



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898473*

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TÍTULO: Abordando los sujetos públicos en los países de América Latina.

AUTORES:

1. Alim R. Makhov.
2. Fedor F. Chaplickij.
3. Ludmila I. Nikonova.
4. Alevtina E. Novikova.
5. Vladislav Y. Turanin.

RESUMEN: El objetivo de la investigación fue identificar el estudio jurídico comparativo de las constituciones de los países americanos. El estudio actual se basó en un enfoque dialéctico para la divulgación de fenómenos y procesos legales, utilizando un método científico general (sistema, lógica, análisis y síntesis) y métodos científicos privados. Los autores realizaron una clasificación de constituciones al considerar asegurar el método de juramento. También se identificaron temas típicos y originales de juramento. Algunas de las conclusiones se formularon sobre la base de un análisis directo de los textos del juramento previsto para diversos temas en las constituciones latinoamericanas.

PALABRAS CLAVES: constitución, juramento, presidente, condición jurídica, asunción de cargo.

TITLE: Addressing public subjects in latin american countries

AUTHORS:

1. Alim R. Makhov.
2. Fedor F. Chaplickij.
3. Ludmila I. Nikonova.
4. Alevtina E. Novikova.
5. Vladislav Y. Turanin.

ABSTRACT: The aim of research was identified comparative legal study of constitutions of American countries. The current study was based on a dialectical approach to disclosure of legal phenomena and processes, using general scientific method, (system, logical, analysis, and synthesis) and private scientific methods. Authors performed a constitutions classification by considering securing the oath method; typical and original subjects of taking the oath were also identified. Some of the conclusions were formulated base on a direct analysis of texts of the oath envisaged for various subjects in the Latin American constitutions.

KEY WORDS: constitution, oath, president, legal status, assumption of office.

INTRODUCTION.

A comprehensive feature of the legal status of civil servants and officials is oath. It is formalized in state legal acts of various levels. It should be mentioned that the important key belongs to the country's highest law, i.e. the constitution. As part of this study, research will focus on ways to legalize the oath in constitutions of American states (Kernaghan, 1980; Rutgers, 2010; Kaithari & Babu, 2017; Sommerstein & Bayliss, 2012; Zare, 2015).

With regard to constitutional sphere, the oath may acquire additional features, for example, be provided by country's constitution; address certain constitutional entities; and receive constitutional formalization of text, sometimes through mentioning something sacred and value-significant. In line

with the oath, conditions and procedure for bringing it may be prescribed, as well as consequences of not bringing or bringing it with reservations (Marhgejm, 2017; Soleimani et al, 2014; Guzmán et al, 2018; Kasteyeva, 2018).

Analysis and systematization of the presented manifestations of oath within the framework of this section of work will be performed with reference to constitutions of the American states.

DEVELOPMENT.

Methodology.

The current study was based on a dialectical approach to disclosure of legal phenomena and processes, using general scientific method, (system, logical, analysis, and synthesis) and private scientific methods. Among the latter there are formal legal, linguistic legal and comparative legal which were used to identify the provisions that establish procedure for taking the oath.

This study also used the results of the previous studies (Kornyushkin et al, 2017; Millanei et al, 2016; Mendes & Silva, 2018). The focus group consisted of American countries, texts of the constitutions of which were taken from the Internet-library “Constitutions of the Countries of the World” (<http://worldconstitutions.ru/>).

Results and discussion.

The author used a method in this study which is different from the European one. The analysis provided the following conclusions.

The constitutions of this focal group of countries are characterized by use of the term "oath". However, in some constitutions the terms such as “solemn oath of allegiance” (Bolivia), “oath of allegiance” (Guatemala), “oath of devotion” (Canada), “constitutional oath” (Haiti, Costa Rica, Nicaragua), “solemn promise "and" solemn declaration" (USA) are used.

