What is the Object of the Constitutional Oath?

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ABSTRACT

How and why are public officials today obliged to follow the Constitution? Article VI gives us a crystal-clear answer: They are bound “by oath or affirmation, to support this Constitution.” But what is “this Constitution”? American constitutional culture today describes its Constitution in ways that presuppose that the Article VI oath binds officeholders to an external, objective, common object: the same commitment for all oath-takers today, and the same commitment today as in the past. Justices on the Supreme Court took their constitutional oaths at different times, spread out over 31 years from 1991 to 2022, but they claim to fulfill those nine oaths by speaking collectively of “the Constitution.” Americans regularly describe their Constitution as the oldest, still-operational, written national Constitution in the world. These

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sorts of contingent practices could, of course, change. But until they do, we should understand oath-takers to be swearing to obey the same entity which has been operative since the eighteenth century. If we have a living Constitution today, it must have been living from the very start. Change in constitutional requirements may be justified only if rooted in the rules for constitutional change operative at the Founding.

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This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.¹

I. INTRODUCTION

How important is fidelity to the constitutional oath? Pretty important, we think: Any theory of constitutional decisionmaking that does not tell officers how to keep their oath to support the Constitution is fatally flawed on this ground alone. Properly understanding the obligation of the constitutional oath in Article VI is absolutely necessary—if not sufficient—for a successful theory of constitutional decisionmaking.

This is not a new view. Justice Hugo Black, for instance, rooted his approach to interpretation squarely on the Article VI oath: “That oath means to me that I should support the Constitution as written, not as revised by the Supreme Court from time to time.”² Then-Professor Amy Coney Barrett and the late Professor John Copeland Nagle say, “The conventional position of modern originalists . . . is that the original public meaning of the Constitution’s text is ‘the law.’ The consequence of that position is that the original public meaning of the Constitution binds the legislators who swear to uphold it.”³ Senator Jacob Howard, who in 1866 introduced what would become the Fourteenth Amendment to the Senate and authored its Citizenship Clause, said in 1862, “We are sworn to uphold the Constitution, to be sure, and that oath is binding upon our consciences, but we are sworn to support it as it was intended by its framers.”⁴ Judge Thomas Cooley’s celebrated 1868 treatise on constitutional

¹. U.S. CONST. art. VI pars. 2–3.
decisionmaking relied on the oath for his argument for unchanging constitutional meaning and the sharp distinction between constitutional interpretation and common-law methods:

A constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstance or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed; and there can be no such steady and imperceptible change in their rules as inheres in the principles of the common law. Those beneficent maxims of the common law which guard person and property have grown and expanded until they mean vastly more to us than they did to our ancestors, and are more minute, particular, and pervading in their protections; and we may confidently look forward in the future to still further modifications in the direction of improvement. Public sentiment and action effect such changes, and courts should recognize them; but a court or legislature which should allow a change in public sentiment to influence it in giving construction to a written constitution not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty . . . .

Representative Ely Moore gave attention to the particular wording of Article VI in 1837:

We are bound, by all the obligations which an oath imposes, to “support this Constitution.” We are not required to “support” the forced constructions that may be given by a pliant court, or by a careless or venal Legislature. We are not called upon to “support” a constitution corrupted by congressional interpolations, or distorted and sophisticated by the legal mummeries of the bar or of the bench. Nor are we obligated to support a constitution that may be construed to change with the times and circumstances, that may grow with the growth, and decay with the decline of the country: but we are bound by our solemn oaths or affirmations to “support this Constitution” in its purity and integrity, unsophisticated and uncontaminated.

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5. THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 54 (1868) (emphasis added); see also West Coast Hotel v. Parrish, 300 U.S. 379, 404 (1937) (Sutherland, J., dissenting) (quoting the emphasized part of this passage from Cooley).

The importance of fidelity to the Article VI oath has, indeed, been a continuous drumbeat throughout American history.\footnote{See Christopher R. Green, “This Constitution”: Constitutional Indexicals as a Basis for Textualist Semi-Originalism, 84 NOTRE DAME L. REV. 1607, 1644–47, n.120 (2009) (many examples today and from every decade of American history).}

It is therefore a bit surprising that the literature on constitutional theory does not say more about the Article VI oath. The most extensive effort to explore the oath’s content and the nature of the obligations that it imposes upon public officials has been made by Richard Re, who has argued that officials are legally and morally bound to adhere to the consensus public understanding of the Constitution at the moment that they take their oaths.\footnote{Richard Re, Promising the Constitution, 110 NW. U. L. REV. 299 (2016). For criticism, see infra Section III.F. There is also our work in Green, supra note 7; Randy E. Barnett & Evan D. Bernick, The Letter and the Spirit: A Unified Theory of Originalism, 107 GEO. L.J. 1, 23–32 (2018); Evan D. Bernick, The Morality of the Presidential Oath, 47 OHIO N.U. L. REV. 33, 36–87 (2021); Evan D. Bernick & Christopher R. Green, There Is Something that the Constitution Just Is, 27 TEM. REV. L. & POL. 247, 266–77 (2023); and Michael Stokes Paulsen, Does the Constitution Prescribe Rules for its Own Interpretation?, 103 NW. U. L. REV. 857, 859–72 (2009).}

In earlier work, we have argued that the Constitution uses terms like “now,” “the time of the adoption of this Constitution,” and “our posterity” to situate itself in time and terms like “foregoing,” “hereinbefore,” “enumeration,” and “preceding” to define itself as a textual expression of meaning rather than more broadly as a set of goals or more narrowly as a set of particular applications.\footnote{See Green, supra note 7, at 1648–66; see also Barnett & Bernick, supra note 8, at 24.} Because Article VI requires officers to obey “this Constitution,” and because current officers receive power from the Constitution only after making a voluntary, public promise to do so, the content originally expressed by that temporally situated Constitution would seem to bind officeholders today.\footnote{See Green, supra note 7, at 1644–67.}

But there is a gap in this argument: What if the Constitution that officials promise to obey today is somehow not the original Constitution? What if the original Constitution was non-living, but was swapped out for a living Constitution at some point along the way? This might happen if officials came to understand themselves as promising to follow a different Constitution; it might happen if the American public also came to understand officials as promising to follow a different Constitution. This is the possibility of constitutional “abiogenesis”—life arising from non-living (“abiotic”) precursors.

This Article argues that no such change has yet taken place. This lack of change in the Constitution’s nature does not preclude changes in the Constitution’s content, nor does it preclude changes in the application of
that content to current facts. Article V provides that later amendments are “valid to all intents and purposes, as Part of this Constitution,” and original, textually expressed categories must be filled in with current facts. But if theorists want to defend the existence in present legal culture of a living Constitution, they need to trace those aspects of life back to the Founding and show that “this Constitution” was always alive.

If the Constitution has always been alive, and the meaning originally expressed by its text has never been binding on interpreters, then what is usually called originalism is false. We can call this sort of originalism “first-order originalism.” First-order originalism is an issue of language: an interpretive commitment to the meaning expressed by the constitutional text in its original context. Second-order originalism, by contrast, says that we should assess our attitude toward first-order originalism by looking to the Founding. And if one thinks the Constitution was malleable in living-constitutionalist ways even at the Founding—not becoming malleable along the way, but being that way all along—then it would be possible to be a second-order originalist without being a first-order originalist. While we are both first- and second-order originalists ourselves, this Article defends second-order originalism.

Part II of this Article presents three collections of evidence from current culture that pin down what we mean when we talk about “the Constitution,” especially in the morally critical context of the oath: We mean something objective and enduring since the Founding. We say that we swear the same oath, to the same Constitution, as each other today, and to which George Washington swore his presidential oath. We describe our Constitution as the oldest currently effective national constitution in the world. And Justices speak with one voice about the Constitution,

12. Second-order originalism is one way to describe the theory defended by William Baude and Stephen Sachs:

Officially, we treat the Constitution as a piece of enacted law that was adopted a long time ago; whatever law it made back then remains the law, subject to various de jure alterations or amendments made since . . . . [E]xplaining how a legal rule enjoys good title today means explaining how it lawfully arose out of the government established at the Founding.

vindicating on particular occasions oaths of office spread out across 27 years.

