

# 1650-1850: Ideas, Aesthetics, and Inquiries in the Early Modern Era

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Volume 20

Article 2

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2013

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### Recommended Citation

A. G. Monaco (2013) "LOYALTY OATHS A Reminder from the Enlightenment," *1650-1850: Ideas, Aesthetics, and Inquiries in the Early Modern Era*: Vol. 20, Article 2.

Available at: <https://digitalcommons.lsu.edu/sixteenfifty/vol20/iss1/2>

# LOYALTY OATHS

## A Reminder from the Enlightenment

A. G. Monaco

The faculty member on the other side of the call was breathing fire into the telephone. For the past ten minutes I had been shouted at out about my violations of individual freedom and personal dignity and called a variety of names including “jack-booted pop-injay” which, had I been able to get a word in, I would have pointed out was probably an oxymoron. My offense: I had informed a new colleague of his that the laws of my state required all employees to sign a “loyalty oath.”

We in the field of higher education tend to be far more willing to elevate minor issues to matters that are in some way a threat to all of Western civilization. As the rhetorical flame gets hotter someone is likely to declare that the other person is the second coming of Stalin or at the very least

"Nixonian" in behavior. We then often run to our collections of reference materials to engage in ridiculous levels of research to destroy the position of the other person. While gaining a sense of satisfaction from winning the most minor of arguments we then try to declare our efforts to be some form of important research so that in some way we then get some level of credit for "scholarship." This article is a product of all that is "silly" in higher education and most likely emerges from a pattern of personal behavior that has been fashioned by a generosity of free time rarely afforded to professionals outside higher education.

As an administrator I have the ability and obligation to point out all the silly intellectual attempts by some faculty to fashion research out of nonsense followed by an absolute expectation of accolades or at the very least "classroom release time." I however believe the more honest administrators among us perform such duties while acknowledging that they have always been jealous of the ability of their friends in the faculty to joyously spend so much time researching so many subjects that are neither important or generally worth knowing.<sup>1</sup> Most naturally an article must arise out of the opposition by a small group of highly articulate but somewhat underemployed individuals to the rather common and I believe benign practice of asking faculty at public institutions to declare their support for the United States Constitution and the laws of their respective states. Now before you assume that this is some attempt on the part of some higher education bureaucrat to declare that the "Emperor has no clothes!" please note that in my jealousy I too wish to be naked.



Complaints about loyalty oaths whether litigious or simply expressed are not unique but with the exception of a period of about twenty-five years in the middle of the last century such challenges are rather few and far between. In the case of my career, since the 1980s I have administered functions at a number of public entities that have required the signing of

<sup>1</sup> While administrators often use the term "our friends in the faculty" in all reality rarely do faculty consider any of us their friends. When my own wife was a member of the faculty at a Midwestern university where I was an administrator she regularly introduced me as "the jack-ass from the administration."

**I** *Benedict Arnold Major General*  
do acknowledge the UNITED STATES of AMERICA to be Free, Independent and Sovereign States, and declare that the people thereof owe no allegiance or obedience to George the Third, King of Great-Britain; and I renounce, refuse and abjure any allegiance or obedience to him; and I do *Swear* that I will, to the utmost of my power, support, maintain and defend the said United States against the said King George the Third, his heirs and successors, and his or their abettors, assistants and adherents, and will serve the said United States in the office of *Major General* which I now hold, with fidelity, according to the best of my skill and understanding.  
*Sworn before me this 30<sup>th</sup> May 1778. at the Artillery Park Valley Forge George B. Glendon*

Figure 1: Loyalty oath signed by Benedict Arnold on May 30, 1778.  
War Department Collection of Revolutionary War Records.  
National Archives Identifier: 300357.

an oath of loyalty to the United States Constitution and the laws of the state. Over a period in excess of thirty years literally thousands of professionals, tradesmen, and administrative employees have been asked to sign the oath and this was only the third time I was even asked a question about the practice. There was on one occasion an inquiry by a foreign national, and at another time a question raised by a Mennonite, but the only complaint for political reasons about being “forced” to adhere to a loyalty oath took place this year.<sup>2</sup> The objection was expressed not by a political scientist but rather by a new member of the English faculty, who was then joined by a couple of other veteran faculty members (who had long ago signed the oath) in complaint. One of their complaints directed to my office declared that the practice of requiring the signing of the oath was “draconian” and “insensitive” in nature and borne out of “an unenlightened thought process.” Inevitably whenever intelligent people are questioned about their motives or asked by an administrator to simply get to the

<sup>2</sup> Foreign nationals are exempt from the oath requirement and Mennonites are not required to swear.



point the name of Senator McCarthy is eventually invoked. Any request to simply do something to satisfy the law inevitably raises the specter of the old "blowhard" from "cheese country." One might wonder if academic argument and angry discussion on college campuses could even be sustained in its present form if Wisconsin had reelected Robert La Follette in 1948 instead of old "tailgunner Joe."

