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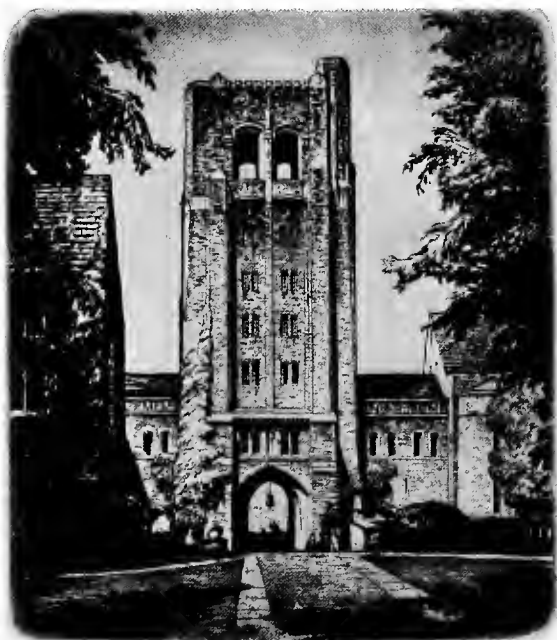
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# JUDICIAL OATHS:

THEIR MORAL CHARACTER  
AND EFFECTS.

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BY JONATHAN DYMOND.

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# JUDICIAL OATHS:

## THEIR MORAL CHARACTER AND EFFECTS.

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“AN Oath is that whereby we call God to witness the truth of what we say, with a Curse upon ourselves, either implied or expressed, should it prove false.”\*

Supposing the Christian scriptures to contain no information respecting the moral character of oaths, how far is it reasonable, or prudent, or reverent, for a man to stake his salvation upon the truth of what he says? To bring forward so tremendous an event as “everlasting destruction from the presence of the Lord,” in attestation of the offence perhaps of a poacher, or of the claim to a field, is surely to make unwarrantably light of most awful things. This consideration applies, even if a man is sure that he speaks the truth: but who is, beforehand, sure of this? Oaths in evidence, for example, are taken before the testimony is given. A person swears that he will speak the truth. Who, I ask, is sure that he will do this? Who is sure that the embarrassment of a public examination, that the ensnaring questions of counsel, that the secret influence of inclination or interest, will not occasion him to utter one inaccurate expression? Who, at any rate, is so sure of this, that it is rational, or justifiable, specifically to stake his salvation upon his accuracy? Thousands of honest men have been mistaken; their allegations have been sincere but untrue. And if this should be thought not a legitimate objection, let it be remembered that few men’s minds are so sternly upright, that they can answer a variety of questions upon subjects on

\* Milton: Christian Doctrine, p. 579.

which their feelings, and wishes, and interest are involved, without some little deduction from the truth, in speaking of matters that are against their cause, or some little over-coloring of facts in their own favor. It is a circumstance of constant occurrence, that even a well-intentioned witness adds to or deducts a little from the truth. Who then, amidst such temptation, would make, who ought to make, his hope of heaven dependent on his strict adherence to accurate veracity? And if such considerations indicate the impropriety of swearing upon subjects which affect the lives and liberties, and property of others, how shall we estimate the impropriety of using these dreadful imprecations to attest the delivery of a summons for a debt of half a crown!

These are moral objections to the use of oaths independently of any reference to the direct moral law. Another objection of the same kind is this: To take an oath is to assume that the Deity will become a party in the case,—that we can call upon Him, when we please, to follow up, by the exercise of his almighty power, the contracts (often the very insignificant contracts) which men make with men. It is not irreverent, and for that reason immoral, to call upon Him to exercise this power in reference to subjects which are so insignificant that other men will scarcely listen with patience to their details?

Upon every subject of questionable rectitude that is sanctioned by habit and the usages of society, a person should place himself in the independent situation of an inquirer. He should not seek for arguments to defend an existing practice, but should simply inquire what our practice ought to be. One of the most powerful causes of the slow amendment of public institutions, consists in this circumstance, that most men endeavor rather to justify what exists than to consider whether

it ought to exist or not. This cause operates upon the question of oaths. We therefore invite the reader in considering the citation which follows, to suppose himself to be one of the listeners at the mount,—to know nothing of the customs of the present day, and to have no *desire* to justify them.

