regarded as a criminal, proclaim his innocence of the crime. But no crime has been proved. No crime has even been charged. No evidence has been adduced. No proceeding occurs.

A notable example of this reasoning is found in the argument of the County Counsel of Los Angeles, before the Supreme Court of California on 13 June 1956. The case involved two churches who refused to make the affidavit of loyalty required under California law since 1953 for churches and other non-profit agencies claiming tax exemption. Since they refused to swear they were not disloyal, these churches had been taxed. They were suing for the return of their tax payments on grounds that the law was unconstitutional and violated freedom of conscience and separation of church and state. Mr. Boller, for the County Counsel said, "...here we have the churches, certain of them, and they alone of all the (tax-exempt) organizations urging the right to advocate the overthrow of government by force and violence."

THE CHIEF JUSTICE: "Do they urge the right to make that application? There isn't any finding that they do."

MR BOLLER: "They are unwilling to declare that they do not, and by the very refusal to show themselves, prejudice their standing and raise the doubt."

Later Mr. Boller continued, "...when they refuse to take this particular oath it is the occasion that they are asserting a right and a privilege to refrain, and that very fact indicates the assertion of a principle, a contention by them of a right

to refrain and of a right to do the thing which they refrain from disavowing. We submit that no good American would desire the overthrow of the government by force and violence. That, of course, is the Communist aim, and these churches are here in court to establish the right to advocate.”

Mr. Boller may be right when he says no good American would desire the overthrow of the government by force and violence. No good American ought to desire the overthrow of the presumption of innocence, either. Mr. Boller takes a short-cut; he would probably be as distressed as anyone else if the short-cut became a common path. It is easy to say, “They won’t swear they do not want to overthrow the government; therefore they must want to overthrow the government.” You don’t have to have any investigators; you don’t have to do any police work. You save time and money.

Exactly the same reasoning might be applied to the solution of any crime. “He couldn’t prove he didn’t commit the murder; therefore he must have killed the man.” It would always be easy to convict *someone* for every crime committed, if all the policeman had to do was find someone who would have trouble proving his innocence.

But the American system was not designed to make the policeman’s lot a happy one. It was designed to protect the citizen from governmental abuse and persecution. The policeman has to prove his case; the accused has to prove nothing—he need not speak at all. The presumption of innocence is a keystone in the arch of justice, without

which the arch will collapse. Loyalty oaths are chipping away the keystone.

Driving Out the Conscientious

What happens when a loyalty oath statute is enacted? We have seen that it catches no subversives. It catches queer folk who have conscientious reasons for refusing to make the statements required of them.

When the Pechan Act became law in Pennsylvania in 1952, the oath reproduced above was presented to every governmental employee within the Commonwealth. Three teachers, a social worker, three doctors, and a nurse refused to make the declaration, and were discharged. Their comments are instructive:

– Helen Corsan, social worker: “...During the long legislative struggle over this Bill, many teachers have been afraid to voice their opposition to it for fear of being suspected of subversion...the Bill is producing, among many, a timid conformity instead of the free thinking and discussion on which the stability and progress of our nation rests...for these reasons I cannot conscientiously support this Act...”

– Paul Goulding, high school teacher: “...In spirit, however, the Oath is one of several instruments by which we are being ‘persuaded’ that totalitarian regimentation must be met by totalitarian, 100 percent ‘Americanism.’ In a day when the impulse to conform, to acquiesce, to go along, is the instrument used in subjecting men to

dictatorial rule throughout the world, nonconformity—with a religious motivation—becomes a means of preserving the dignity of man. Although I am neither communist nor subversive, I must say `No' to the spirit of the Oath...”

– Eugene Mercer, grade school teacher: “...I have been very much tempted to keep my teaching job...However, it is more important to withhold my support from this law...This law helps create an atmosphere of mistrust among us, inhibits complete freedom of discussion...”

– Robert Repas, teacher: “...Limitations upon the right to think and say are thought control methods contrary to a democratic society...The intent behind this kind of legislation should also be taken into consideration. Individuals and organizations most apt to be supporting it in many cases have been leading opponents of any effort made by members of the teaching profession to examine critically our political and economic institutions...”

– Doctor Julina Gylfe and intern Doctor Anna Chirico: They objected to being “put under compulsion to do a vain thing.”

– Doctor Donald Wohlrabe, intern: Quoted Benjamin Franklin that “the people who give up personal liberty for a little safety deserve neither liberty nor safety.”

– Mrs. John Fitzgerald, nurse: “...I believe the first duty of every American citizen is to protect himself and his country in all the liberties we have. If I were to condone the principle of the extorted loyalty oath I would be a very poor

citizen indeed...I would rather...be dismissed from my employment as a servant of the sick..."