A simple reference to oath could be a method of consolidating it in the constitution's texts (Argentina, Bolivia, Venezuela, Honduras, Cuba, Peru) and presentation of its text (Brazil, Haiti, Guatemala, Dominican Republic, Canada, Colombia, Costa Rica, Mexico, Nicaragua and the United States).

In general, recipients of the oath in the constitution's texts are as follow:

The President.	<p>Article 90 of the Constitution of Bolivia</p> <p>Article 79 of the Brazilian Constitution</p> <p>Article 231 of the Venezuelan Constitution</p> <p>Article 78 of the Haitian Constitution</p> <p>Article 164 of the Guatemalan Constitution</p> <p>Article 48 of the Dominican Republic Constitution</p> <p>Article 116 of the Constitution of Colombia</p> <p>Article 137 of the Constitution of Costa Rica</p> <p>Article 87 of the Constitution of Mexico</p> <p>Article 116 of the Constitution of Peru</p> <p>Section 1 of the US Constitution</p>
Vice-President	<p>Article 90 of the Constitution of Bolivia</p> <p>Article 57 of the Constitution of Brazil</p> <p>Article 137 of the Constitution of Costa Rica</p>
Parliamentarians, including presidents and members of chambers	<p>Article 57 of the Brazilian Constitution</p> <p>Article 54 of the Constitution of Haiti</p> <p>Article 101 of the Constitution of Honduras</p> <p>paragraph 31 of the Canadian Constitutional Act of 1867</p> <p>Article 115 of the Constitution of Costa Rica</p> <p>Article 71 of the Constitution of Cuba</p> <p>Article 6 of the US Constitution</p>
Judges of higher courts who are the Supreme Court members, members of the Supreme Tribunal of the Federal District, as well as territories.	<p>Article 79 of the Constitution of Mexico</p>
the High Court of Justice members	<p>Article 112 of the Constitution of Haiti</p>

According to the Amendment No. 16 of Constitution of Argentina, typical state, municipal services, and officials should be considered as the national members, provincial, and municipal authorities.

In addition to the public power subjects among typical addressees in individual constitutions, there are also other atypical addressees whose legal nature is public and non-public; for example, non-public subjects of the oath are: slaves (Article 15 of the Constitution of Argentina), members of trade unions organizations (Article 96 of the Constitution of Venezuela), persons allowed naturalization (Article 10 of the Constitution of Guatemala), and the victim (Article 107 of the Constitution of Mexico).

Public atypical addressees include senators who judge those who are the Chamber of Deputies convicted against them. (Article 59 of the Constitution of Argentina), senators sitting for the purpose of impeachment (Section 3 of the US Constitution), members of the Community Council (Article 112 of the Constitution of Haiti), members of Privy Council of the Queen (paragraph 11 of the Constitutional Act of Canada 1867), and Governor-General, Lieutenant-Governor (paragraph 61 of the Constitutional Act of Canada 1867).

Public and non-public entities are formulated such as anyone who presents an affidavit statement and also shows untruth declaration (Article 60 of the Constitution of Guatemala), and a person who trusts (Article 16 of the Constitution of Mexico).

according to wording of the oath which addressed to the president or vice president, then its standard legal construction is as follows: when taking office, the president or vice president takes the oath before the parliament (Article 78 of the Brazilian Constitution, Article 78 of the Constitution of Haiti Article 164 of the Guatemalan Constitution, Article 116 of the Constitution of Colombia, Article 185 of the Constitution of Nicaragua).

In relation to this group of norms, specific forms were also revealed. Thus, the President of Bolivia takes the oath of allegiance not only to the Republic, but also to the Constitution (Art. 90 of the Constitution of Bolivia);

The established Article 231 of Constitution of Venezuela shows an elected candidate who takes office as President of the Republic on January 10 of the first year of his constitutional term, taking the oath before the National Assembly. If the President of the Republic is unable to take office before the National Assembly, then he should take office before the Supreme Court.

The standard claimed design, but with a clarification of the terms of Article 116 of the Constitution of Peru is as following: President of the Republic must take the oath which determined by law and take office before the Congress on July 28 of the relevant year in which elections are held.