“Ye have heard that it hath been said by them of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths. But I say unto you, Swear not at all: neither by heaven, for it is God’s throne; nor by the earth, for it is his footstool; neither by Jerusalem; for it is the city of the great King. Neither shalt thou swear by thy head, because thou canst not make one hair white or black. But let your communications be, yea, yea; nay, nay; for whatsoever is more than these, cometh of evil.”\*

If a person should take a New Testament, and read these words to ten intelligent Asiatics who had never heard of them before, does any man believe that a single individual of them would think that the words did not prohibit *all* oaths? I lay stress upon this consideration: if ten unbiassed persons would, at the first hearing, say the prohibition was universal, we have no contemptible argument that that is the real meaning of the words. For to whom were the words addressed? Not to schoolmen, of whom it was known that they would make nice distinctions and curious investigations; not to men of learning, who were in the habit of cautiously weighing the import of words;—but to a multitude,—a mixed and unschooled multitude. It was to such persons that the prohibition was addressed; it was to such apprehensions that its form was adapted.

“It hath been said of old time, Thou shalt *not* forswear thyself.” Why refer to what was said of old time? For this reason assuredly; to point out, that the

\* Mat. v. 33–37.

present requisitions were *different* from the former; that what was prohibited now, was *different* from what was prohibited before. And what was prohibited before? Swearing *falsely*,—Swearing and *not performing*. What then could be prohibited now? Swearing *truly*,—Swearing, even, and *performing*: that is, swearing at all; for it is manifest that if truth may not be attested by an oath, no oath may be taken. Of old time it was said, “Ye shall not swear by my name *falsely*.”\* “If a man swear an oath to bind his soul with a bond, he shall not *break* his word.”† There could be no intelligible purpose in contra-distinguishing the new precept from these, but to point out a characteristic difference; and there is no intelligible characteristic difference but that which denounces all oaths. Such were the views of the early Christians. “The old law,” says one of them, “is satisfied with the honest *keeping* of the oath; but Christ cuts off the *opportunity* of perjury.”‡ In acknowledging that this prefatory reference to the former law, is in my view absolutely conclusive of our Christian duty, I would remark, as an extraordinary circumstance, that Dr. Paley, in citing the passage, omits this introduction, and takes no notice of it in his argument.

“I say unto you, Swear *not at all*.” The words are absolute and exclusive.

“Neither by heaven, nor by the earth, nor by Jerusalem nor by thy own head.” Respecting this enumeration it is said that it prohibits swearing by certain objects, but not by all objects. To which a sufficient answer is found in the parallel passage in James: “Swear not,” he says, “neither by heaven, neither by the earth, neither by *any other* oath.”§ This mode of prohibition, by which an absolute and universal rule is first proposed and then followed by certain *examples* of the prohibited things, is elsewhere employed in

\* Lev. xix. 12.

† Numb. xxx. 2.

‡ Basil.

§ Jas. v. 12.

Scripture. "Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image; or any likeness of any thing that is in heaven above; or that is in the earth beneath; or that is in the water under the earth."\* No man supposes that this after-enumeration was designed to restrict the obligation of the law:—Thou shalt have no other gods before me. Yet it were as reasonable to say that it was lawful to make idols in the form of imaginary monsters, because they were not mentioned in the enumeration, as that it is lawful to swear any given kind of oath, because it is not mentioned in the enumeration. Upon this part of the prohibition it is curious that two contradictory opinions are advanced by the defenders of oaths. The first class of reasoners says, The prohibition allows us to swear by the Deity, but disallows swearing by inferior things. The second class says, The prohibition allows swearing by inferior things, but disallows swearing by the Deity. Of the first class in Milton. The injunction, he says, "does not prohibit us from swearing by the name of God,—we are only commanded not to swear by heaven, &c."† But here again, the Scripture itself furnishes a conclusive answer. It asserts that to swear by heaven *is to swear by the Deity*: "He that shall swear by heaven, sweareth by the throne of God, and *by Him* that sitteth thereon."‡ To prohibit swearing by heaven, is therefore to prohibit swearing by God.—Amongst the second class is Dr. Paley. He says, "On account of the relation which these things [the heavens, the earth, &c.] bore to the Supreme Being, to swear by any of them was in effect and substance to swear by *Him*; for which reason our Saviour says, Swear not at all; that is, neither directly by God, nor indirectly by any thing

\* Exod. xx. 3, 4.

