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SO HELP ME GOD: RELIGION AND PRESIDENTIAL OATH-TAKING

*James E. Pfander**

President Bill Clinton underwent impeachment and courted conviction and removal from office for having violated, in the words of his accusers, the religious sanctity of the oath. Representative Henry Hyde (R., Illinois) was especially unwilling to forgive Clinton's oath-breaking. In preaching the importance of the oath as a bulwark of the rule of law, Representative Hyde emphasized the religious features of the oath. Hyde argued that Clinton's promise to tell "the truth, the whole truth, and nothing but the truth, *So Help Me God*," went to the very heart of his obligations as the nation's chief executive.

Although the Senate and the people ultimately disagreed on the merits, one can scarcely disagree with Hyde's characterization of the oath as an advertently religious expression. It was so understood during the Founding Era, a time when many critics viewed the religious features of oath-giving as problematic.¹ Partly, this distrust of oath-giving flowed from the religiously-inspired perception that an oath might unfairly demand a promise that would send an oath-breaker to eternal damnation; partly, it reflected a desire to accommodate the rights of Quakers and others, who refused on principle to swear an oath to the Almighty; partly, it reflected a growing recognition that oath-taking might invade the rights of conscience of the increasingly deistic populace of the country.²

* Professor of Law, University of Illinois. Thanks to Jim Chen for a number of quite useful suggestions.

1. Interesting ruminations on oath-taking appear in Sanford Levinson, *Constitutional Faith* (Princeton U. Press, 1987).

2. With its provision for an oath or affirmation, the presidential promise in the Constitution reflects a concern for rights of conscience that a simple oath requirement would have ignored. See U.S. Const., Art. II, § 1, cl. 8 (specifying that the president shall take the following "Oath or Affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.'"). Cf. U.S. Const., Art. I, § 3, cl. 6 (requiring the Senate, when sitting for the purpose of impeach-

The complex considerations that inspired this opposition to oath-taking may have helped to persuade the Framers of the Constitution to leave God and the requirement of a religious oath out of the nation's fundamental charter. Unlike the Declaration of Independence and the Articles of Confederation, both of which invoked God's blessing, the Constitution contains no reference to God.³ In the text of the provision that sets forth the oath of office for the President of the United States, moreover, the Constitution contains a conspicuous omission: in contrast to the form of virtually every oath then current in the courts of law,⁴ the oath for president does not conclude with the familiar words, *So Help Me God*.⁵ That this omission reflected a policy of ending the religious nature of oath-giving comes through clearly in the rejection of a proposed amendment that would

ment, be on "Oath or Affirmation"); U.S. Const., Art. VI, cl. 3 (requiring state and federal officers to "be bound by Oath or Affirmation, to support this Constitution. . ."); U.S. Const., Amend. IV (requiring warrants to issue upon evidence supported by "Oath or affirmation"). But cf. U.S. Const., Amend. XIV, § 3 (barring from federal office-holding those who supported the Confederacy after having taken "an oath . . . to support the Constitution. . ."; no mention of affirmation). See generally Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1410, 1475 (1990) (noting the explicitly religious elements of oath-taking and distinguishing the affirmation as an alternative for Quakers and others, who on the basis of religious or other scruples, would have been disqualified from office by a religious oath requirement). Apparently, only one President, the devout Franklin Pierce, availed himself of the option to affirm rather than to swear in the course of making the presidential promise. See Joseph Nathan Kane, *Facts About Presidents* 85 (H. W. Wilson Co., 6th ed. 1993) (linking Pierce's scruples about swearing an oath to the passages in Matthew 5:34-37).

3. Although the Declaration of Independence referred to the "laws of nature and of nature's God," to the "Creator," and to the "protection of Divine Providence," and the Articles of Confederation to the "great Governor of the world," the Constitution of the United States omits reference to God (aside from its closing reference to the year of "our Lord" 1787) and proscribes in Article VI any religious test for office. Cf. *Rector of the Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892) (invoking the references to God in the Declaration of Independence to proclaim ours a Christian nation).