Constitution of the Dominican Republic indicates the National Assembly or some government official or employee as an alternative to whom the President may take the oath (Article 48). In this aspect, the settings are similar.

Article 137 of the Constitution of Costa Rica was provided to take the oath by the President and Vice-President before the Legislative Assembly or, if this is not possible before the Supreme Court.

Article 87 of the Constitution of Mexico, showed that if the latter does not sit, before the Permanent Commission oath the President takes an oath before the Federal Congress.

Referring to section 1 of the United States Constitution, which before taking office, the President takes an oath or makes a solemn promise. This establishment is not subject to specification and is of a general nature.

In compared with the presidential oath norms, there are fewer establishments which are directly connected to the oath of parliamentarians. Thus, paragraph 4 of Art. 57 of the Brazilian Constitution established that each of the Chamber members meets in a preparatory session, beginning February 1

of the first year of the legislature beginning to take the oath of its members and elect its presidium for a two-year term.

Article 54 of Constitution of Haiti says that the members of each House should take an oath. It was clarified that members of the Legislative Corps enjoyed immunity from the day of taking the oath until expiration of their office term.

In this state, based on constitutional establishment, oath is the receiving remuneration basis for a parliamentarian; every member of the Legislative Corps receives a reward of one thousand two hundred fifty gurdus from the moment of taking the oath (Article 75 of the Constitution of Haiti).

Clause 128 of the Canadian Constitutional Act of 1867 with the title "The oath of allegiance" differs in details of the subjects of taking the oath - each member of the Senate or House of Commons of Canada must take and sign an oath before the Governor or some other authorized by the Governor-General face.

Article 115 of Constitution of Costa Rica says that the chairman of the Legislative Assembly takes an oath before the Assembly, and the Deputies before the Chairman of the Assembly.

More concise is wording of Art. 71 of the Constitution of Cuba according to thirty days after the deputies' election to the National Assembly of People's Power, they take an oath at a meeting of the deputies.

In the Article 6 of the US Constitution - Senators pledge, by giving an oath or solemn pledge, support this Constitution.

It is notable that there are no constitutional norms that conjugate the oath of government members with their legal status.

In relation to judges, the following few wordings have the following characteristic:

- The terms of office of cassation judges, appeal and civil courts begin with taking of the oath (Article 100 of the Constitution of Haiti).

- By opening a meeting, each member of the High Court of Justice takes an oath to judge impartially, as is appropriate for a free and honest person, guided by his own consciousness and personal conviction (Article 100 of the Constitution of Haiti).

- Each member of the Supreme Court, takes an oath before the Senate, and if Senate does not sit, it is done before the Standing Committee (Article 97 of the Constitution of Mexico).

- District judges take an oath before the Supreme Court or before other authorities specified by law (Article 97 of the Constitution of Mexico).

Constitutions that formalize the oath of civil servants in their norms, as a rule, indicate the obligation to bring it in compliance with the constitution and laws (for example, Article 11 of the Costa Rican Constitution).

Art. 6 of the US Constitution declares that members of the state legislatures, as well as executive and judicial officials of both the United States and individual states, pledge, by giving an oath or solemn promise, to support the Constitution.

Paragraph 128 of the Constitutional Act of Canada in 1867 titled “The oath of allegiance” establishes that members of the legislative council or legislative assembly of each province must assume and sign the oath of allegiance which contained in the fifth annex, before lieutenant governor of the province, or any other who authorized the account of the lieutenant governor.