† Christ. Doct. p. 582.

‡ Matt. xxiii. 22.



related to Him.”\* But if we are thus prohibited from swearing by any thing related to Him, how happens it that Paley proceeds to justify judicial oaths? Does not the judicial deponent swear by something related to God? Does he not swear by something much more nearly related than the earth, or our own heads? Is not our hope of salvation more nearly related than a member of our bodies?—But after he had thus taken pains to show that swearing by the Almighty was especially forbidden, he enforces his general argument by saying, that Christ *did* swear by the Almighty: He says that the high priest examined our Saviour upon oath, “by the living God;” which oath he took. This is wonderful; and the more wonderful, because of these two arguments, the one immediately follows the other. It is contended, within half a dozen lines, first, that Christ forbade swearing by God, and next, that he violated his own command.

“But let your communication be, yea, yea; nay, nay.” This is remarkable; it is positive superadded to negative commands. We are told not only what we ought not, but what we ought to do. It has indeed been said that the expression “your communication,” fixes the meaning to apply to the ordinary intercourse of life. But to this there is a fatal objection: the whole prohibition *sets out* with a reference not to conversational language but to solemn declarations on solemn occasions. Oaths, oaths, “to the Lord,” are placed at the head of the passage; and it is too manifest to be insisted upon, that solemn declarations, and not every-day talk, were the subject of the prohibition.

“Whatsoever is more than these, cometh of evil.” This is indeed most accurately true. Evil is the foundation of oaths, it is because men are bad that it is supposed oaths are needed; take away the wickedness of

\* Mor. & Pol. Phil. b. 3, p. 1, c. 16

mankind, and we shall still have occasion for No and Yes, but we shall need nothing "more than these." And this consideration furnishes a distinct motive to a good man to decline to swear. To take an oath is tacitly to acknowledge that this "evil" exists in his own mind,—that with him Christianity has not effected its destined objects.

From this investigation of the passage, it appears manifest that all swearing upon all occasions is prohibited. Yet the ordinary opinion, or rather, perhaps, the ordinary defence is, that the passage has no reference to judicial oaths.—"We explain our Saviour's words to relate not to judicial oaths, but to the practice of vain, wanton, and unauthorized swearing in common discourse." To this we have just seen that there is one conclusive answer: our Saviour distinctly and specifically mentions, as the subject of his instructions, *solemn oaths*. But there is another conclusive answer even upon our opponents' own showing. They say first, that Christ described particular forms of oaths which might be employed, and next, that his precepts referred to wanton swearing;—that is to say that Christ described what particular forms of wanton swearing He allowed and what He disallowed! You cannot avoid this monstrous conclusion. If Christ spoke only of vain and wanton swearing, and if He described the modes that were lawful, He sanctioned wanton swearing provided we swear in the prescribed form.

With such distinctness of evidence as to the universality of the prohibition of oaths by Jesus Christ, it is not in strictness necessary to refer to those passages in the New Testament which some persons adduce in favor of their employment. If Christ have prohibited them, nothing else can prove them to be right. Our reference to these passages will accordingly be short.