4. For exemplars of the oaths common in King's Bench, see Richard Gude, 2 *The Practice on the Crown Side of King's Bench* 578-92 (1828) (Rothman reprint ed. 1991) (setting forth 55 oaths of office, virtually all of which conclude with the phrase, "so help you God," or "as God you help, and by the contents of this book"—a reference to the Bible). Exceptions to the rule of requiring a reference to God were made for Quakers, see *id.* at 591, and for Chinese nationals, see *id.* at 592 (setting down an oath for Chinese nationals that entailed the breaking of a saucer coupled with an admonition that "if you do not tell the truth your body is cracked like this saucer"). The oath of office of Chief Justice John Jay, the nation's first Chief Justice, included a concluding reference, *So Help Me God*. See Maeva Marcus and James R. Perry, eds., 1 *Documentary History of the Supreme Court of the United States, 1789-1800* at 12-13 (Columbia U. Press, 1985). References to God persist at the Supreme Court, with the commonplace suggestion that "God save the United States and this Honorable Court." Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 Colum. L. Rev. 2083, 2109-10 (1996).

5. See note 2.

have altered the general oath requirement in Article VI to proclaim it, in essence, a religious test for office.⁶ The agnostic (if not downright atheistic) character of the Constitution was well-known and grew controversial during the nineteenth century. Among a surprisingly small number of other changes, the Constitution of the Confederate States of America altered the federal Constitution to add an explicit reference to God in its preamble.⁷

But in keeping with the claims of Rep. Hyde and despite the best efforts of the Framers, presidential oath-takers traditionally intone, *So Help Me God*. Our tradition dates from a precedent set by President George Washington at the nation's first inaugural.⁸ Although he wore a plain brown suit of good American cloth (and thus carefully avoided the pretense of European clothes even as he abandoned certain of the features of a monarchical investiture), Washington did arrange to have a Bible on hand when he gave the oath of office. Washington also chose to add the words, *So Help Me God*, to the oath of his office, despite their omission from the terms set down in the Constitution. *So Help Me God* has been a regular feature of the event ever since, an outcome that would not have surprised the precedent-conscious first president.⁹ In a real sense, then, we have a religious oath of office as a result of a constitutional amendment adopted through the precedent-setting action of the nation's first chief executive.

In this characteristically clever symposium, the editors of *Constitutional Commentary* invite us to blot out a single constitu-

6. See Edward Dumbauld, *The Bill of Rights: And What it Means Today* 20, 44, 48 (U. of Oklahoma Press, 1979) (describing the ultimate rejection of amendment, first proposed by the South Carolina ratification convention and later considered in the House and Senate during debates over the bill of rights, that would have inserted the word "other" before "religious" in Article VI and would thus have converted the oath into a religious test).

7. See 1 *Journal of the Congress of the Confederate States of America, 1861-1865* at 899, 909 (Gov't Printing Office 1904) (reproducing provisional and permanent versions of the Confederate Constitution, both of which invoke the "favor of Almighty God" in their preambles). Interestingly, the Confederate Constitution did not include the South Carolina proposal to create a religious test for office, see note 6, nor did it water down the establishment and free-exercise provisions of the first amendment. See *id.* at 902, 908 (adopting verbatim the religious provisions of the First Amendment, albeit in article I of the Confederate Constitution, and repeating the ban on religious tests in Article VI).

8. For accounts of George Washington's first inaugural and his spontaneous addition of *So Help Me God* to his oath of office, see Epstein, 96 *Colum. L. Rev.* at 2110 and sources cited therein (cited in note 4).