Part III sets out several reflections on this data:

(a) Despite near-universal disagreement in constitutional theory, officeholders nonetheless can give universal consent to a common object. The object’s identity, not overlap in officeholders’ subjective understandings of the object’s properties, is the key.

(b) The oath provides an external check on constitutional theory beyond mere coherence between our methodological principles and our considered judgements about how concrete constitutional disputes ought to be resolved, contrary to the coherence-based theories of Mitch Berman, Richard Primus, and Richard Fallon.

(c) In insisting on an external, common object for the oath, our constitutional culture has agreed with the most powerful ethical thinking about promises since the time of Pascal in rejecting subjective mental reservations as ethically relevant.

(d) Because the objective Constitution establishes a reasonably just scheme of social coordination, it imposes an obligation on even those oath-takers who honestly misunderstand its nature to adhere to its strictures; error about the object of one’s oath is at most an excuse for oath-breaking, rather than a justification.

(e) The constitutional promise imposes a defeasible moral obligation on both officeholders and members of the general public who offer them advice not to describe the Constitution inconsistently with its nature. It is possible that fidelity to even a reasonably just Constitution can yield sufficiently unjust outcomes in certain cases to justify deception. Even if public officers and constitutional scholars might be permitted or even obliged to lie about the content of the Constitution to avoid extreme injustice, however, such deception would not change the content of the Constitution.

(f) These considerations exclude post-Founding constitutional abiogenesis. To change the original processes of constitutional change is to create a new object—one different from “this Constitution.” Swearing the same oath as George Washington means swearing an oath to a Constitution with the same powers of change as Washington’s Constitution.

Part IV concludes with lessons for fans of constitutional flexibility and stability. Those who want flexibility must either find it there or convince Americans to abandon our claims of unity with the Founding. Those who want constitutional stability must find it in the original Constitution rather than simply touting the virtue of stability as such.

II. CONSTITUTIONAL OBJECTIVITY AND ENDURANCE IN CURRENT LEGAL CULTURE

The aspects of American culture we survey here are so obvious that it is hard to see how identifying them could possibly be of any use in resolving interpretive controversy over the Constitution. But just as fish need to be told what water is, constitutional theorists need to remind ourselves of very simple, basic facts about how Americans think about the Constitution. They think it (a) really exists, (b) is the same for everyone, and (c) is as old as the Founding.

A. The History of American Oath Formulas

Throughout American history, we have claimed to obey Article VI. The words we have used, however, have been different over time and for different officials. The President’s own oath is set out in Article II:

Before he enter on the Execution of his Office, he 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.”

Since 1862, this has been the oath for other federal officers:

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.”

The first Oath Act of June 1, 1789, was much more concise:

14. See David Foster Wallace, This Is Water: Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life 1 (2009).
15. See Green, supra note 7, at 1644–47 n.120.
17. 5 U.S.C. § 3331. The prefatory language was last changed in 1966, but the oath itself has been the same since 1862.
[T]he oath or affirmation required by the sixth article of the Constitution of the United States, shall be administered in the form following, to wit: “I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.” 18

Several of the auxiliary provisions of the 1789 legislation are worthy of note. The entire House of Representatives takes the oath every two years, but Senators only take the oath when elected. 19 State officers are only required to take the oath once, even if re-elected; They are to “take the same oath or affirmation, except where they shall have taken it before.” 20 Federal executive and judicial officers are likewise only required to take the oath once. 21 The Justices do not, for instance, swear a new oath each term; Justice Thomas’s oath from 1991 and Justice Ketanji Brown Jackson’s oath from 2022 are, of course, deemed still effective today.

States fulfill their Article VI obligations today with a large variety of verbal formulas; no federal statute prescribes the exact words. 22 Identity between state officers’ oaths and others can thus only mean identity of content and meaning, not verbal identity. 23 Taking the same oath instead means taking an oath with the same content. The mere marks in the text of a Constitution, after all, could be taken to mean anything at all in the appropriate context. For instance, if I precede raising a pocket Constitution into the air by saying “when I raise this Constitution, that will be a signal that X,” I can make the marks of a pocket Constitution mean anything in that particular context. Identity of content is not verbal identity. 24 Article VI itself does not give a form of words, but instead gives a requirement of an oath or affirmation that carries a particular meaning; that content has always been instantiated in a variety of verbal formulas.

18. 1 Stat. 23, § 1 (1789).
19. See id. at § 2.
20. Id. at 24, § 3.
21. See id. at § 4.
22. We collect these provisions in the Appendix.
23. For one instance where a distinction in wording was made plain alongside a characterization of state and federal Article VI oaths as the “same oath,” see Confirmation Hearing on the Nomination of John Ashcroft to be Att’y Gen. of the United States: Hearings Before Senate Judiciary Committee, 107th Cong. 195 (2001) (statement of Sen. Ted Kennedy quoting Missouri oath with “uphold” and calling it the “same oath” as § 3331’s “support and defend”).
24. See Jorge Luis Borges, Pierre Menard, Author of the Quixote, in Collected Fictions 88, 88 (1988) (Spanish language original 1939) (humorously making the point that a seemingly identical text read in a different context may carry a very different meaning); David Kaplan, Demonstratives: An Essay on the Semantics, Logic, Metaphysics, and Epistemology of Demonstratives and Other Indexicals, in Themes From Kaplan 481, 505 (1989) (“[I]t was convenient to represent contents by functions from possible circumstances to extensions.”); Christopher R. Green, Originalism and the Sense-Reference Distinction, 50 St. Louis U.L.J. 555, 571–72 (2006).
In other earlier work, we have insisted on the importance of resolving the existence of “constitutional truthmakers:” the entities in virtue of which constitutional claims are true or (if they do not exist) false.25 This conception of truthmaking makes it critical to understand what we are pointing to when we use the term “the Constitution,” in an oath or otherwise. The Supreme Court’s discourse in explaining its own errors in interpreting the Constitution requires a constitutional truthmaker beyond its own decisions: something in the world that “the Constitution” can pick out.26 For instance, only on the assumption of a truthmaker external to the Court’s decisions can we make sense of instances in which Justices have described a past decision as “wrong the day it was decided.”27

Our thesis here takes an additional step: When officers (and their academic advisors) use the term “the Constitution” in relation to the job for which the Article VI oath was a condition, they refer to the same Constitution—the Founders’ Constitution, understood as a historically situated entity. We present the evidence for our thesis below.

B. References to the “Same Oath” in Current American Legal Culture

Those who take the Article VI oath mention frequently, without evident fear of contradiction, that others today, and others throughout history, have taken the same oath. As Justice Joseph Story explained in 1833, the whole point of requiring all public officials to take the same Article VI oath is to ensure uniformity in constitutional decisionmaking: “Decisions ought to be, as far as possible, uniform; and uniformity of obligation will greatly tend to such a result.”28 Here are some examples of this idea from all over the political spectrum in current culture, divided into a few basic topics: Justice-Story-style use of the sameness of the oath

25. See Christopher R. Green, Constitutional Truthmakers, 32 Notre Dame J. L. Ethics & Pub. Pol'y 497, 519–21 (2018). In line with Alfred Tarski’s semantic conception of truth, a truthmaker for propositions containing a term is the element of reality to which the term refers—the piece of the world the term picks out (or fails to pick out). See 4 Alfred Tarski, The Semantic Conception of Truth, Phil. & Phenom. Res. 341, 353 (1944).

26. See Green, supra note 25, at 519–23.


28. 3 Joseph Story, Commentaries on the Constitution § 1839, 704 (1833).
to promote unity in constitutional decisionmaking, sameness between the presidential oath and others, sameness between the oath of federal and state officers, evidence that explicitly refers to the “same Constitution” as well as the same oath, evidence from the Supreme Court, and evidence that talks about the same oath being taken over time.

1. Importance-of-Unity Same-Oath Evidence

Representative Derrick Van Orden: “I remind my friends, as Members of this body, we did not take an oath to the Republican Party or the Democratic Party, we didn’t take an oath to the President. We all took the same oath to the Constitution. With this oath came a responsibility to the people that we represent.”