"I adjure thee by the living God that thou tell us

whether thou be the Christ, the Son of God." To those who allege that Christ, in answering to this, "Thou hast said," took an oath, a sufficient answer has already been intimated. If Christ then took an oath, he swore by the Deity, and this is precisely the very kind of oath which it is acknowledged He himself forbade. But what imaginable reason could there be for examining him upon oath? Who ever heard of calling upon a prisoner to *swear* that he was guilty? Nothing was wanted but a simple declaration that He was the Son of God. With this view the proceeding was extremely natural. Finding that, to the less urgent solicitation he made no reply, the high priest proceeded to the more urgent. Schleusner expressly remarks upon the passage, that the words, I adjure, do not here mean "I make to swear or put upon oath," but, "I solemnly and in the name of God exhort and enjoin." This is evidently the natural, and the only natural meaning; just as it was the natural meaning when the evil spirit said, "I adjure thee by the living God that thou torment me not." The evil spirit surely did not administer an oath.

"God is my witness, that without ceasing I make mention of you always in my prayer." \* That the Almighty was witness to the subject of his prayers, is most true; but to state this truth is not to swear. Neither this language nor that which is indicated below, contains the characteristics of an oath according to the definitions even of those who have the expressions. None of them contain, according to Milton's definition, "a curse upon ourselves;" nor according to Paley's, an "invocation of God's vengeance." Similar language, but in a more emphatic form, is employed in writing to the Corinthian converts. It appears from 2 Cor. ii. that Paul had resolved not again to go to Corinth in heaviness, lest he should make them sorry. And to assure them *why* he had made this resolution, he says, "I call God for a record upon my soul that *to spare you*

\* Rom. i. 9. See also 1 Thess. ii. 5, and Gal. i. 20.

I came not as yet unto Corinth.”\* In order to show this to be an oath, it will be necessary to show that the apostle imprecated the vengeance of God if he did not speak the truth. Who can show this?—The expression appears to me to be only an emphatical mode of saying, God is witness; or as the expression is sometimes employed in the present day, God knows that such was my endeavor or desire.

The next and the last argument is of a very exceptionable class; it is founded upon silence. “For men verily swear by the greater, and an oath for confirmation is to them an end of all strife.”† Respecting this it is said that it “speaks of the custom of swearing judicially without any mark of censure or disapprobation.” Will it then be contented that whatever an apostle mentions without reprobating, he approves? The same apostle speaks just in the same manner of the pagan games; of running a race for prizes and of “striving for the mastery.” Yet who would admit the argument, that *because* Paul did not then censure the games, he thought them right? The existing customs both of swearing and of the games, are adduced merely by way of *illustration* of the writer’s subject.

Respecting the lawfulness of oaths then, as determined by the Christian Scriptures, how does the balance of evidence stand? On the one side, we have plain emphatical prohibitions,—prohibitions of which the distinctness is more fully proved the more they are investigated: on the other we have—counter precepts! No—It is not even pretended: but we have examples of the use of language of which it is saying much to say, that it is *doubtful* whether they are oaths or not. How then would the man of reason and of philosophy decide?—“Many of the Christian fathers,” says Grotius, “condemned *all* oaths without exception.”‡ Grotius was himself an advocate of oaths. “I say nothing of perjury,” says Tertullian, “since *swearing itself* is unlaw-

\* 2 Cor. i. 23.

† Heb. vi. 16.

‡ Rights of War and Peace.

ful to Christians.”\* Chrysostom says, “Do not say to me, I swear for a just purpose; it is no longer lawful for thee to swear either justly or unjustly.”† “He who,” says Gregory of Nysse, has precluded murder by taking away anger, and who has driven away the pollution of adultery by subduing desire, has expelled from our life the curse of perjury by forbidding us to swear; for where there is no oath there can be no infringement of it.”‡ Such is the conviction which the language of Christ conveyed to the early converts to his pure religion; and such is the conviction which I think it would convey to us, if custom had not familiarized us with the evil, and if we did not read the New Testament rather to find justifications of our practice, than to discover the truth and to apply it to our conduct.