In addition to leading me to now believe that the jokes administrators make about English Departments<sup>3</sup> are in fact based in truth I decided to use some of my ample free time to research loyalty oaths and its connection to the "Enlightenment." Whether loyalty oaths serve any value or are actually efficient in maintaining some adherence to laws may be a more important subject to research but simply not as interesting as the direction I have chosen. So in this article I set out to argue that the modern American loyalty oath rather than a recent product of the "Red Scare" or a political reaction to the downturn in the residential real estate market is the product of the Period of Enlightenment and by nature romantic rather than draconian.

Whether you agree or do not agree with their use the "loyalty oath" in its present form they are a product of American culture and origins of the oath are clearly owed not to fear of communism or the result of "right-wing" politics but rather they are borne out of the liberalism and works of the intellectual leaders of the sympathetic school of the Enlightenment. The language of the oath though shaped by modern courts is indeed romantic in nature and liberal in intent.

### \* The Oath Is Not Really an Oath \*

The most common "loyalty oath" used throughout the United States for all levels of public employment and appointments is as follows:

I [employee's name] do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this State; and I will faithfully and impartially discharge and perform all the duties incumbent upon me as [job

<sup>3</sup> "On the campus of the University of Hell there are two libraries but no English Department because even Satan is occasionally compassionate."

title], and according to the best of my ability and understanding.  
So help me God.<sup>4</sup>

Designated a loyalty oath in numerous state constitutions and described in some federal documents as the "oath of office" the truth is that by definition only the last sentence "So help me God." is an oath. The remainder of the statement is the professing of an obligation to do certain things. The offering of the alternative to "affirm" rather than swear speaks to the influence of Quakers in the founding of the country and the traditions brought from England where since the mid-seventeenth century a Quaker's right not to swear but rather to affirm was recognized and perhaps stood as an early example of religious tolerance.

Quakers, Mennonites, and other religious groups do not swear to god as a result of a literal adherence to Mathew 5:33.<sup>5</sup> Followers of religions that forbid swearing are allowed in the United States to "affirm" their intentions rather than "solemnly swear." Both Quaker presidents, Hoover and Nixon, however, chose to swear when taking the oath of office. To date the only president to choose the option of affirming rather than swearing was Franklin Pierce. Though technically not an oath we should perhaps be grateful that a precise adherence to language and custom is no longer an important part of professing our obligation of loyalty. I am told that the common practice of holding up our right hand while we take an oath is drawn from the ancient practice of severing the right hand of those who broke a promise.

### ✱ Loyalty Oaths Are Not New ✱

To pinpoint when exactly oaths became commonplace is likely impossible to prove but one can find the discussion of oaths among the ancient Greeks. From Herodotus through to modern Greece the swearing of oaths has remained an important element of society.

Sworn statements as to truth or future action, exchanged by wary interactants and witnessed by higher powers, punctuated high-

<sup>4</sup> Louisiana Revised Statutes 42:52 and 42:53. The language displayed is in use by the federal government, nearly all fifty states and most major municipalities.

<sup>5</sup> *The New King James Bible: The New Testament* (Nashville: Gideons International, 1985), 8.

stakes dealing, among Greeks. The binding oath had unique importance in preliterate societies and remains central in later alphabet-dependent ancient Hellas and in our contemporary world. Hellenic oaths regularly punctuated interpersonal (ethical commitments), domestic judicial proceedings, and inter-city diplomacy. Extant records suggest that Greek oath procedure followed a consistent pattern: an oath asserts something past as fact or promises something for the future with an invocation to the gods to punish the swearer if the assertion proves false or the promise is not kept. The self-curse invites a rebalancing, or *tisis*, for falsehood or non-performance.<sup>6</sup>

Discussions of the use of oaths can be found in John Milton's a treatise *On Christian Doctrine* "whereby we call God to witness the truth of what we say, with a curse upon ourselves...should it prove false."<sup>7</sup> Milton's definition has been read to suggest that oaths in the Old Testament have three major elements—the oath statement, the invocation of a witness (usually God), and the curse formula which might be explicitly stated or implied through the use of some accepted bodily gesture.<sup>8</sup>

Within the new testament we find the gospels of both Mathew and James offering the opinions on oaths that some have taken to mean that one should never swear an oath and others have interpreted to forbid unlawful oaths.<sup>9</sup> For our purposes we can avoid that debate and simply note that in some form both major sections of the Bible speak to the use of oaths.