Senator Jack Reed: “Too often, the Senate is viewed through a partisan lens, but the truth is that we all work together to serve the American people. We all swore the same oath to uphold and defend the Constitution. Although we may have differing views, we certainly have common values.”

Representative Eliot Engel: “We all take the same oath. We can argue about this resolution without questioning one another’s motives or one another’s patriotism.”

Representative Pete Olson: “Where is the Constitution? Is it still law? Is it still alive? It is still law. It is still alive. I took a sacred oath to defend it. All my colleagues took that same oath. Mr. Holder took that same oath.”

Representative Anna Eshoo: “We all take the same oath. We all take the same oath. And when we take that oath, we say ‘to defend the Constitution of the United States.’ That is the steel of our Nation. The flag that is behind us is the heart of our Nation, but the Constitution is the soul of our Nation.”

2. Interbranch Same-Oath Evidence

Representative Elaine Luria: “I have come to this floor many times over the past [three] years and discussed the oath of office. The oath to protect and defend our Constitution against all enemies foreign and domestic. Every Member of this body swore that oath, and it is the

same oath that our President and military officers . . . swear in service to our Nation.”

Representative Jim Costa: “Madam Speaker, as an elected Member of Congress, I take the same oath as the President of the United States: ‘I will support and defend the Constitution of the United States against all enemies, foreign and domestic.’”

Representative Jan Schakowsky: “I have now taken the oath of office, the same oath of office that the President of the United States has taken, that all of us here have taken, and he has been the orchestrator of this attack.”

Senator Martha McSally: “I am tired of it. That is why I first ran to come into this deployed zone and fight in a different way than when I did in uniform but with the exact same oath.”

Senator John Cornyn: “[W]e all have taken an oath to uphold and defend the Constitution and laws of the United States. Whether you are a legislator, the President of the United States, the Secretary of Homeland Security, the head of Immigration and Customs Enforcement, we all have taken that same oath.”

Representative Michael Bost: “This document that we take an oath to, the President himself has to take that same oath.”

Representative Mike Kelly: “Mr. President, you are the President of the United States. You take the same oath all of us take.”

Representative Ted Poe: “[J]ust a few weeks ago, this Chamber was filled with Members of the House of Representatives, and all of us stood up and raised our right hands, and we took an oath to support and defend the Constitution of the United States. It is the same oath the President takes and that others take—the military.”

Representative Austin Scott: “We—the Members of Congress, the President, and General Dempsey—all swore the same oath to defend the Constitution of the United States against all enemies, foreign and domestic.”

Representative Phil Gingrey: “I took an oath to uphold and defend the Constitution as a Member of this institution, and I have taken that oath seriously every single day. Unfortunately, I believe the President’s actions undermine the very same oath that he has twice taken.”

Senator Chuck Grassley: “Each one of us swore an oath to protect and defend the Constitution—the same oath that the President took.”

Representative Tom Rice: “[W]e all took an oath when we took this office. We pledged to God to protect and defend our Constitution. President Obama took that same oath.”

Representative Steve King: “[I]n the Constitution the President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States when called into actual service of the United States. That is our constitutional obligation, Mr. Speaker. And we have all taken the same oath.”

Representative John Carter: “We swear to preserve, protect and defend the Constitution of the United States. That’s what we swear to. . . .[O]ur job is to defend that and the President’s got the same oath.”

Senator Russ Feingold: “As Members of Congress, we have taken a solemn oath to uphold the Constitution of the United States. The president and the executive branch officials, of course, take this same oath.”

Representative Vito Fossella: “Each Member of this body still must maintain an obligation and responsibility to be bound to our oath of office, the same oath of office voluntarily taken by the President of the United States.”

Representative William Jenner: “Each of you, when admitted to the Bar of this country and when you became a Member of Congress, took the same oath that Richard M. Nixon took when he became President of the United States. You swore, as did he, to preserve, protect and defend the Constitution of the United States.”

44. 160 CONG. REC. 10027 ( June 12, 2014) (statement of Sen. Chuck Grassley).
3. Local-Federal Same-Oath Evidence

Judge Patrick Higginbotham: “State judges take the same oath to faithfully apply the law as do federal judges.”

Sheriff Thomas Hodgson: “[W]e cannot say that elected officials who [have] taken the same oath that we have can decide which laws they are going to follow or not.”

Representative Paul Broun: “We the people need to start holding every single Member of Congress, every President, every public official, local, State, as well as Federal, because they all take that same oath, to defend the Constitution.”

Representative Ted Poe: “Not only do Members of the United States House of Representatives raise their right hand and swear to uphold the United States Constitution, but every elected official in this country takes that same oath.”

Representative Ted Poe: “As a former Texas judge for over 22 years, having heard 25,000 criminal cases, I took the same oath as our Supreme Court Justices, to uphold the United States Constitution.”

Senator Patrick Leahy: “It is the same oath of office he will take as U.S. Attorney General. It is the one he took as Missouri’s Governor and attorney general.”

4. Same-Oath-to-Same-Constitution Evidence

Senator Mitch McConnell: “We gavel in today like 116 prior Senates have gaveled in before us, with plenty of disagreements and policy differences among our ranks but all—all—swearing the same oath to support and defend the same Constitution, all loving the same country, and all of us committed to do all we can to leave behind an even stronger nation than the one we have been blessed to inherit.”

Senator Joe Manchin: “We take the same oath. We swear on the Bible to the same Constitution—that we will uphold it.”

51. Devillier v. Texas, 63 F.4th 416, 419 (5th Cir. 2023) (Higginbotham, J., concurring).
Professor Tom Lin: “Presidents Washington, Lincoln, FDR, Truman, Kennedy, Reagan, and Bush all viewed the chief objectives of their presidencies differently even though they were honor-bound by the same oath to the same Constitution.”

Senator Orrin Hatch: “[I]t is right there in the same Constitution that we have all sworn to uphold. We have all sworn that same oath to protect and defend, and we are just as bound today to obey it.”

Professor Henry Abraham: “[T]he two polar opposites [Justices Douglas and Rehnquist] heard the same cases, saw the same briefs and the same documentation, [and] took the same oath to the same Constitution . . . .”

Representative Bob Schaeffer: “[I]t was on this very floor that we all swore allegiance by the same oath, to the same Constitution . . . .”

Representative Barney Frank: “We took the same oath to the same Constitution.”

5. Same-Oath Evidence from the Court

Justice Antonin Scalia: “You take the very same oath that I take.”

Justice Samuel Alito: “[S]tare decisis reflects the view that there is wisdom embedded in decisions that have been made by prior [J]ustices who take the same oath and are scholars and are conscientious.”

Justice Antonin Scalia: “Members of Congress and the supervising officers of the Executive Branch take the same oath to uphold the Constitution that we do . . . .”

Justice William Rehnquist, for the Court: “The Congress is a coequal branch of government whose Members take the same oath we do to uphold the Constitution of the United States.”

6. Intertemporal Same-Oath Evidence

Representative Bennie Thompson: “All of us have one thing in common: We swore the same oath, that same oath that all Members of Congress take upon taking office and afterwards every 2 years if they are reelected. We swore an oath to defend the Constitution against all enemies, foreign and domestic.”

Secretary of Defense James Mattis: “When I joined the military, some 50 years ago, I swore an oath to support and defend the Constitution. Never did I dream that troops taking that same oath would be ordered under any circumstance to violate the constitutional rights of their fellow citizens—much less provide a bizarre photo-op for the elected commander-in-chief.”

Senator Jack Reed: “Soldiers, sailors, marines, airmen, and coastguardsmen serve the Constitution, not the President. That is the oath many of us took as young men and women. That is the oath that defines the military of the United States . . . . That is the oath we take.”

Senator Martin Heinrich: “Throughout our history, the defense of our Nation has depended on the leadership of men whose names we now remember when we visit their memorials, names like Lincoln and Washington and Roosevelt. These men all swore the same oath that President Trump did when they assumed our Nation’s most powerful office.”

Representative Martha Roby: “All members of Congress are required to take an oath of office at the beginning of every Congress. By taking this oath we swear above all else to defend the Constitution of the United States . . . . This revered and longstanding oath serves as a

68. Several of the pieces of evidence set out earlier also refer to stability of the oath over time. See sources cited supra notes 55, 59, and 65.
guiding principle for every decision I make as a Member of Congress.”

