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## On “The Politics of Oath-Taking”

David J. Wasserstein

*This commentary responds to Marybeth Ulrich’s article “The Politics of Oath-Taking” published in the Summer 2020 issue of Parameters (vol. 50, no. 2).*

Marybeth Ulrich’s article, “The Politics of Oath-Taking” raises questions important to any democracy, especially to the United States, and even more so, as she points out, as we navigate a period of what Steven Metz in the same issue labels “the decline of authority structures, political hyperpartisanship, and the coalescence of new ethical structures” (“The Future of Strategic Leadership,” *Parameters*, Summer 2020, 61). These questions touch on the obligations of the citizen, the soldier, and the civil servant in relation to the state, its governing institutions, and its orders. While she highlights problems, her responses, however, do not resolve them but imply an ease about solutions belied by thought and historical experience.

Two central issues stand out. In the first, Ulrich distinguishes between what she labels professional and political oath-taking/takers. And the second concerns the primacy of legal over other obligations.

As to Ulrich’s assertion of a difference between professional and political oath-takers, the distinction is artificial at best, dangerous at worst. The former are obliged to give impartial, nonpartisan service to their country, while the latter give explicitly partisan support to the political agenda for which they or those who appoint them are elected. Ulrich mentions Ambassador William B. Taylor Jr. who took an oath twice, once as a professional and later as a political appointee. Her argument does not, however, draw any conclusions from his case, which glides tellingly between her two positions. (It is also noteworthy Taylor was, at over 70 years old, far from risking his career in defying a presidential prohibition on testifying before Congress).

There is certainly a difference in the persons and the tasks involved. Professional appointees are skilled experts possessed of relevant qualifications for their jobs. Political appointees, by contrast, need not have any special qualifications for their posts, beyond enjoying the confidence of the president and, when relevant, winning Senate approval. But no difference exists in the legal (and the moral/ethical) obligations to the state and the people of this country that come with these jobs and the oath, regardless of whether the oath-taker is a professional or a political appointee. The real world does not alter these obligations.

The second issue is far larger than the first. The question is not whether those who take oaths are obliged to follow through and obey them. Obviously they are—except when they are not. The real question, therefore, is when may they, when must they, not. The problem is very often the answer to that question boils down to a matter of perception: when do we, when must we, place our moral/ethical obligations above our legal ones? When do we place our legal obligations as we understand

Dr. David Wasserstein, professor of history and the Eugene Greener Jr. professor of Jewish studies at Vanderbilt University, is the author most recently of *Black Banners of ISIS: The Roots of the New Caliphate*.

them above our legal obligations as they are understood by others? And when may government or the president compel such obedience?

These questions have worried and harried human beings for millennia. Twenty-four centuries ago, Sophocles showed us Antigone, in his play of that name, faced this central issue—in the terms of that time, the law of the state versus the law of God—and offered one answer. We admire her decision and her action, not least because it threatens to cost her her life. But hers is not, or not always and not necessarily, the only possible or right answer. This dilemma, rather than the answers themselves, is why the decisions of now retired US Army Lieutenant Colonel Alexander Vindman and Taylor are important. It is also why those who think those decisions wrong are not so handily to be dismissed.

The questions matter not just in the personal realm, but also, as Ulrich points out, in what she labels the “civil/military relations norms” field. Like other Western nations, the United States is a democracy in which the military is firmly subordinated to civilian control. We can even say that to be a so-called Western nation, a state must subordinate the military to civilian control. But as the current situation shows, there may come times when devotion to country and the Constitution demands an individual break an oath and disregard norms of civil-military relations. That devotion may demonstrate an oath—quite apart from its legal aspects—is really just confirmation of a universal obligation (The famous Great Loyalty Oath Campaign in Joseph Heller’s *Catch-22* is not irrelevant here).

It may occasionally, as the United States itself has asserted in many countries around the world, be necessary to destroy democracy temporarily in order to save it permanently (the example of the dictator in ancient Roman legal tradition is pertinent here). If democracy or the state is threatened from within by the actions of a commander in chief gone wild and the civilian arm has no means or desire to remove that individual, the military may have a responsibility—a loaded term—to step in. That is what German officers (without Allied support) tried and failed to do in 1944—far too late, for the wrong reasons, and with terrible results for themselves. It is also, less admirably, what Chilean General Augusto Pinochet—with American support—did in Chile in 1973. The moral/ethical dilemmas for soldiers, as for others, are complex.