The oath as an object of authority of state structures is provided for the parliament, its chambers, or other structures and it is expressed by wording of the right to take an oath of office with the president (paragraph 3 of article 57 of the Brazilian Constitution, article 45 of the Constitution of Haiti, part 4 of article 144 of the Guatemalan Constitution Article 160 of the Constitution of Nicaragua,), Vice-President (paragraphs 3 and 6 of Article 57 of the Constitution of Brazil), officials elected by him (part 12 of Article 101 of the Constitution of Honduras, paragraph 7 of Article 160 of the Constitution of Nicaragua), members of parliament (Part 3 of Article 101 of the Constitution of Honduras),

members of higher authorities, for with the exception of the Ministers of the Government (Art. 121 of the Constitution of Costa Rica), members of the Supreme Court of the Republic, members of the Supreme Tribunal of the Federal District, as well as the territories, if the latter are in Mexico city (Article 79 of the Constitution of Mexico).

Part 9 of Article 101 of Constitution of Honduras in the event displays that none of the candidates who collected an absolute majority of votes, the Congress shall elect President and Vice-President of the two candidates who each received the highest number of votes. If the Congress does not announce its election or does not hold an election for President or Vice-President within twenty days from the date of its convocation, the Supreme Court will do it within seven days before the day that is fixed for entry into these positions; in this case, the Supreme Court is empowered to take the oath from the elect.

Interestingly, the Constitution of Honduras contains only a single article which is devoted to the oath, and is in the context of the parliament's powers.

It must be noted that the provisions of § 41 and § 84 of the Constitutional Act of Canada in 1867 indicate the continued existence of oath laws in various provinces by the time the Union was established until the Canadian Parliament or the legislature of Ontario and Quebec decides otherwise, with regard to the laws that are in force in these provinces by the time Union was established (paragraph 41 of the Canadian Constitutional Act of 1867).

The oath as an object of authority is also reserved for government officials. So, based on the Article 100 of Constitution of the Dominican Republic, the oath of a person appointed to a public office is taken before any public servant or official.

Referring to the previously indicated atypical oath-addressees, the corresponding legal language regarding will be clarified:

- Members of the governing bodies of trade union organizations who are obliged under oath to fill out a declaration on their property (Article 96 of the Constitution of Venezuela).
- Members of the Community Council taking the oath before taking office in a civil court of local jurisdiction (Article 119 of the Constitution of Haiti).
- Persons who will be allowed naturalization in Guatemala. They must renounce any other citizenship and take an oath of allegiance to Guatemala and in respect for the institutions which are established by the Constitution (Article 104 of the Constitution of Guatemala).
- Everyone who in a statement given under oath should not tell a lie (Article 60 of the Constitution of Guatemala).
- Persons who will be members of the Privy Council, from time to time will be selected and invited by the Governor-General and sworn in as secret advisers to them (paragraph 11. of the Canadian Constitutional Act of 1867).
- Each lieutenant-governor, before taking office signs and gives to the Governor-General or to his authorized person, and takes the oath of allegiance and oath of office, similar to those given by the Governor-General (p. 61 "Oath, etc., Lieutenant Governor "of the Constitutional Act of Canada in 1867).
- A victim who takes an oath that a petition for a protection order is declared and gives to a responsible authority within the time limitation that are established by law (Article 107 of the Constitution of Mexico).
- Senators taking an oath or solemn promise that they are there for the purpose of impeachment (Section 3 of the US Constitution).

Article 16 of the Mexican Constitution is provided for such an atypical addressee as a person enjoying confidence: "an order to arrest or detain someone who can only come from a competent judicial authority if preceded by an accusation, prosecution, or a complaint of a particular punishable act by

imprisonment, supported by the affidavit testimony of a trusted person or other evidence that with reasonable probability testifies to the accused guilt".

Considering to the main text of the Constitution of Argentina, in which the oath is addressed only to atypical subjects:

- The few slaves that exist at the present time, become free after taking the oath of this Constitution (Article 15 of the Constitution of Argentina);

- The Senate, which judges an open court of Chamber of Deputies, has filed an accusation against them, while the senators must take an oath (Article 59 of the Constitution of Argentina).

Transitional provisions are contained in Mexico Constitution, in its Art. 1, it is determined that this Constitution is subject to immediate publication throughout the Republic in a solemn ceremony, taking an oath to respect and protect the Constitution; ...The Constitution as a whole will take effect on May 1, 1917, when the Constitutional Congress is to meet solemnly and when a citizen elected during the forthcoming election as President of the Republic takes the oath of allegiance to the law.