Senator Roy Blunt: “President George Washington took this exact same oath; miraculous because we have done it every [four] years since 1789 . . . .”

Representative Trent Franks: “I am told you [President Obama] are the first to request to be sworn in with your hand on the same Bible used by Abraham Lincoln when he took the same oath.”

Representative Elise Stefanik: “Exactly a half century earlier, twenty years before she was born, a 45-year-old veteran New York State Republican legislator from Ogdensburg, took the same oath.”

Secret Service Director Mark Sullivan: “It gives all of us a tremendous sense of pride to witness a new generation take that same oath we took many years ago.”

Representative Paul Broun: “Congresses, Presidents, court judges, every public official in this country swears an oath. I swore the oath when I was sworn into the United States Marine Corps in 1964. I swore the same oath in 2007, when I came and stood behind this podium. In 2007, I swore to that oath, in 2009, and 2011. Every Member of this body swears to uphold and protect the Constitution against enemies both foreign and domestic.”

Senator Harry Reid: “In the oath General Kagan will soon take—the same oath sworn by 111 Justices before her—she will pledge to ‘do equal right to the poor and to the rich.’”

Senator Jay Rockefeller: “In that seat they will find a man [(Senator Robert Byrd)] who took that same oath that we did 50 years ago today.”

Representative Donna Edwards: “As I swore to defend and protect the Constitution of the United States . . . I thought of my father . . . who

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79. 156 CONG. REC. 15165 (Aug. 5, 2010); cf. 155 CONG. REC. 20821 (Aug. 6, 2009) (Sen. Harry Reid stating that Sotomayor will “take[] the same oath every Justice before her has taken”).
swore the same oath when he joined the United States Air Force as a young man . . . .” 81

Representative Jackie Speier: “In the days and months following the Japanese attack on Pearl Harbor, more than 250,000 Filipino nationals swore allegiance to the United States of America with the same oath each of us took when we became Members of this body.” 82

Representative Jean Schmidt: “I stand here today in the same shoes, though with a slightly higher heel, as thousands of Members who have taken the same oath before me.” 83

Senator Tom Carper: “Before beginning 23 years of service as a naval flight officer, I took the same oath as each of the men and women now fighting overseas.” 84

Senator Chris Dodd: “Forty years ago this week, I was a very proud 14 year old watching from the family gallery as my father took the same oath I took on Wednesday.” 85

President Gerald Ford: “The oath that I have taken is the same oath that was taken by George Washington and by every President under the Constitution.” 86

President Lyndon Johnson: “On the thirtieth day of April, in the year Seventeen Hundred and Eighty-Nine, on the balcony of the Federal Hall in New York City, George Washington took the oath as the first President of the United States of America. In the one hundred and seventy-five years since that occasion, thirty-five other Americans have sworn that same office . . . to discharge in seamless continuity the duties prescribed by the Constitution.” 87

Governor Fuller Warren: “On April 30, 1789, Washington took the oath as President of the United States. Last Friday, Kennedy took the same oath.” 88

We have found no one contradicting these sorts of claims. They are commonplaces in America today, just as they have been commonplaces throughout American history.

84. 147 CONG. REC. 24254 (Dec. 6, 2001) (statement of Sen. Tom Carper).
Again, note that sameness of oaths is not confined to merely speaking the same *words*: Members of Congress repeatedly refer to *presidential* oaths as the same, though the verbal form in Article II differs from the one other officers use. State and local verbal formulas are likewise verbally diverse while imposing the same obligation on oath-takers. Identity of content, not mere sameness of words, is clearly in view.

*C. References to the Oldest Currently-Operational National Constitution in the World*

A second data point from current American legal culture is the claim that we have the oldest constitution still in effect. Ours is not the *first* nation with a written constitution, an honor usually given to Corsica’s written constitution of 1755. We have also never been the *only* nation with a written constitution. Since 1809, however, when Sweden replaced its constitution of 1772, we have had the oldest one *still in effect*. That is, of course, a claim about legal effectiveness today and its relationship to the original Constitution. And we have not been shy about trumpeting that fact:

Professors Curtis Bradley and Neil Siegel: “The U.S. Constitution is the oldest written Constitution in the world . . . .”

Professor Larry Lessig: “The fundamental fact about our Constitution is that it is old—the oldest written Constitution in the world.”

Professor Steven Calabresi: “The 1780s produced the world’s first constitutional democracy, the world’s shortest constitution, and the world’s oldest constitution.”

Attorney Belachew Girma: “[T]he U.S. Constitution [is] . . . the oldest constitution in the world.”

Professors Mila Versteeg and Emily Zackin: “[T]he US Constitution [is] . . . the world’s oldest constitution.”


90. Larry Lessig, *Fidelity and Constraint* (2019), dust jacket. Perhaps this blurb should only be attributed to his publisher, Oxford University Press, but blurbs also give excellent evidence—perhaps even better evidence than even the most prestigious professor!—of what current American legal culture takes for granted.


Professor Jeremy Waldron: “Americans . . . pride themselves . . . on having the oldest constitution currently in force in the world.”\(^{94}\)

Professor Louis Michael Seidman: “The American Constitution is the oldest currently in force in the world.”\(^{95}\)

Judge Samuel Bufford: “Virtually everyone knows that the United States Constitution (including the Bill of Rights), the oldest constitution in force in the world, is our most popular legal export.”\(^{96}\)

Senator Robert C. Byrd: “It’s the oldest constitution in the world . . . .”\(^{97}\)

Justice Anthony Kennedy: “[Y]ou have the oldest constitution in the world.”\(^{98}\)

Professor Lucas Prakke: “The world’s oldest constitution [is] that of the United States . . . .”\(^{99}\)

Professor Lynn Wardle: “[T]he United States . . . has the oldest [c]onstitution still in use in the world . . . .”\(^{100}\)

Professor Cass Sunstein: “The American Constitution is the oldest in force in the world.”\(^{101}\)

Judge Charles D. Gill: “Our Constitution . . . is the oldest [c]onstitution in the world . . . .”\(^{102}\)

Legal Counsel Theodore Sorensen: “Ours is the oldest [c]onstitution still in effect in the world today.”\(^{103}\)

\(^{95}\) Louis Michael Seidman, ON CONSTITUTIONAL DISOBEDIENCE 11 (2013).
\(^{99}\) Lucas Prakke, Swamping the Lords, Packing the Court, Sacking the King: Three Constitutional Crises, 1 EUR. CONST. L. REV. 116, 116 (2006).
Professor Ann Elizabeth Mayer: “The U.S. Constitution . . . is the oldest constitution remaining in force.”\textsuperscript{104}

Judge James Buckley: “That is an extraordinary record of stability under what is, today, the world’s oldest constitution.”\textsuperscript{105}

Professor William Van Alstyne: “Real amendments mark visible events in the life of the world’s oldest [c]onstitution.”\textsuperscript{106}

Professor Arthur Miller: “Because it so acted for nearly two centuries, the oldest constitution in the world survived.”\textsuperscript{107}

Chief Justice Fred Vinson: “[O]ur Constitution . . . is today the oldest [c]onstitution in the world.”\textsuperscript{108}

Bar President Gerald Hayes: “[I]f we are going to continue to enjoy the freedoms which we have under the oldest constitution still in existence, we must give support to our courts and to our judiciary . . . .”\textsuperscript{109}

Bar President John Voigt: “The Constitution of the United States . . . is now the oldest constitution of any government in the world.”\textsuperscript{110}

Representative Sam D. McReynolds: “[W]e have the oldest [c]onstitution existing in the world today.”\textsuperscript{111}

Again, as with the “same oath” evidence, we have found no one—neither the original Constitution’s devotees nor its critics—contradicting these claims. The user-driven algorithm behind Google tells us, of course, the questions most frequently found useful by ordinary people; asking it “how old is the Constitution?” produces an answer based on the Founding.\textsuperscript{112}


\textsuperscript{108} Fred M. Vinson, Our Enduring Constitution, 6 Wash. & Lee L. Rev. 1, 10 (1949).