Additionally, the obligations Ulrich describes in the oath-taking of soldiers and public servants are not as special as she thinks. Oaths simply add another layer of obligation to those that exist already under the law. Being a soldier or a professional or political civil servant does not exempt anyone—including the president—from the obligation to obey the law.

Ulrich’s essay is timely and useful. The United States faces major problems, especially internally, that confront citizens—soldiers, professional civil servants, political appointees, everyone—with the legal and moral challenges she addresses. How Americans face those challenges will determine more than the careers of a few soldiers or retired ambassadors. It will determine the future of the Constitution, America’s system of checks and balances, and the place of the United States in the world.

## On “The Politics of Oath-Taking”

Jimmie R. Montgomery, retired US Air Force colonel

*This commentary responds to Marybeth Ulrich’s article “The Politics of Oath-Taking” published in the Summer 2020 issue of Parameters (vol. 50, no. 2).*

Marybeth Ulrich’s article, “The Politics of Oath-Taking” presents much to unpack and does more than promote the idea that oath-takers are obligated to abide by their oaths. Let me react. First, what American military officer would fail to support democratic institutions and our constitutional processes? How is it possible to allege such actions are a violation of our nonpartisan norms? I reject that notion! Supporting our institutions is inherent in our duty. Characterizing it as patriotic seems overkill. It is just expected.

I agree a military officer can testify before Congress if lawfully subpoenaed. I do not agree with the assertion Congress is a “second and coequal civilian master.” This assertion is a wholly different and distracting inclusion. The Department of Defense is in the executive branch. In her discussion regarding Constitutional foundations, Ulrich cites herself in restating the theory of two masters. (I disapprove of the term master in this context.) Then Ulrich asserts any action violating constitutional norms violates our oath. I agree, but the challenge for us all is the lack of clarity or consensus on such norms. Ulrich ignores this challenge, and the fact she does not address it undermines her argument.

I have no heartburn with her paragraphs on the stated purpose of the presidential impeachment inquiry or the distinction between the two oath-taker types postulated. (I do have less confidence in our nonmilitary oath-takers.) And the scholars cited, David Barno and Nora Bensahel, warn of consequences resulting from a loss of trust in our military institutions due to partisan activities by oath-takers. The referenced article importantly notes such activities are not new. (As an aside, does calling them scholars mean their views carry extraordinary weight?)

Several paragraphs are spent building up Ambassador William B. Taylor Jr. as a righteous example of a good, responsible oath-taker. I would not argue with that conclusion. But citing Timothy O’Brien, a well-known Democratic loyalist, undermines the buildup. Taylor, in his testimony, was explicitly upset for two reasons. First, an irregular channel of policy making was used by the administration. Frankly, get over it. Taylor executes policy, and while he may have an input to the policy process, he does not make it.

Second, Taylor asserted military aid he considered vital was being withheld for “domestic political reasons.” It is worth noting the aid was delayed about seven weeks. Taylor thought, as characterized by O’Brien, the president was undermining the national interest. For me, Taylor’s testimony before the impeachment inquiry was far from convincing. No mention was made by Ulrich of Ambassador Gordon Sondland’s

Retired colonel Jimmie Montgomery served in the US Air Force commanding various units responsible for criminal, fraud, and counterintelligence operations worldwide. Most recently, his unit administered security and operations security (OPSEC) for special acquisitions programs.

testimony/recollection, which was often at odds with Taylor's. Perhaps Sondland is not a good, responsible oath-taker.

Ulrich uses now retired US Army Lieutenant Colonel Alexander Vindman as the second example of a good oath-taker. Again, Vindman was responding to a lawful subpoena, and he should have testified. He was not insubordinate. He did his duty. He expressed his judgments. I listened to Vindman's testimony and viewed his demeanor; he does not lack self-confidence and was borderline arrogant in his responses. He believed what he said. Whether his judgment was correct on what he believes he heard in the phone conversation between the president of Ukraine and US President Donald Trump will be evaluated by history.

Finally, I wholeheartedly disagree with the concluding assertion that the current view of our military officers is that loyalty to the president outweighs the duty to testify before Congress when lawfully subpoenaed. (I had to smile at the use of "trumps" in the paragraph.) I agree a robust education is needed on oath-taking, but the concluding paragraph in the article should have been omitted. The tone is melodramatic.