#### INEFFICACY OF OATHS.

Of the influence of legal penalties in binding to veracity, little needs to be said. It is obvious that if they induce men to refrain from theft and violence, they will induce men to refrain from perjury. Jurymen swear that they will give a verdict according to the evidence, and yet it is perfectly well known that they often assent to a verdict which they believe to be contrary to that evidence. They do not all coincide in the verdict which the foreman pronounces; it is indeed often impossible that they should coincide. This perjury is committed by multitudes; yet what juryman cares for it, or refuses, in consequence of his oath, to deliver a verdict which he believes to be improper? The reason that they do not care, is, that the oath, as such, does not bind their consciences. It stands alone. The public do not often reprobate the violation of such oaths; the law does not punish it; jurymen learn to think that it is no harm to violate them; and the resulting conclusion is, that the form of an oath cannot and

\* De Idol. cap. 11. † In Gen. ii. Hom. xv. ‡ In Cant. Hom. 13.

does not supply the deficiency;—it cannot and does not apply the religious sanction.

Step a few yards from the jury-box to the witness-box, and you see the difference. The public opinion interposes its power—there the punishment of perjury impends—there the religious sanction applied—and there, consequently, men regard the truth. If the simple intervention of an oath was that which bound men to veracity, they would be bound in the jury-box as much as at ten feet off: but it is not.

To take an oath in voluntary ignorance of the obligations which it is intended to impose, and to excuse ourselves for disregarding them because we do not know what they are, cannot surely be right. Yet it is often difficult, sometimes impossible, to discover what an oath requires. The absence of precision in the meaning of terms, the alteration of general usages whilst the forms of oaths remain the same, and the original want of explicitness of the forms themselves, throw sometimes insuperable obstacles in the way of discovering, when a man takes an oath, what it is that he binds himself to do.

“The truth, the whole truth, and nothing but the truth, touching the matter in question.” Is the witness to understand by this that if he truly answers all questions that are put to him, he conforms to the requisitions of the oath? If he is, the terms of the oath are very exceptionable, for many a witness may give true answers to a counsel, and yet not tell “the whole truth.” Or does the oath bind him to give an exact narrative of every particular connected with the matter in question, whether asked or not? If it does, multitudes commit perjury. How, then, shall a witness act? Shall he commit perjury by withholding all information but that which is asked? Or shall he be ridiculed and perhaps silenced in court for attempting to narrate all that he has sworn to disclose? Here again the morality of the people is injuriously affected. To take an oath to do a certain prescribed act, and then to do only just that

which custom happens to prescribe, is to ensnare the conscience and practically to diminish the sanctions of veracity. The evil may be avoided either by disusing all previous promises to speak the truth or to adapt the terms of the promise (if that can be done) to the duties which the law or which custom expects. "You shall true answer make to all such questions as shall be asked of you," is the form when a person is sworn upon a *voir dire*; and if this is all that the law expects when he is giving evidence, why not use the same form? If, however, in deference to the reasonings against the use of any oaths, the oath in evidence were abolished, no difficulty could remain: for to *promise* in any form to speak the truth, is, as we have seen, absurd.

Whilst the oath in evidence continues to be imposed, it is not an easy task to determine in what sense the witness should understand it. If you decide by the meaning of the legislature which imposed the oath, it appears manifest that he should tell all he knows whether asked or not. But what, it may be asked, is the meaning of a law, but that which the authorized expounders of the law determine? And if they habitually admit an interpretation at variance with the terms of the oath, is not their sanction an authoritative explanation of the legislature's meaning? These are questions which I pretend not with confidence to determine. The mischiefs which result from the uncertainty are to be charged upon the legislatures which do not remove the evil. I would, however, suggest that the meaning of a form in such cases is to be sought, not so much in the meaning of the original imposers, as in that of those who now sanction the form by permitting it to exist. This doubtless opens wide the door to extreme licentiousness of interpretation. Nor can that door be closed. There is no other remedial measure than an alteration of the forms or an abolition of the oath.

## THE EFFECTS OF OATHS.

There is a power and efficacy in our religion which elevates those who heartily accept it, above that low moral state in which alone an oath can even be supposed to be of advantage. It is the testimony even of infidelity, that "wherever men of uncommon energy and dignity of mind have existed, they have felt the degradation of binding their assertions with an oath."\* This degradation, this descent from the proper ground on which a man of integrity should stand, illustrates the proposition that whatever exceeds affirmation "cometh of evil." The evil origin is so palpable that you cannot comply with the custom without feeling that you sacrifice the dignity of virtue. It is related of Solon that he said "A good man ought to be in that estimation that he needs not an oath; because it is to be reputed a lessening of his honor if he be forced to swear."† If to take an oath lessened a pagan's honor, what must be its effect upon a Christian's purity?