D. Speaking in One Voice about “the Constitution”

A final relevant aspect of current American legal culture is the Supreme Court’s practice of speaking collectively about “the Constitution.” The Justices, however, take their oaths of office only once each, not anew each term. If the Court’s speech about the Constitution today vindicates all nine of the Justices’ Article VI oaths, taken from 1991 to 2022, those oaths must have a stable object over that whole time. Because Justices since 1789 have never been replaced all at once—the sort of thing that would tend to mark a revolution, of course—this collective-speech-about-the-Constitution practice therefore requires stability in the object of the Justices’ oaths all the way back to the Founding.

The Justices have spoken collectively about the Constitution even before Chief Justice Marshall began the institution of the “opinion of the Court” in 1801.\(^{113}\) In 1793, for instance, five Justices (four of the original Justices plus Justice William Paterson, who joined the Court earlier that year) wrote a collective letter to President Washington speaking of “the Constitution.”\(^{114}\) They clearly all refer to the same thing by the term. But even taken by itself, the opinion-of-the-Court practice is enough to require identity of the object of the oath all the way back to 1789. One of the inaugural members, Justice Cushing, was still on the Court in 1801, together with justices confirmed in 1793 (Paterson), 1796 (Chase), 1798 (Bushrod Washington), 1799 (Moore), and of course Chief Justice Marshall himself, confirmed the same year the practice began.

III. IMPLICATIONS OF THE SAME-OATH, OLDEST-OPERATIVE-CONSTITUTION, AND ONE-VOICE DATA

A. Theoretical Consensus v. Universal Consent

American constitutional theory—like America generally—seems rife with dissensus. We don’t seem to agree about anything. And that disagreement most emphatically includes the Constitution and how to interpret it: Some say that its original textually expressed meaning should govern, some that its originally understood applications should instead, some that the Constitution should be updated by interpreters in light of contemporary policy concerns because the original meaning or original

\(^{113}\) See Talbot v. Seeman, 5 U.S. 1, 26 (1801) ("Marshall, Chief Justice, delivered the opinion of the Court."); see also id. at 28 ("The whole powers of war being by, the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this enquiry.") (emphasis added).

\(^{114}\) See Letter to George Washington from Supreme Court Justices (Aug. 8, 1793) in 13 PAPERS OF GEORGE WASHINGTON 392 (2007) (speaking of "[t]he Lines of Separation drawn by the Constitution between the three Departments of Government"). Justice Cushing was absent at the time.
applications (or both) don’t go far enough, or go in the wrong direction. Some scholars, including Larry Alexander and Frederick Schauer, have suggested that such methodological disagreement yields different Constitutions in practice—that a Constitution that consists (say) in original intentions is a different kind of thing than a Constitution that consists in (say) contemporary public meaning.115

But the participants in our legal culture quoted above who repeatedly claim to swear the same oath to the same Constitution, producing the same obligation, are themselves plainly aware of the ubiquity of methodological disagreement in that culture over the Constitution. Many of the statements are made, for instance, in the midst of hot disagreements with their fellow representatives about whether originalists or living constitutionalists should be confirmed to the Court. Yet they insist on the identity of their constitutional oaths and appeal to that identity as a device for promoting—if only in the tiniest measure—greater unity among Article-VI-oath-swearers officers.

It is obviously possible to consent to general principles without agreeing about how those principles will be applied in particular circumstances. Distinguishing verbal disagreements from disagreements about the underlying reality is commonplace for anyone who has spent significant time in intellectual disputes.116 Swearing an oath to a common object likewise does not mean agreeing about that object’s properties or even appreciating all of them. A driver can fulfill his promise to abide by the rules of the road without knowing what the speed limit is on a given road,117 a novice chess player can fulfill his promise to play by the rules of chess without understanding what happens if there has been no capture and no pawn has been moved in the previous 50 moves.118

In the case of the Constitution, the evidence above shows vividly that even those who so vehemently disagree about the nature of the Constitution believe that they agree in swearing the same oath to support it. Put another way, those who disagree about the nature of the Constitution (and the nature of the original Constitution that they equate with the Constitution today) are disagreeing about something. There is something out there in reality that either matches, or doesn’t match, our theories about it. If I say that my car is green, and you say that your car is not green, we do not have a real disagreement unless we share the same car. Similarly,

117. See supra note 12, at 320 n.77.
118. A player can claim a draw under these circumstances. See G. M. Haworth, Strategies for Constrained Optimisation, 23 ICGA J. 1, 9–10 (2000).
if one Justice says that the Constitution guarantees an individual right to bear arms in self-defense and another Justice denies this, there is no disagreement unless the Justices are both speaking about the same Constitution. Our constitutional culture describes its disagreements about the Constitution as a real disagreement: the sort that has a truthmaker to which the term “Constitution” refers in the context of official business.

The existence of interpretive disagreement might seem to create problems for any effort to establish an oath-based obligation to follow a particular interpretive theory under one influential account of the nature of law. On H.L.A. Hart’s positivist account of law, all law within a jurisdiction needs to satisfy criteria of legal validity that are specified in a rule of recognition. That rule, in turn, arises from the convergent practice by public officials (and perhaps others) of accepting and following those criteria out of a sense of obligation—from “an internal point of view,” as Hart put it.119 Mark Greenberg argues that nothing controversial can be contained in the rule of recognition:

Because of the straightforward way in which the rule of recognition is determined by the convergent practice of judges, nothing that is uncertain or controversial can be part of the rule of recognition. Thus, to the extent that judges lack consensus with respect to whether a theory of legal interpretation is correct, that theory is not part of the rule of recognition. In other words, no theory of legal interpretation that is not widely accepted can be part of the rule of recognition.120

If Hart is right about the nature of law, and if the Constitution is part of our rule of recognition, and if there is no convergence upon how to interpret the Constitution, it might be doubted that a promise to follow the Constitution entails an obligation to interpret it in any particular way. But those are big “ifs,” and, even if the conditionals are satisfied, such doubts would be unwarranted. Just because an interpretive theory isn’t itself part of the rule of recognition doesn’t mean that the rule of recognition doesn’t entail an interpretive theory. Controversy over the entailment, and therefore controversy over the conclusion, does not undermine the universality of consent to a premise.

To borrow an illustration from Matthew Adler: Imagine that an agency has issued an administrative regulation barring dietary supplements that are carcinogenic and which specifies the criteria that a

dietary supplement must meet in order to be carcinogenic. The question whether a given dietary supplement S is legal depends on whether it satisfies those criteria. Applying those criteria may be difficult and give rise to debate owing to the limitations of information, computational capacity, and time under which decisionmakers labor. Nonetheless, the question may have one right answer that all sides of the debate would accept if fully informed, boundlessly rational, and given infinite time. Similarly, a theory of legal interpretation that is not universally accepted may satisfy a criterion contained in a rule of recognition that is universally accepted. It may be the only extant theory of legal constitutional decisionmaking that satisfies that criterion and thus be entailed by the rule of recognition.

It seems that there is indeed a “convergent practice of judges” in swearing to obey the same, centuries-old Constitution. There is disagreement, of course, about what the nature of the Constitution was at the Founding. But there is near-universal agreement that there is one Constitution, that judges are oath-bound to it, and that it is centuries old. So it might be that correspondence with the same, centuries-old Constitution is part of our rule of recognition—it is among the criteria that a theory of constitutional decisionmaking must satisfy in order to be legally legitimate. And that correspondence with the Constitution of the past may entail a further conclusion about what theory judges ought to follow, notwithstanding the lack of official convergence upon any particular theory.