Oaths to tell the truth or for business guarantees made the natural transgression through its basis of fealty to a supreme being to loyalty to a particular leader or government during civil wars in England and other wars and transfers of colonies within Europe. During the reign of Philip II and the nearly constant unrest in what was then known as the Spanish Netherlands a variety of loyalty oaths were imposed in order to assure fealty to the king, adherence to Catholic leaders, support of Calvinist leaders and numerous other individuals. Between 1560 and the start of the Thirty Years' War in

<sup>6</sup> Edith Foster and Donald Lateiner, eds., *Thucydides and Herodotus* (New York: Oxford University Press, 2012), 154.

<sup>7</sup> Stephen D. Ricks, "Oaths and Oath Taking in the Old Testament," in *The Temple in Time and Eternity*, ed. Donald W. Parry and Stephen D. Ricks (c. 1999), <http://maxwellinstitute.byu.edu/publications/books/?bookid=21&chapid=103>.

<sup>8</sup> Ricks, "Oaths and Oath Taking," 1.

<sup>9</sup> David G. Hagopian, "So Help Me God: A Biblical View of Oaths," *Antithesis* (1990): 3–6.

1618 it would appear that in order to save one's life depending on what faction was most threatening at the moment people in that part of the Hapsburg Empire were willing to sign multiple oaths of allegiance to a variety of leaders. Still it was perhaps the demand by Henry VIII for an Oath of Supremacy later edited by his daughter Queen Elizabeth in 1559 that most effectively used an oath during the sixteenth century. Through the English monarchies heavy reliance on the use of the Oath of Supremacy (with a slight respite during Mary's abbreviated reign) the use of an oath allowed an entire empire to leave the Catholic Church and create a religious revolution of sorts that was based solely on law rather than public outcry.<sup>10</sup> One could even argue that the English oath of supremacy made a saint out of the rather disagreeable Thomas More when he refused to sign it.

We see a use of loyalty oaths in the portion of the Americas that became the United States before England took control of the colonies. Examples of New Jersey residents in Woodbridge, Piscataway, and Middletown signing oaths of allegiance to the Dutch Crown are seen as early as 1673.<sup>11</sup> Still available for review in the files of the Louisiana State Archives is the signed oath of allegiance to his Catholic Majesty the King by the Free Black Militia of Louisiana dated 1769.<sup>12</sup> In nearly all cases the oaths that are prevalent in North America prior to the Revolutionary War are promises of loyalty to a particular version of God as formed by religious doctrine, or we see a continuation of the codification of a subservient relationship between subjects and their lords. The use of oaths of loyalty to prove support of a political cause or adherence to a particular set of laws are not seen until the colonialists seek to escape from the control of the British monarch.

### ✱ Then Came John Adams ✱

Assume that national politics corrupts all who enter and recognize that the Adams who so brilliantly stated the basis for the modern American loyalty oath did so prior to running for national office, one will then be allowed to accept that the uncorrupted Adams is the one that still influences us today. I

<sup>10</sup> Jeff Hobbs, "The Religious Policy of King Henry VIII," Britannia.Com (2000).

<sup>11</sup> East and West Jersey Property Records, New Jersey State Archives.

<sup>12</sup> *La Compagnie des Mulâtres et Nègres Libre 1769*, Louisiana State Museum, <http://LSM.crt.state.la.us>.

do not wish to get derailed in my argument by Adams's use as president of the Alien and Sedition Act. Instead I will point to the fact that Thomas Jefferson used the act to quell disagreement with his administration,<sup>13</sup> though Jefferson had argued against the act during Adams's presidency. Thus I will simply state that modesty and morals are often challenged when one reaches the height of political power. The John Adams I wish to recognize in this matter is the Adams who was a vibrant voice and the intellectual standard for freedom from British tyranny.

In 1774 John Adams, writing under the pseudonym Novanglus, published a letter in the *Boston Gazette*, which argued that England's treatment of American colonists violated their rights under British law. He stated that "the British constitution is much more like a republic than an empire....a government of laws and not of men."<sup>14</sup> Adams actually credited James Harrington with expressing the idea in *The Commonwealth of Oceana*, published in 1656. Adams however, captured common credit for the phrase when he used it in writing the Massachusetts Constitution's Bill of Rights in 1780.<sup>15</sup> This one phrase and the ideas behind it grew out of the great thinkers of the Enlightenment and continue to shape the American governing process.