9. See *id.* at 2111 (reporting that President Bill Clinton and Vice-President Al Gore followed the tradition by including *So Help Me God* in their oath of office).

tional feature and to imagine how such a suppression, magnified by the accumulated weight of history and the centuries, might change our world. So let's imagine for a moment how today's world might differ if we were to return in our trusty time machine to the period of the first inaugural. Suppose we persuaded Washington to deliver only the oath set down in the Constitution, to use the language of affirmance rather than that of oath-taking, and to omit the Bible from the whole affair. How would the world of today look if we returned with the butterfly, *So Help Me God*, stuck in the mud under our sneakers?

Well, different, of course.¹⁰ Suppose that Washington's practice took hold and led to the widespread abandonment of ceremonial deism at the federal level. The House of Representatives abandoned the practice of hiring a chaplain and refused to invite religious leaders to offer solemnizing benedictions at the opening and closing sessions of Congress. At the same time that religious observance left public life, it obtained a stronger purchase on the private lives of the people and flourished in the churches, mosques and synagogues of the day. The oath of office and the promise to tell the truth, though they omitted the words, *So Help Me God*, came to represent a promise to all of the members of civil society. As a result, Americans dropped the presumption that God would punish oath-breakers and demanded honesty and rectitude in their public office holders.

Many features of our history changed as a result. For example, when Abraham Lincoln gave his Lyceum Speech, urging veneration of the Constitution and laws of the United States as the country's political religion, he was expressing a truism of the day. The country adopted a practice, often followed in its earliest state papers, of dating transactions from the date of our de-

10. One might, of course, follow the literary device of the story, "The Lady or the Tiger," and propose an alternative ending. See Frank R. Stockton, *The Lady or the Tiger* in Ralph L. Woods, ed., 1 *Treasury of the Familiar* 286 (MacMillan, 1948). Consider this one: Washington had feared that omission of *So Help Me God* might galvanize a religious opposition to the Constitution. Sure enough. His simple inaugural oath so shocked the decent folk of America that they immediately mounted a campaign to bring God explicitly into the Constitution. Newspapers as disparate in interest as the *Aurora* and the *Gazette* editorialized in favor of the change. Many good citizens were shocked to learn, upon reading (leaked) portions of Madison's journal, that the delegates to the Philadelphia convention had rejected Benjamin Franklin's proposal for a prayerful solution to their impasses over representation. All of this fuss and bother left its mark on Madison's subsequent efforts in the First Congress to secure a bill of rights. Rather than a constitutional amendment assuring the free exercise of religion and prohibiting its establishment, the politics of the day demanded a pro-religion amendment.

clared independence from Great Britain (July 4, 1776)¹¹ and dropping the reference to the year of our Lord.¹² (This had the salutary but wholly incidental effect of delaying the arrival of the Y2K bug by nearly two thousand years and eliminated it from the popular culture of today.)¹³

More recently, the Senate voted on February 12, 223 (i.e., 1999) to convict President Clinton and remove him from office. Although the people forgave Clinton his dalliances, they were quite unwilling to leave it to God to punish him for his violation of his promise to tell the whole truth. Having broken faith with the American people, Clinton was cashiered in a process free of cant and hypocrisy.

11. See, e.g., Articles of Confederation (dating the Articles as of "the ninth day of July, in the year of our Lord 1778," and "in the third year of the Independence of America"); U.S. Const., (dating the Constitution as of "the year of our Lord 1787" and "of independence the twelfth").

12. The French, of course, later followed suit by dropping the Lord and resetting their calendar to begin with the first year of the French Revolution. See Daniel L. Dreisbach, *In Search of a Christian Commonwealth: An Examination of Selected Nineteenth-Century Commentaries on References to God and the Christian Religion in the United States Constitution*, 48 *Baylor L. Rev.* 927, 965-66 (1996).

13. Of course, some Y1C problems arose during the run-up to July 4, 100 (1875) as the nation struggled with the change to three digits. Reports suggest that the Y1C bug persisted and may have contributed to the vote-counting difficulties that plagued the Hayes-Tilden election in November 101.