What kind of people were these? Apparently they were not "subversive." Said the Danville (Pennsylvania) *Morning News*, on April 1, 1952, commenting upon the case of Eugene Mercer, "His loyalty to the United States, and the possibility of his belonging to a subversive group was not in question at any time...Members of the Board felt he was an excellent teacher, but the law...left them no choice but to dismiss him." The Board of Trustees of the hospital where the three non-signers quoted worked discharged them only after being advised by the city solicitor that it "had no choice." The minutes of the meeting of the Board "expressed regret at having to dismiss those persons who failed to execute" the oath. The statements of those fired indicate they were concerned for personal liberty, and for the effect of the oath upon the exercise of freedom by their colleagues.

Lessons in Timidity

We can disregard those whose consciences made them refuse the oath. They are, and will remain, free. We can likewise disregard other conscientious public employees who subscribed to the oath with protests, at some cost to their dignity. That these men and women did not choose to do battle on this issue leaves them still able to recognize and resist further encroachments upon their freedom. The State will not be endangered by them. But the State will be endangered by those others who were warned by the public

debate and private pressure to be careful, to keep quiet, and to act circumspectly.

The views of these careful and quiet ones are described by a brave member of their tribe, Senator John H. Dent, Minority Leader in the Senate of the Commonwealth of Pennsylvania, during debate on the Pechan Bill:

Mr. President, I would be derelict in my duties to the Democratic Party if I did not vote for this piece of legislation today. I agree in principle and in fact with statements...[of opponents of the bill.] This legislation should not be before us today...I cannot permit my party to be further stigmatized as a party friendly to un-American activities...[My] vote in 1945...[against 'removing the communists from the ballot by legislative act'] was vindicated, because it was declared unconstitutional, but all the newspapers and the people in my community, who felt that they were doing what they thought was right, burned me in effigy upon my front lawn and, although I was characterized as a Red and a near Red or a 'pink,' or whatever you want to call it, there was never an apology made to my family, there was never a word of retraction made after the bill was declared unconstitutional. So, ...in the face of that injustice, in fairness to my family, I will vote for this legislation... We are living in a day when men will hide behind the decent emblem of patriotism to do things that they would not do openly, but as a leader of my party I must subscribe to the days that we live in...Mr. President, I will vote for this measure because the injustices of the day demand me to vote for it.

Senator Dent was not brave enough to vote against the Bill, but he was brave enough to admit that he was less than free. Not many were that brave.

How many people who work for the Commonwealth have been encouraged in the habit of timidity? How far has the erosion of character proceeded? How many otherwise loyal and faithful public servants have now learned to observe injustice in silence or even to cast their open vote for it? How ready are the quiet and careful ones to acquiesce in serious wrongs? How have we now prepared for the demagogue?

As a motion-picture producer remarked on the blacklist in the entertainment industry, "I am sorry for the people who are kept out of jobs by the blacklist. I am sorrier for the rest of us who are still in our jobs: we will be careful what we join; we will be suspicious of our friends; we will watch our words. For every one fired, the blacklist has made ninety-nine others give up some of their liberty."

Preparation for Totalitarianism

There is no way to measure the cost to our society of the practice of seeking loyalty by extortion. What we can see is that the State has grown in power. Under the guise of protecting the nation against a foreign enemy, whose agents among us are feared, the State has come within the last ten years to possess machinery that can be described only, with Penn, as a "rack to the mind."

Many States, and the Federal Government, now have the legal right to demand that citizens in government employment, and a great company of others, tell about their friends, their political interests, what organizations they have belonged to, the publications they read, and what they intend to do in regard to such matters in the future. Is the list shocking? It is more shocking that the list sounds now quite commonplace. In a single decade we have lost so much of our determination to keep the State in its proper place, we are no longer surprised to find powers in the hands of public officials that would have caused a wild outcry only a generation ago.

The accumulation of powers by the State has a momentum of its own, an inevitable effect of the forces that generated the effort to get the powers in the first place. California is a model exhibit.

– In 1948 the City of Los Angeles protected itself against subversive infiltration of high places with a loyalty oath.

– In 1950, the State University Board of Regents, to head off a legislative investigation and assure its appropriations, prescribed a loyalty oath for the faculty as part of the contract of employment. The faculty resisted this oath, because it singled them out as the only employees suspected of subversion, and undercut the tenure they had believed had the force of law. Regardless of protests, the Regents maintained the loyalty oath contract. Some professors declined to execute the oath and some of this group carried the battle to the courts.