It is not hard to understand the direction from whence Adams's ideas had come from. Despite the common characterization of him as a stolid conservative who leaned toward support of an aristocracy Adams displayed in his pre-presidential writings and opinions the character found within the "sentimentalists of the enlightenment" It is most likely that Adams like many of the sentimentalist philosophers were influenced by Francis Hutcheson. Hutcheson has been described by Norman Fiering, the leading expert in the intellectual history of New England as one of the "most influential and respected moral philosophers in America in the eighteenth century."<sup>16</sup> His influence on the founding fathers of the United States was likely quite significant since his teachings were a cornerstone of philosophical education at the College of Philadelphia (University of Pennsylvania), College of William and Mary, and the College of New Jersey (Princeton University) prior to

<sup>13</sup> Frank L. Mott, *Jefferson and the Press* (Baton Rouge: Louisiana State University Press 1943), 37.

<sup>14</sup> John Adams, "Novanglus Papers," no. 7, in *The Works of John Adams*, ed. Charles Francis Adams (New York: Little Brown, 1850), 4:10.

<sup>15</sup> Adams, "Novanglus Papers," 4:230.

<sup>16</sup> Norman Fiering, *Moral Philosophy at Seventeenth-Century Harvard: A Discipline in Transition* (Chapel Hill: University of North Carolina Press, 1981), 199-201.

the Revolution.<sup>17</sup> By the time Adams was studying at Harvard in the early 1750s Hutcheson's book *Inquiry into the Original of Our Ideas of Beauty and Virtue* had been used as a texts for several decades.<sup>18</sup> Additionally Adams admits to having read Hutcheson's *Short Introduction to Moral Philosophy* after leaving Harvard.<sup>19</sup> It is likely Hutcheson's use of the term "unalienable rights" in association with the right of a society to resist tyranny and oppression that led some like Gary Wills and Samuel Fleischacker to believe his work even influenced Jefferson in his writing of the Declaration of Independence.<sup>20</sup> From Hutcheson also flowed *The Theory of Moral Sentiments* by Adam Smith, his star pupil and a key participant in the sentimental school of the Enlightenment.

I further contend that the ideas contained within Smith's *Theory of Moral Sentiments* published in 1759 but often forgotten in the overwhelming shadow of *A Wealth of Nations* may have influenced Adams as much as Harrington in writing the Novanglus letters. While Harrington coined the famous phrase it was Adam Smith who within the *Theory of Moral Sentiments* who most clearly stated the need for a government of laws not personalities when he compares the successes of the American colonies covered by British law versus the failures of the Bengal colonies ruled by a mercantilist company.<sup>21</sup> Smith's work which was so readily available to Adams during his early public life clearly defines the great leader not as a military hero leading troops into battle but as the person who "may re-establish and improve the constitution."<sup>22</sup> The supremacy of laws is captured in many of Adams's early writings and can be seen woven within his creation of the Massachusetts Constitution. Adam Smith's contention that justice is essential not just to civil society but also to how we "measure our behavior in the eyes of others" is the common theme of the *Theory of Moral Sentiments* and provides the bridge between the libertarianism and Federalism that one sees in Adams's work.

<sup>17</sup> Caroline Robbins, "When It Is That Colonies May Turn Independent: Analysis of the Environment and Politics of Francis Hutcheson," *William and Mary Quarterly*, 3<sup>rd</sup> series, 11 (1954): 215-16.

<sup>18</sup> Fiering, *Moral Philosophy*, 199.

<sup>19</sup> John Adams, *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (Cambridge: Belknap Press, 1961), 2-3.

<sup>20</sup> Alexander Brodie, ed., *The Cambridge Companion to the Scottish Enlightenment*, (Cambridge: Cambridge University Press, 2003), 319-21

<sup>21</sup> Jerry Evensky, "Adam Smith's *Theory of Moral Sentiments*: On Morals and Why They Matter to a Liberal Society of Free People and Free Markets," *Journal of Economic Perspectives* 19.3 (2005): 110-11.

<sup>22</sup> Evensky, "Adam Smith's *Theory of Moral Sentiments*," 128.