Oaths, at least the system of oaths which obtains in this country, tend powerfully to deprave the moral character. We have seen that they are continually violated,—that men are continually referring to the most tremendous sanctions of religion with the habitual belief that those sanctions impose no practical obligation. Can this have any other tendency than to diminish the influence of religious sanctions upon other things? If a man sets light by the Divine vengeance in a jury-box to-day, is he likely to give full weight to that vengeance before a magistrate to-morrow? We cannot prevent the effects of habit. Such things will infallibly deteriorate the moral character, because they infallibly diminish the power of those principles upon which the moral character is founded.

Oaths encourage falsehood. The effect of instituting oaths is to diminish the practical obligation of simple affirmation. The law says, You must speak the truth

\* Godwin: Political Justice, v. 2, p. 633. † Stobæus: Serm. 3.



when you are upon your oath; which is the same thing as to say that it is less harm to violate truth when you are not on your oath. The court sometimes reminds a witness that he is upon oath, which is equivalent to saying, If you were not, we should think less of your mendacity. The same lesson is inculcated by the assignation of penalties to perjury and not to falsehood. What is a man to conclude, but that the law thinks light of the crime which it does not punish; and that since he may lie with impunity, it is not much harm to lie? Common language bears testimony to the effect. The vulgar phrase, I will take my oath to it, clearly evinces the prevalent notion that a man may lie with less guilt when he does not take his oath. No answer can be made to this remark, unless any one can show that the extra sanction of an oath is so much added to the obligation which would otherwise attach to simple affirmation. And who can show this? Experience proves the contrary: "Experience bears ample testimony to the fact, that the prevalence of oaths among men (Christians not excepted) has produced a very material and very general effect in reducing their estimate of the obligation of plain truth, in its natural and simple forms."\* — "There is no cause of insincerity, prevarication, and falsehood, more powerful, than the practice of administering oaths in a court of justice." †

Upon this subject the legislator plays a desperate game against the morality of a people. He wishes to make them speak the truth, when they undertake an office or deliver evidence. Even supposing him to succeed, what is the cost? That of diminishing the motives to veracity in all the affairs of life. A man may not be called upon to take an oath above two or three times in his life, but he is called upon to speak the truth every day.

A few, but a few serious, words remain. The investigations of this chapter are not matters to employ speculation, but to influence our practice. If it be indeed

\* Gurney: Observations, &c., c. x.

† Godwin: v. 2, p. 634.

true that Jesus Christ has imperatively forbidden us to employ an oath, a duty, an imperative duty, is imposed upon us. It is worse than merely vain to hear his laws unless we obey them. Of him, therefore, who is assured of the prohibition, it is indispensably required that he should refuse an oath. There is no other means of maintaining our allegiance to God, Our pretensions to Christianity are at stake; for he who, knowing the Christian law will not conform to it, is certainly not a Christian. How then does it happen, that although persons frequently acknowledge they think oaths are forbidden, so few, when they are called upon to swear, decline to do it? Alas! this offers one evidence amongst the many, of the want of uncompromising moral principles in the world,—of such principles as it has been the endeavor of these pages to enforce,—of such principles as would prompt us and enable us to sacrifice *every* thing to Christian fidelity. By what means do the persons of whom we speak, suppose that the will of God respecting oaths is to be effected? To whose practice do they look for an exemplification of the Christian standard? Do they await some miracle by which the whole world shall be convinced, and oaths shall be abolished without the agency of man? Such are not the means by which it is the pleasure of the Universal Lord to act. He effects his moral purposes by the instrumentality of faithful men. Where are these faithful men?—But let it be; if those who are called to this fidelity refuse, theirs will be the dishonor and the offence. But the work will eventually be done. Other and better men will assuredly arise to acquire the Christian honor and to receive the Christian reward.