## The Author Replies

Marybeth P. Ulrich

In my essay, "The Politics of Oath-Taking," I introduced the concept of political oath-takers (political appointees) and professional oath-takers (civil servants including the uniformed military) and argued understanding their constitutional obligation is uneven. I also raised the basic question of whether participating in the constitutional process in support of democratic institutions violated the professional military norm of nonpartisanship. I concluded fulfilling one's oath to the Constitution, even if such an act was contrary to the commander-in-chief's wishes, did not violate professional military norms. On the contrary, acts such as now-retired US Army Lieutenant Colonel Alexander Vindman's testimony before the House of Representative's impeachment inquiry support Congress's impeachment power to protect the presidency from an occupant who may abuse presidential power. Several readers took issue with some of the arguments raised. This brief essay seeks to address their concerns.

### Political versus Professional Oath-Takers

David Wasserstein writes the distinction I proposed between professional and political oath-takers was "artificial at best, dangerous at worst." He went on to offer a distinction, "The former are obliged to give impartial, nonpartisan service to their country, while the latter give explicitly partisan support to the political agenda for which they or those who appoint them are elected." This definition is in fact consistent with my own, but I also emphasize whether or not the role is a partisan one, the obligation to uphold the oath is the same. As such, political

oath-takers cannot be excused from not following their oaths simply because they are political appointees.

Members of Congress are political oath-takers who have a particular obligation beyond political appointees. As elected officials, they are accountable to their constituents and are ascribed specific constitutional powers in order to check executive power. Members of Congress who choose to attack the character of witnesses and engage in hyperpartisan rhetoric, instead of questioning professional oath-takers on the issue at the heart of the inquiry, abdicate their constitutional responsibility. Professional oath-takers offer the nonpartisan objectivity critical to establishing the truth. Members of Congress true to their oaths balance their partisan loyalties with their constitutional obligation to check a president who abuses the power of his or her office. Unfortunately, the impeachment inquiry featured a number of politicians unable to exercise the restraint necessary to conduct an objective proceeding capable of producing the constitutional remedy the founders intended.

The readers criticize Ambassador William B. Taylor Jr. and Vindman for interjecting their policy expertise into the proceedings. It is important to clarify the responsibility that career national security professionals, both uniformed and civilian, have in the process. Vindman and Taylor both possessed expert professional knowledge relevant to the inquiry uniquely acquired through their national service. Professional norms and the oaths of each man to the Constitution required such expertise be shared in the form of professional advice with the executive and Congress. Indeed, as part of the confirmation process senior military officers promise to be forthright when questioned before Congress.

Jimmie R. Montgomery rejects the “two masters” argument that the military is subject to the control of both the president and the Congress, citing the fact the Department of Defense is part of the executive branch. This position highlighted the president’s commander-in-chief role atop the military chain of command but did not pay sufficient attention to the founders’ intent to place significant authority to fund, regulate, and even create military forces, such as the nascent Space Force, uniquely in Congress’s hands.

Montgomery also took issue with Vindman’s demeanor while testifying, chiding him for arrogance. I witnessed some of my War College students raising such objections, including the critique he wore his uniform to testify. Vindman responded he was testifying in his professional capacity. His choice was in line with Army regulations and the norm that active duty officers testify in uniform. Critics may dispute his preference, but focusing on his attire and demeanor detracts from full consideration of the issues at the center of the inquiry.

## Implications

Vindman retired from the Army in the aftermath of President Donald Trump’s attempt to deny him promotion to full colonel and Army officials’ communication to him his future assignments would be restricted. Vindman determined his Army career was no longer viable, ultimately sacrificing his career for remaining loyal to his oath. Vindman told the *Atlantic*, “I had to choose between the president and the Constitution. I was aware of the fact that I could be compelled to

testify. But I chose the Constitution. No Army officer wants to be put in that position, but there I was” (Jeffrey Goldberg, “Alexander Vindman: Trump is Putin’s ‘Useful Idiot.’” *Atlantic*, September 14, 2020). Given the inability of the secretary of defense to protect Vindman sufficiently from retaliation for his participation in the impeachment query, future professional oath-takers may not choose a path of government service if such a choice is perceived to be career ending.

The founders understood merely stating the rules of the game in the Constitution would not be enough. They also thought it was important to socially construct an emotional commitment to the document—the oath—in order to buttress the rules with supporting norms. But the current American political scene lacks oath-takers in sufficient numbers who understand the obligations of their oath and its associated norms for civil-military relations in a democracy. Without such understanding those “who choose loyalty to American values and allegiance to the Constitution” may be punished, contributing to the further erosion of democratic institutions (Alexander Vindman, “Alexander Vindman: Coming Forward Ended My Career. I Still Believe Doing What’s Right Matters,” *Washington Post*, August 1, 2020).