Figure 2: "The United States is a nation of laws badly written and randomly enforced" — Frank Zappa. Spiro Agnew subscribes to the oath of office for Vice President of the United States. Collection RN-WHPO: White House Photo Office Collection (Nixon Administration). National Archives Identifier: 194280

### ✱ So What Does That Have to Do with Loyalty Oaths? ✱

Adams's contention that the United States was a country of laws became a commonly repeated statement in major court cases starting with *Marbury v. Madison*.<sup>23</sup> Eventually the phrase becomes the most effective defense of the ability to speak out against perceived injustice subsequent to signing a loyalty oath and thus primarily shaped the language most commonly used in such oaths creating its present constitutional form.

One can easily find numerous examples of the language of oaths being found offensive and eventually unconstitutional by the American courts.

<sup>23</sup> *Marbury v. Madison*, 5 U.S. 137 (1803): "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right" (Chief Justice Marshall).



Oaths required of members of Congress in 1864 led Senator James A. Bayard to resign rather than take an oath he believed inappropriate because of the limitations it set in regard to past behavior. The oath often called the "Ironclad Oath" required that you swear to future loyalty as well as to the fact that you never previously engaged in disloyal acts. Originally designed to cover all federal employees and to eliminate southerners from regaining political power, both Presidents Lincoln and Johnson opposed the oath. They instead sought to have southerners swear to an oath that promised loyalty to the Union in the future. Eventually Congress exempted southerners from portions of the oath and by 1884 repealed the entire oath.<sup>24</sup>

The state of Missouri required a similar oath for teachers and clergy, which led to the case of Father John Cummings. Father Cummings, the pastor of St. Joseph Roman Catholic Church in Louisiana, Missouri, refused to sign the oath, which was required in order to preach the gospel in the state. He continued to preach and was eventually imprisoned for two years. In 1867 the United States Supreme Court ruled the law unconstitutional.<sup>25</sup>

While history can be cruel in describing the motives behind those who pushed for pledges of loyalty that pronounced an opposition to communist ideals the misuse of oaths was broader than as a guard against Communism. At one point in the early days of the Roosevelt Administration children were asked to take an oath to only buy where "the blue eagle flies." This practice of using oaths to drive economic boycotts was appropriately ended when the Supreme Court ruled the National Recovery Act unconstitutional. Still, one must admit that the worst use of loyalty oaths centered on the "red scare" and America's mid-twentieth century preoccupation with Communism.

Anti-communist loyalty oaths were challenged repeatedly in court from the 1940s through the 1960s. The challenges, based on the grounds that the oaths violated the individual's rights as expressed in the First and Fourteenth Amendments to the Constitution, were thankfully successful by the late 1960s. The court decisions honed the language used in loyalty oaths to where the previously presented example from Louisiana tends to be the most common form of oath. Eventually the courts began to move away from its policing of the constitutionality of loyalty oaths to where in more recent years it has used its decisions to protect the modern loyalty oath while clearly stating the rights of the individual to dissent after signing an oath. The common oath used today has been found to not violate the constitutional rights of individu-

<sup>24</sup> United States Senate, "Art and History" web page, [www.senate.gov/art&history](http://www.senate.gov/art&history). 2013.

<sup>25</sup> *Cummings v. Missouri*, 71 U.S. 277 (1867).



als and importantly courts have found that it does not limit an individual's right to protest the behavior of government.

Swearing that you “will support the constitution and laws of the United States and the constitution and laws of this State” has been found to no way impede the right to nonviolently oppose the actions of the government consistently in both state and federal courts. Today the most often cited case is *Hosack v. Smiley*, in which, by finding the oath to be “plain, straight-forward and unequivocal,” the court stated that since “ours is a government of laws and not of men...recognition and respect for law in no way prevents the right to dissent and question repugnant laws. Support for the constitutions and laws of the nation and the state does not call for blind subservience. Such an extreme concept is not now nor has it ever been accepted.”<sup>26</sup>

With those words in that defining judicial decision I believe we come back full circle to the words of Adams and Harrington and the sentimentalist of the Enlightenment. The modern oath and its interpretation by our modern courts embraces the view of a society of laws based on a foundation laid by the great thinkers of the Enlightenment. The words that are contained in the modern American loyalty oath are a call to every public employee to support a society governed by laws and to avoid blind obedience to individuals or religious dogma. It is meant as a reminder that it is the laws of the nation and not the ambition or desires of public officials that rule the country. That reminder leads us directly back to Adams, his writings, and his dependence on the sentimentalists of the Enlightenment.