We hasten to add here that we are not committed to any particular theory of the nature of law. We offer instead a theory of the Constitution itself. Perhaps our best theory of law will end up including the Constitution as an instance; Article VI proclaims the Constitution to be the “Supreme Law of the Land,” after all. But philosophizing about the nature of law requires careful thinking about lots of things besides the Constitution: the natures of statutes, regulations, judicial decisions, unwritten customs, and much else. It is possible that that process of reflection might lead us to use the word “law” in a different way than Article VI uses it. A philosophical tradition of the conceptual boundaries of the word “law” obviously cannot

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122. See id.
123. Greenberg does, in the immediately following discussion, note that it would be possible in theory that “at a high level of generality judges agree . . . and that the disagreement is in the application . . . “ Greenberg, supra note 120, at 116. Greenberg dismisses the possibility, however, simply on the basis of a list of theoretical disagreements about the Constitution: “It is not at all plausible, however, that there is such a consensus.” Id. He does not, alas, consider the oath; the word does not even appear in his article. See generally id.
control the nature of an actual entity, the Constitution. Even if the Constitution is seen as an entity that is part of a larger entity, the law as a whole, we need not discern the boundaries and nature of that larger entity to understand the boundaries and nature of one of its constituents. France is part of Europe, but knowing the exact boundary of Europe is neither necessary nor sufficient for knowing the exact boundary of France. Understanding the nature of a ship is neither necessary nor sufficient for understanding the nature of a plank of wood. Accordingly, we need not wait for the completion of our best theory of jurisprudence in order to get to work on a theory of the Constitution.124

B. Remember, Remember: The History of Mental Reservations

How can disagreeing officers today, and over time, swear common oaths to the same, centuries-old Constitution? Because their oaths bind them not to internal, subjective mental apprehensions of content or meaning, but to external, objective, verbally-expressed content itself—content that has been altered over time through the amendment process.

Those in different offices, of course, do not all have the same opportunities to “support and defend” the Constitution; they have different job descriptions that intersect with the Constitution in very different ways. Promising to “well and faithfully discharge the duties of the office on which I am about to enter” will thus pose different requirements with respect to the Constitution for different officers. But the Constitution itself can still be the same for all of them. When those in Congress speak of the President swearing the same oath that they do, they of course mean only the part about the Constitution; the President discharges the office of the President, while those in Congress discharge the very different offices of Representatives or Senators. The sameness of the constitutional oath for those holding different offices obviously means only identity of the overlapping part, not the entire oath. Indeed, because the oath refers to the subjective obligation to use the best of one’s abilities, even those discharging the same office might have different responsibilities as their

124. Scott Shapiro evidently disagrees. He claims that the question of how judges ought to interpret the Constitution cannot be answered without “know[ing] which facts ultimately determine the content of all law.” SCOTT J. SHAPIRO, LEGALITY 29 (2011). We confess we don’t see it and are surprised that a positivist would make such a claim. See Leiter, supra note 119, at *4 (“For positivists . . . ‘what the law is’ is one thing, and ‘what judges ought to do’ is another.”). One of us has argued that the nature of law is ultimately irrelevant to the question of what judges ought to do, regardless of whether one is a positivist or a nonpositivist. See Evan D. Bernick, Eliminating Constitutional Law, 67 S.D. L. REV. 1 (2022). In any event, it is demonstrable that judges need not have any such theory in order to make decisions. “[I]n their routine work, legal officials are not concerned with the nature of law, the relationship between law and morality, or the concept of law.” Felipe Jiménez, Legal Positivism for Legal Officials, CAN. J. L. JURIS. 1, 6 (2023).
abilities differ. One judge with expertise in the separation of powers and another with expertise in the Fourteenth Amendment may, for instance, have different abilities to learn the answer to different constitutional questions with requisite confidence in the limited time available for adjudication. But the Constitution can still be the same for all of them. It is possible for different officers all to be under subject-relative obligations to support and defend, in the ways appropriate to their various offices and abilities, the same objective Constitution.

It has been tempting to think that when we make a promise, we are bound only to what we believe ourselves to mean subjectively. Many Jesuits of the sixteenth and seventeenth centuries reasoned from an appealing initial premise: “It is the intention that determines the quality of the action.” This is the same idea behind, for instance, Justice Robert Jackson’s explanation of the priority of a subjective mental states in *Morissette v. United States*:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. A relation between some mental element and punishment for a harmful act is almost as instinctive as the child’s familiar exculpatory “But I didn’t mean to.”

Many Jesuits held to the intention-determines-the-quality-of-the-action principle, however, no matter how the oath-taker’s subjective intention was formed. “Directing the intention” was encouraged as a device for directing the content of one’s promissory obligations. The object of an oath on their account simply was the oath-taker’s subjective intention—the “animus jurantis,” or the mind of the one swearing. Until the oath was actually taken, moreover, no promissory obligation was formed, and oath-takers could therefore change the content of oaths at will, simply by manipulating their subjective intentions at the moment of swearing. Robert Bolt’s *A Man for All Seasons*, depicting a mid-sixteenth-century scene, explained the basic idea in the advice of Thomas More’s wife: “Say the words of the oath, and in your heart think otherwise.” More rightly refused: “When a man takes an oath, he’s holding his own self in his own hands like water. And if he opens his fingers then, he

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needn’t hope to find himself again.” Lots of Jesuits of the time, however, would have accepted or given More’s wife’s advice.

The identification of oaths with the mental states of oath-takers was eventually dealt fatal political and intellectual blows. Following the Guy Fawkes episode, several Roman Catholics such as Henry Garnet, who had defended the use of a “secret meaning reserved in his mind” to evade the meaning other observers attributed to answers given under oath, were hanged, drawn, and quartered. James’s loyalty oath of June 22, 1606, foreshadowing the American disavowal of mental reservations in the oath formula adopted in 1862, elaborated on the English hatred of mental reservations: “[A]ll these things I do plainly and sincerely acknowledge and sweare, according to these expresse wordes by me spoken, and according to the playne and comon sense and understanding of the same wordes, without any equivocacon or mentall evasion or secret reservacon whatsoever.” Of course, one could simply insert a negation in one’s head when saying that. But it would be wrong.

Blaise Pascal’s extended Jansenist mockery of the Jesuits in his 1656 Provincial Letters led to the long-term repudiation of mental reservations in subsequent history. Seana Valentine Shiffrin, for instance, notes that mental reservationism “is obviously insufficiently attentive to the social purposes of communication and the interests of hearers.” Sissela Bok’s history of the casuistry of lying quotes Pascal as the end of the debate. Perez Zagorin’s history notes that Pascal achieved “enduring success in convincing the world.” Thomas Babington Macaulay’s history notes that the view of the Jesuits was “sufficient to destroy the whole value of human contracts and of human testimony,” adding, “[i]n truth, if society continued to hold together, if life and property enjoyed any security, it was because common sense and common humanity restrained men from doing what the Society of Jesus assured them that they might with a safe conscience do.” He summarizes the response to these doctrines: “The chief accuser was Blaise Pascal . . . . All Europe read and admired, laughed and wept. The Jesuits attempted to reply: but their feeble answers were received by the public with shouts of mockery . . . . It was universally

129. Id.
131. 3 James I c. 4, 4 Statutes of the Realm 1071, 1074 (June 22, 1606).
132. See PASCAL, supra note 125, at 188–205.
133. SEANA VALENTINE SHIFFRIN, SPEECH MATTERS: ON LYING MORALITY, AND THE LAW 150 n.59 (2014).
acknowledged that, in the literary contest, the Jansenists were completely victorious.”

Mental reservationism has never recovered. While he does not review the sixteenth- and seventeenth-century history, Richard Re agrees: “Plainly, people cannot evade promissory obligations by communicating one thing while secretly thinking another.” No one seems to take mental reservations seriously today, though Adrian Vermeule once tweeted, “If I ever take an oath to ‘the Constitution,’ I’m going to secretly refer in my head to the unwritten ‘constitution.’ No one can stop me.”

In place of the mental-reservation-susceptible animus jurantis, the new ethical theory of the oath stressed the “animus imponentis,” or the mind of the one imposing the oath. William Paley summarized the established doctrine in 1785:

> As oaths are designed for the security of the imposer, it is manifest that they must be interpreted and performed in the sense in which the imposer intends them; otherwise, they afford no security to him. And this is the meaning and reason of the rule, “jurare in animum imponentis.”

He added,

> The animus imponentis . . . is the measure of the juror’s duty . . . . Subscription . . . is governed by the same rule of interpretation: Which rule is the animus imponentis. The inquiry, therefore, concerning subscription will be, qui imposuit, et quo animo? [Who imposed it, and with what intention?]

Who was the imposer of the oaths under English law? Paley did not expressly say. Those who analyzed his commentary and extended the principles that he extracted from Anglo-American practice, however, consistently identified as imposers those who were empowered to make oath requirements legally effective.