– When it became clear in 1951 that the professors would win this battle (as ultimately they did) Mr. Harold Levering, a state legislator from Los Angeles, proposed that all employees in all State and political subdivisions, including all teachers in the public schools and colleges, be required to take the oath. The Legislature gave this oath a fictional relationship to national security by describing each such employee as a civil-defense worker: civil-defense workers must be loyal, and how better to assure their loyalty than by getting them to take a loyalty oath? Though extending the oath to all employees dealt with the objection that the University of California faculty had been subjected to discriminatory imposition of the oath, Mr. Levering and others felt they would be safer from judicial interference if the oath were made a part of the California Constitution. In California the Constitution can be amended at any State election. Such a measure was added to the ballot for 1952 and passed by a vote of two to one.

– Persons who spoke against the proposed amendment were characterized as suspicious or guilty of disloyalty. This novel doctrine of disloyalty-by-opposition-to-proposed-legislation was reinforced in 1954 by the issue of the report of the State Senate Committee on Education. The report purported to describe the struggle for loyalty in California: it listed as opposed to loyalty many of those who had opposed loyalty oaths during the previous campaign, and implied that only Communists or the dupes of Communists could be against the loyalty oath program.

– In 1953 the Legislature passed a new form of loyalty declaration which required any agency receiving tax

exemption to declare that it did not advocate force or violence or other unlawful means of overthrowing the government; and did not propose to aid or comfort the enemies of the United States in event of hostilities. This law extended the loyalty-oath program to purely private institutions—all churches, schools, social welfare agencies, and incidentally, to war veterans, who had been allowed certain tax advantages in recognition of their service to the nation.

– Another measure now requires a loyalty declaration from every person or organization that uses a public building.

– At first the loyalty oath was demanded of every elected or appointed official at the time he assumed the duties of his office. In 1951 it was extended to include every candidate, and it must be filed with his declaration of intention to run for office. In 1955 the members of the County Central Committees of the political parties were added to the persons obliged to take the oath. These offices, while political, are private, are responsible only to the political parties, and receive no compensation from tax funds.

– Proposed in 1955 was a law for tax-exempt private institutions which would have required the tax commissioner to remove the tax exemption of any agency if any of its facilities were used by a “subversive person,” who was defined as any person who belonged to any organization on the U.S. Attorney General’s list. This Bill was defeated in Committee when it was pointed out that a church would lose its tax exemption if a member of one of the proscribed organizations should use its chapel for

prayer, or a YWCA would become unexemptible if its mimeograph machine were cranked by a young lady with the proscribed connections.

This catalogue of recent California history is not exhaustive. It does not refer to events that parallel the oath program, but did not involve oaths. It should demonstrate that those who demand loyalty oaths are not satisfied by the oaths when they have them. The suspicions or desires for power that lead to adopting oaths cannot be assuaged so easily.

California is a pioneering state, but its record is not unique. Having passed and sustained the Feinberg law in New York, New Yorkers proceeded to additional statutes for extorting loyalty from other employees. Having put the Pechan Act on the books in 1952, the Commonwealth of Pennsylvania has discussed at every succeeding session of the legislature a loyalty measure for tax-exempt organizations and fund raisers. Illinois, after seven years of successful resistance, twice by governor's veto, finally passed the Broyles Bill, which requires loyalty oaths of all public employees, not to keep their jobs but to get their pay. (This has given rise to the peculiar spectacle of six or seven Quaker teachers teaching in the public school system of Illinois who may not be paid for doing so.) A whole schedule of oaths has been enacted for residents in public housing projects.

The Final Arguments

We have examined the consequences of programs designed to avoid the dangers of betrayal by commanded declarations of loyalty. Still, those who support loyalty oaths are likely to answer “So what?” Most people will not mind taking loyalty oaths. Their dignity is not affronted because they have no principles that are violated by saying the words they have to say. They are not alarmed by the growing machinery to extract the oaths, because their alarm is directed toward Russia, which they believe threatens our lives and manner of living more urgently than any loss of freedom. They are not more careful in what they say, or do, or in choosing their associates, because they say and do only what is popular, and they never wanted to associate with radicals.

What is needed is an understanding of the value of the First Amendment to the citizen who does not feel any restriction on his own rights to speak, worship, publish, assemble, or petition. If the First Amendment were taken away, it is likely that only a small minority of Americans would soon notice its absence. Since what the majority say and publish and petition for will always be acceptable, in the nature of things the Bill of Rights is suited only to protect the minority from the majority, and from the expressions of the majority through government.

Our Republic was intended to avoid the flaw of popular democracy. We were promised by the Bill of Rights a government that would guard against the tyranny of the majority. We founded our nation on the concept of the

inestimable value of each individual. We hoped that an American Socrates would suffer only the trials of unpopularity and would never have to stand trial for his life or livelihood.

What great jurists have seen in the First Amendment, in support of our aspirations for the freedom of minorities, is the right of privacy of opinion. Not long before Penn described oaths as “racks to the mind,” body racks— instruments of physical torture—were considered the proper means for getting confessions of crimes of belief. What a man said when in pain and near death, according to legend, would be true. That what a man says in pain and near death is what will stop the pain and delay death is more likely. The founders of the Republic thought the best way to prevent the government from applying racks to the mind or body was to give every citizen the right to keep still. The States were unwilling to accept the Constitution without the safeguards of the First and Fifth Amendments.