CONCLUSIONS.

The rules of the oaths and the status of the countries are very diverse and are subject to swearing in various laws and regulations. In addition to oaths in civil and criminal proceedings, there is a kind of oath in public law that mentions the owners of its specialty. The familiar example is the oath of office of the President at the time of the beginning of the presidency, but cases of political and economic oaths do not end there.

Parliamentarians, doctors and lawyers are among the other places to swear at the beginning of their work. In the legal system, it is necessary to distinguish two oaths from each other. The first type is an oath that is based on the provisions of the Code of Civil Procedure and the Code of Criminal Procedure and is used in judicial cases as evidence of a dispute or a supplementary condition for the

validity of the reason for the claim, but the second type is the oath that the owners of certain and influential businesses learn to do their job well.

The most prominent example of this oath is the oath of office of the House of Representatives and the president at the beginning of each of the above posts. But in ordinary laws, there are also instances of this oath, and the oath of the oath by the owners of medical and legal professions at the beginning of these occupations is oaths.

The obligation to swear words for important and sensitive businesses is seen in the laws and regulations of all countries, so countries are jointly bound by this requirement. But their nature varies from country to country. In general, swearing for this, it is foreseen in the fundamental laws of countries that public service officials have a conscientious commitment. In most countries, oaths are also foreseen for many officials and businesses.

The way oath swears oaths are different from one another to occupations; for example, the President should be a supporter of the rights of the people, and judges should not refuse to uphold their rights; it is important for health professionals and lawyers should be trusted.

The lawyer says about the law enforcement oath in the legal system: the oath does not have a statutory legal guarantee, such as that directly supervised, but it has a moral enforceability. Of course, it should be noted that if the oath of office is one of the tasks of the individual and he violates this duty, this violation will have a guarantee of execution and, if executed that duty, violation or criminal offense is considered and examined.

These are included in Section 3 of the US Constitution, according to which no person can be a senator or representative in Congress, an elector of the President or Vice President, or hold any position, civil or military, in the service of the United States, in the service of any other state. If they have already taken an oath as a member of Congress, as an official of the United States, a member of the legislative

assembly of a state, or an executive or judicial officer of a state, took part in a rebellion against the United States, or provided assistance or support to the enemies of the United States.

Paragraph 31 of the Constitutional Act of Canada in 1867 which titled "Disqualification of Senators" is provided for senators the consequences of taking an oath to another state. Therefore, if a senator takes an oath or makes a statement or acknowledgment of loyalty or obedience to a foreign state, or if he commits an act by which he becomes a citizen or receives national rights or privileges or citizen of any foreign country, the senator's position will be vacant.

In addition, paragraph 13 of the Constitutional Act of Canada in 1867 which titled "Using testimony", establishes the consequences of violating the oath when using testimony — everyone has the right to process no other testimony which is given in another court, process, except in cases of violation of the oath or giving false testimony.

In addition to the constitutional provisions which are currently presented, the rule concerning oath should be mentioned. Article 152 of the Constitution of Haiti displays that oath can be established only by the Constitution or the law.

By the presentation of model of the oath which is revealed in this study, Amendment 4. 1791 of the US Constitution defined that no instruction shall be issued unless there is a sufficient basis which is confirmed by oath or solemn a statement, showing its aspect as a necessary condition for granting official status to various documents.

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DATA OF THE AUTHORS.

1. **Alim R. Makhov.** Pyatigorsk State University. Russia. E-mail: 1210040@bsu.edu.ru
2. **Fedor F. Chaplickij.** Belgorod State University. Russia.
3. **Ludmila I. Nikonova.** Belgorod State University. Russia.
4. **Alevtina E. Novikova.** Belgorod State University. Russia.
5. **Vladislav Y. Turanin.** Belgorod State University. Russia.

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