Thus, we find the Anglican priest Charles Valentine Le Grice writing that the “imposer” of the oath required of clergy to subscribe to the 39 Articles of Religion was “the legislature of the 13th Eliz.”—that is, the Parliament that, in 1571, made the subscription law. An English barrister, Charles Thomas Lane, wrote of the coronation oath required of

137. Id. at 64.
138. Re, supra note 8, at 321.
139. See Green, supra note 25, at 524 n.113.
141. Id. § 3.2.21, at 124.
142. Charles Valentine Le Grice, Analysis of Paley’s Principles of Moral and Political Philosophy 18 (5th ed. 1807) (also referring to the “animus imponentis, that is, the measure of the Juror’s duty”).
English sovereigns through act of Parliament in 1688 that “[t]he Oath was imposed by the Legislature” and added that “the language employed by the Legislature is to be taken in the sense in which it was used, for otherwise the Law itself would be perpetually varying with the mutations of language.” More strongly, he affirmed that “[n]ot to resort to evidence of the intention of the Legislature at the time of establishing the Coronation Oath . . . is to neglect the plainest principles of juridical construction.”

It is worth emphasizing the connection Lane drew between the goal of uniformity in the law and fidelity to the “original sense” of the terms of the coronation oath, both because his analysis resembles Story’s treatment of the Article VI oath and because it is compelling in its own right:

To deny that that [original] intention is binding upon us in the construction of the Oath . . . is to assert that which is inconsistent with the notion of what the Coronation Oath has been declared to be by the authority that imposed it—“one uniform Oath in all times!” Would that be uniform of which the substance and essential qualities were susceptible of change? [T]hat which might be moulded [sic] to suit the views of expediency entertained by opposite parties as they successively attained power? Are we to be told that an [sic] uniformity of sound would satisfy the intention of the imposer?

We should not be understood here to be taking a controversial position concerning semantic theory. Our point is more modest: Whatever the theoretical merits of the position—attributed, perhaps unfairly, to Humpty Dumpty—that speakers can arbitrarily change the meaning of a word through private mental acts, this position has not traditionally been regarded as consistent with the social function of promissory oaths, and for good reason. It might well be the case that the theory of language that best captures what people mean by their utterances is a nominalist and subjectivist one. But a constitutional practice of oath-taking in which officials were deemed free to mean by “the Constitution” whatever they had in mind would not provide any security against their deviation from

144. Id. at 12.
145. Id. at 12–13.
146. See LEWIS CARROLL, THROUGH THE LOOKING GLASS AND WHAT ALICE FOUND THERE 123 (1897) (“When I use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean—neither more nor less.’”); see also Michael Hancher, Humpty Dumpty and Verbal Meaning, 40 J. AESTHETICS & ART CRITICISM 49, 49 (1981) (describing how Humpty Dumpty is “often cited as defining an extreme limit in semantic theory” and to reduce intentionalism to absurdity but pointing out that Humpty stipulates his definitions beforehand and is thus not a “monster of private language”).
the original sense of our written Constitution, nor would it promote uniformity in constitutional decisionmaking.

As we have said, Richard Re argues that the imposer of the Article VI oath is the living American public—that the oath secures the living against radical deviations from a consensus contemporary understanding of the Constitution. Thus, those who ratified the Constitution of 1788 were secured against deviations from the consensus contemporary understanding in 1788; those who live under the amended Constitution in 2023 are against radical deviations from the consensus contemporary understanding in 2023. Of course, imposers at one juncture in time are not secured against radical deviations by future officials who promise to adhere to different understandings that have developed in the meantime.

It seems obvious that, on this account, the identity of “the Constitution” to which oath-takers promise to adhere will change along with the identity of the imposers and their intentions. This account therefore fails to explain the constitutional practices that we have canvassed above—affirmations that officials swear the same oath, incurring the same obligation, to the same Constitution.

If, however, we view the ratifiers of the 1788 Constitution—those who were empowered to make Article VI law—as the imposers, not of any particular oath but of the institution of oath-taking, explanation of these practices becomes possible. It makes sense for officials on opposite sides of a generations-long gulf to understand themselves to be swearing the same oath, incurring the same obligation, to the same Constitution because those who, by ratifying the Constitution, established the institutions that oath-taking officials seek to occupy conditioned access to those institutions upon a public commitment to particular terms. It made sense for the imposers—concerned as they were to “secure the Blessings of Liberty to [them]selves and [their] Posterity”—to impose those terms.\(^\text{147}\)

As we will discuss, it makes sense for oath-takers to regard themselves as presumptively morally bound by the terms set by oath-imposers—assuming a lack of coercion and assuming that the terms are not evidently unconscionable.\(^\text{148}\) We will return to the questions of coercion and conscience in due course—suffice to say that viewing the ratifiers as imposers explains same-oath, same-obligation, same-Constitution practices better than does viewing contemporary publics as imposers.

\textbf{C. Repudiating Only Purposeful Mental Reservations?}

We pause to consider an objection to bringing the history of mental reservationism to bear on Article VI oath-taking. The paradigmatic

\begin{footnotesize}
\textsuperscript{147} U.S. CONST. pmbl.
\textsuperscript{148} See infra Section III.E.
\end{footnotesize}
equivocators at whom Pascal directed his wit were *purposeful* equivocators, who knew how people would understand their words, but deliberately and intentionally thought different things at the time of taking an oath. But what about those with a lesser scienter or mens rea? What about people who are merely reckless, or negligent, or simply faultlessly wrong about the divergence between the external animus imponentis and their subjective animus jurantis? Perhaps it is better, one might think, to hold those who couldn’t know any better to a lower standard.

We agree, of course, that non-purposeful deviation between the animus imponentis and animus jurantis is less culpable than purposefully creating such disparity by means of a mental reservation. But we can see this as providing an excuse, rather than a justification, for departures from the animus imponentis. Deciding when it is proper to punish or blame people for breaking promises is a different matter from assessing what promises they in fact made when they uttered their oaths.

The animus imponentis tradition offers an objective way to explain what a promise *is*. We can still appeal to subjective elements when we parcel out blame for the failure to keep those promises. But only if the oath is objective can all officers at a time, and all officers over time, swear the same one. Moreover, assigning blameworthiness to the creation of a disparity between one’s own private understandings and the meanings others have attributed to the oath for generations presupposes that the animus imponentis exists as a baseline standard of comparison. On a subjective account of promissory obligation, why would that be the baseline? A fully objective account of promissory obligation, with subjective excuses added on, vindicates both the same-oath evidence set out above and the intuition that the subjective mental state of an oath-taker should also matter, just not in modifying the promissory obligation itself.

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### D. Coherence and Foundationalism in Constitutional Epistemology: The Raft and the Pyramid

Several recent constitutional theorists—Richard Primus, Mitch Berman, and Richard Fallon are the most prominent—have adopted what we might call a coherentist constitutional meta-theory. According to this picture, constitutional theorizing ought to proceed sometimes at the level of general methodology and other times at the level of particular results. We sometimes *fashion* general categories to *accommodate* particular cases and other times *apply* general categories to *resolve* particular cases. Neither of these levels is more fundamental than the other; they are, in Ernest Sosa’s metaphor, like the different bits of wood holding together as
a raft on the ocean, rather than different layers of a pyramid. So, for instance, Primus’s response to Will Baude argues that neither our constitutional discourse nor our constitutional decisionmaking should be deemed more fundamental than the other:

[Baude assumes that] if indeed we should do a better job of aligning constitutional discourse with constitutional decisionmaking, it is our discourse that should be regarded as more authoritative. That proposition cannot emerge from the record of practice alone, and it is not clear that we would choose that resolution if the question were squarely put. Maybe the discursive practice of speaking respectfully about original meanings persists in part because it exercises little constraint on decisionmaking. If we had to choose one or the other, perhaps we would (and should) choose to abandon the discursive pretense of originalism.