Times change, and racks are sought to allay our doubts. The loyalty oath forces the disclosure of political belief. “But,” say its defenders, “only the belief that wants to overthrow the very government that protects the right to all other beliefs.” But this is the point. Belief is supposed to be a private matter. If we cannot stand by the principle that thoughts are thoughts, and acts are acts, we have at once given up the foundations of the Republic.

“But thoughts can be dangerous.” Indeed they can be. Nothing can be more dangerous to the established order than a new thought that challenges its base, or shows up its

faults. It was this danger that the fathers of the Republic courted. This is the essence of creation. The nation they founded was to grow. Its liberties were to expand. Just as Jefferson supported the new Constitution when he believed no man should be a slave—although slavery as an institution was perpetuated by the Constitution—so now support of the Constitution does not demand of any citizen that he agree with and advocate its current interpretation. See what has happened in the years since 1787. Slavery has been abolished. The right to vote has been guaranteed to every citizen, regardless of color, and at last, regardless of sex. Due process of law has been extended to the States. None of these changes could have taken place except for the advocacy and political action of minorities, or groups that started as minorities. This is what the unventuresome majority would lose if it denied the minorities the protection of the First and Fifth Amendments.

“But that sort of advocacy is different from advocating crimes. The loyalty oath seeks only to uncover those who advocate crimes.” So it seems, but here the definition of crime must be examined. It was a crime to help Negroes escape from slavery—yet today we honor those who committed that crime. It was a crime to try to vote—if you were a woman—only thirty-five years ago. It is now a crime for any citizen to seek to prevent a war by private negotiations with a foreign government. In California it is a crime for any person who has subscribed to the current loyalty oath to “give aid or comfort to the enemies of the United States in time of hostilities.” Were Quakers guilty of this crime when they advocated peaceful negotiation and

the provision of American surpluses to alleviate the Chinese famine during the Korean war?

“But these crimes are not crimes of violence. What the loyalty oath uncovers are those people who believe in crimes of violence.” But this is only apparently true. What the loyalty oath does, and all it does, is to extort a confession of non-intention. A free man cannot make such a confession without surrendering his rights of private belief and personal conscience. That Quakers generally abhor violence is conceded by most non-Quakers. That they should with such convictions refuse to say so under pressure is incomprehensible to those who favor loyalty oaths. What we object to, those of us Quakers and others who don’t like loyalty oaths, is not what is said, but the conditions under which we must say it. We oppose the force and violence of our government, applied to the conscience of its citizens.

The loyalty oath is magic. It depends for its power on fear. Those it entraps, both the swearers and the sworn, are possessed by fear. Men cannot be both afraid and free. To be free they must be in possession of themselves alone—or of themselves and of God. The message of Jesus and his brothers in all times and places is the message of love. Love God, said Jesus, with all yourselves, and love your fellow men as you love yourselves. It is now being disclosed to us by science, as it has been long taught us by the wise men, that we cannot love our neighbors, or our God, if we do not love and have confidence in ourselves. We cannot encourage the love that makes us free by imposing the fear that makes us incapable of trust and love.

Men need not be possessed by fear. They can be the glory of God.

Notes

1. Byse, Clark, "A Report on the Pennsylvania Loyalty Act," *University of Pennsylvania Law Review*, vol 101, No. 4, January 1953.
2. My authority for this statement is Harold Hyman, now at the University of Arizona. In the course of research for his book, *The Era of the Oath* (University of Pennsylvania Press, 1953) and for a forthcoming book on loyalty oaths and other efforts to assure loyalty throughout U.S. history, he has made an exhaustive search of applicable court records, articles, books, and other sources. Neither he nor I (who can claim no such deep investigation) have turned up a single instance of judicial conviction for false swearing of an oath of loyalty or non-disloyalty.

About the Author

Hallock Hoffman is a member of Orange Grove Friends Meeting in Pasadena, California, is married to Elinor Gene Hoffman and together they have seven children. He has taught at Kenyon College, lectured at Occidental College, manufactured tape recorders, served in the U.S. Air Force, led Great Books discussion groups, served on the staff of the American Friends Service Committee. He is presently Assistant to the President of the Fund for the Republic.

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Located on 23 acres in Wallingford, Pennsylvania, Pendle Hill is a Quaker study, retreat, and conference center offering programs open to everyone. Pendle Hill's vision is to create peace with justice in the world by transforming lives. Since Pendle Hill opened in 1930, thousands of people have come from across the United States and throughout the world for Spirit-led learning, retreat, and community.

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