### \* Concluding Thoughts \*

Expressed by logical and talented people you will find good arguments against the continued use of loyalty oaths. For those who believe that the oaths are an example of a loss of freedom or forced adherence to a belief not their own: read the work of Marjorie Heins, who a few years ago wrote a terrific piece in opposition to loyalty oaths in *Dissent*.<sup>27</sup> Though I disagree with her premise

<sup>26</sup> *Hosack v. Smiley*, 390 U.S. 744 (1968).

<sup>27</sup> Marjorie Heins, “‘A pall of orthodoxy’: The Painful Persistence of Loyalty Oaths,” *Dissent* 56 (Summer 2009): 63–72.

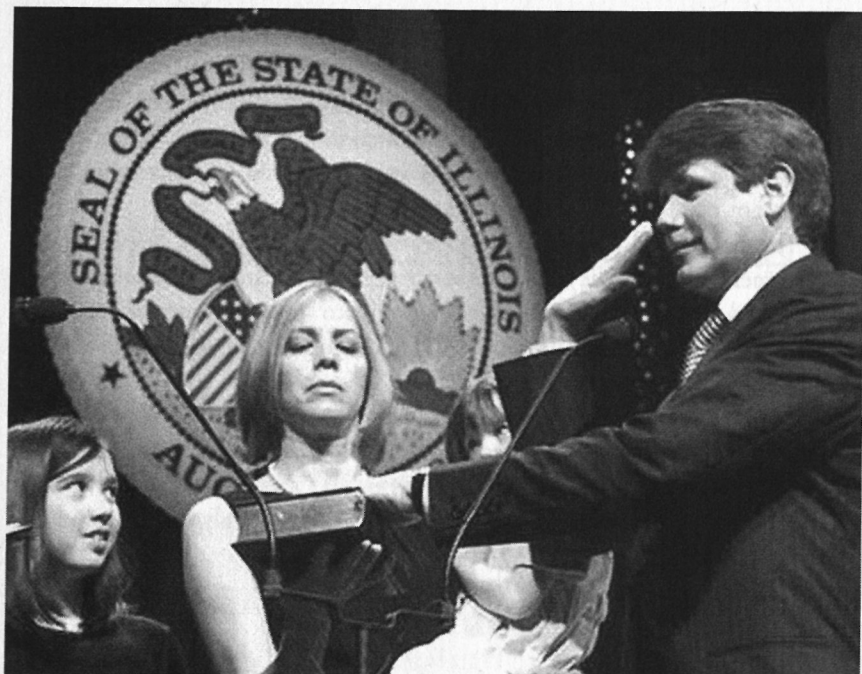


Figure 3: “A liar is always lavish of oaths” — Pierre Corneille. Former Governor Rod Blagojevich swears loyalty to the state of Illinois.

that they serve no valid purpose, I believe few have done a better job at advancing the argument.

Will loyalty oaths sustain loyalty? Probably not. Starting with Benedict Arnold many traitors to our nation have pledged loyalty to the laws of America and then violated those laws. Add to that list the politicians who disappoint us with their dishonest behavior and recognize that they upon attaining office all swore to uphold the laws of the nation and one can see that loyalty oaths do not necessarily provide protection from disloyalty and corruption.<sup>28</sup>

Still, the oaths serve an important purpose. For public employees, the loyalty oath we sign is a reminder that our most important obligation is to our fellow citizens and to justice for all. The purpose the oath serves is neither trite nor obsolete since we are well served by a reminder that public employ-

<sup>28</sup> Nixon, a Quaker, offered us a harbinger of what was to come when he turned his back on his faith and swore rather than “affirmed” when taking his oath of office. It should have come as no surprise when he later turned his back on the Constitution he swore to uphold.

ees and officials serve the citizens of their community through the laws of the nation and the state and not by personal desires or the whim of some supervisor or state college administrator. Though the founders of our nation were far from perfect and the passage of a couple of centuries has increased our body of knowledge, the concept that citizens are best served by a government of laws has not been replaced by a better idea.

This is really an unenlightened and unsympathetic time. We view every disagreement about policy as a personal affront, spirited discussions about politics lead not to greater understanding but to animosity, and discourse is held captive by a profit-centered media and a culture that chooses to look at electronic devices rather than in the eyes of our colleagues. Reminding us through an oath that our purpose is about more than ourselves is not a trampling of our rights but rather a restatement that our rights are guaranteed by law and protected by the behavior of each other. The loyalty oath remains a valuable product of a time when Americans thought deeply about individual obligations, justice, and service.