Richard Fallon paints a very similar picture:

In constitutional law as in morality, we should aim at principled consistency . . . . Nevertheless, . . . we should not . . . begin our quest for principled consistency with a full set of unbending principles or wholly fixed methodological premises. In constitutional law as in morals, we do better to develop our commitments on a partially rolling basis, with concrete cases—concerning which we may already have quasi-intuitive judgments of correctness—in mind. When previously unanticipated cases arise, the reflective equilibrium model suggests that the Justices, along with the rest of us . . . should feel not only free but obliged to reconsider previous methodological commitments if the implications would prove disturbing . . . .

Mitch Berman is most explicit in associating his work with epistemic coherentism:

The coherentist “method of reflective equilibrium” in particular is predicated on the idea that we best justify our beliefs in a range of domains, not by reasoning forward from premises accepted as foundational, but by continually revisiting and adjusting our judgments about diverse propositions in an effort to produce a coherent and mutually supporting network of beliefs.

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We resist these intuitions. If it is to be useful for the participants in a tradition that looks to a Constitution over and above particular legislators’ or courts’ pronouncements, a constitutional theory must not merely be internally coherent, but externally match the world—the actual Constitution to which officers are oath-bound. The designation of “this Constitution” in the Article VI oath—which Primus, Berman, and Fallon do not discuss—is an Archimedean point that anchors our constitutional discourse in an actual Constitution and enables us to assess competing theories of constitutional decisionmaking. To deliver the goods, any “constitutional theory” that is either recommended to, or put into practice by, oath-takers has to begin by being a theory of “this Constitution.” Indeed, exactly this sort of complaint has long been made of coherentialist views of truth.\footnote{153. See, e.g., J. L. Austin, \textit{Truth}, 1 \textbf{PROC. ARISTOTELIAN SOC’Y VIRTUAL ISSUE} 27, 38 n.24 (2013) (orig. 1950) (“[C]oherence’ (and pragmatist) theories of truth . . . fail[] to appreciate the trite but central point that truth is a matter of the relation between words and world . . . . ”); \textit{BERTRAND RUSSELL, THE PROBLEMS OF PHILOSOPHY} 189 (1912) (“[T]he truth or falsehood of a belief always depends upon something which lies outside the belief itself.”).} Coherence is, of course, one mark of a theory that matches a non-self-contradictory external world.\footnote{154. See \textit{id.}, supra note 153, at 193 (“[C]oherence cannot be accepted as giving the \textit{meaning} of truth, though it is often a most important \textit{test} of truth after a certain amount of truth has become known.”).} But perfectly coherent stories can be wildly false.\footnote{155. See \textit{id.}, at 191 (“[T]here is no reason to suppose that only one coherent body of beliefs is possible . . . . [I]t seems not uncommon for two rival hypotheses to be both able to account for all the facts.”).} Properly understood, Article VI keeps us in contact with the external reality of the original Constitution, not just other propositions of constitutional law.

Berman acknowledges Tom Kelly and Sarah McGrathʼs argument against exclusive reliance on reflective equilibrium in domains with “truths that are not . . . of our own making,”\footnote{156. Thomas Kelly & Sarah McGrath, \textit{Is Reflective Equilibrium Enough?}, 24 \textbf{PHILOSOPHICAL PERSP.} 325, 325 (2010).} but suggests that law is not such a domain, relying on Joseph Razʼs claim that “the way a culture understands its own practices and institutions is not separate from what they are.”\footnote{157. \textit{JOSEPH RAZ, BETWEEN AUTHORITY AND INTERPRETATION: ON THE THEORY OF LAW AND PRACTICAL REASON} 96 (2009).} But the nature of the Constitution to which George Washington swore an oath is not of our own making today. As we will show, \textit{contra} Raz, public officials cannot make changes to the Constitution that are not authorized by the rules for constitutional change established by the Constitution while following “the same Constitution” as Washington. Simply understanding ourselves to have the oldest currently-operative constitution in the world does not make it so. Beliefs like that have to match our actual past as well as cohere.
E. The Moral Weight of the Oath: Is the Constitution Sufficiently Just?

If officers have made a promise to uphold the Founder’s Constitution, should they keep that promise? It depends on how just or unjust we deem that Constitution to be. We think that breaking oaths is sometimes justified, but only in extreme circumstances: when the value of the institution of promise-keeping is clearly outweighed by other considerations. We might call these “Nazis at the door” circumstances: If a promise is sufficiently unjust, we need not keep it. Even if we promise to let the authorities know if we learn the whereabouts of certain potential victims of the state, it might be morally permitted—even morally required—to break that promise, if the state will use that information to kill them. These circumstances correspond to circumstances in which rebellion against the state, self-defense, or the defense of others is justified. If putting a bullet in the head of a Nazi at the door is justified on such grounds, it seems to us that putting a false belief into the head of that Nazi by means of a false oath would be similarly justified.158

Is the Constitution Nazis-at-the-door-level bad? There is a strong argument that for enslaved people prior to the Civil War, it may have been. The mere fact that the Constitution protected the “importation of . . . persons”159 and required the re-enslavement of fugitives “held to [s]ervice or [l]abour”160 certainly added no moral legitimation to such practices while they existed. Today, though, it seems unlikely that promises to support the amended Constitution can be violated wholesale on such grounds, because (it seems to us) the Constitution as a whole today provides a reasonably just—though certainly not perfect—scheme for social coordination.161

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158. For a similar view, see LYSANDER SPOONER, THE UNCONSTITUTIONALITY OF SLAVERY 150–51 (1860) (likening officeholders charged with carrying into effect unjust laws to innocent bystanders who have been handed swords by criminals and arguing that officeholders have neither a duty to use the sword of their offices unjustly nor to resign them but to use it to defend the innocent—even if that means violating to the law).
160. U.S. CONST. art. IV, § 2 cl. 3.
161. See Fallon, supra note 13, at 1792 (emphasis added) (“The Constitution’s moral legitimacy, like that of the constitutions of most nations, arises from the facts that it exists, that it is accepted as law, that it is reasonably (rather than completely) just, and that agreement to a better constitution would be difficult if not impossible to achieve.”). The phrase “reasonably just” comes, of course, from Rawls, who did not identify the conditions of reasonable justice with any great precision. See JOHN RAWLS, A THEORY OF JUSTICE 350–51 (1971) (contending that, “[w]hen the basic structure of society is reasonably just, as estimated by what the current state of things allows, we are to recognize unjust laws as binding provided that they do not exceed certain limits of injustice”); A. John Simmons, Disobedience and Its Objects, 90 B.U. L. REV. 1805, 1806 n.6 (2010) (noting that Rawls was “extremely vague” concerning when a society is reasonably or nearly just). We do not mean to rest our arguments upon Rawlsian theory—replace “reasonably just” with “nearly
We acknowledge, however, that even a reasonably just constitution might require extremely unjust outcomes in particular cases, that public officials might be in a position to avoid those outcomes by breaking their oaths, and that they might be morally required to do so. This is not the place to fully articulate a theory of oath-breaking. But, in what follows, we will provide a brief sketch of a theory that we deem plausible.

Like the issue of self-defense, the general question of when it is right to break oaths will present many, many border cases. Macaulay’s comments on this issue seem sensible:

A good action is not distinguished from a bad action by marks so plain as those which distinguish a hexagon from a square. There is a frontier where virtue and vice fade into each other. . . . All our jurists hold that a certain quantity of risk to life or limb justifies a man in shooting or stabbing an assailant: but they have long given up in despair the attempt to describe, in precise words, that quantity of risk . . . . A man beset by assassins is not bound to let himself be tortured and butchered without using his weapons, because nobody has ever been able precisely to define the amount of danger which justifies homicide. Nor is a society bound to endure passively all that tyranny can inflict, because nobody has ever been able precisely to define the amount of misgovernment which justifies rebellion.\(^{162}\)

It does not follow from the existence of extreme cases in which oath-breaking would not only be morally permitted but morally required that constitutional decisionmakers must engage in case-by-case evaluations of whether the moral costs of oath-following marginally exceed the benefits. Indeed, given the social fact of moral pluralism, we think that the latter approach would make it appreciably more difficult for ordinary citizens to predict when state power will be brought to bear upon them; we suspect that routinely lying—or even considering lying—would take a heavy cognitive toll on officials who engage in it; and we are concerned that officials will often err in not only making moral calculations but in assessing whether their oath-breaking will generate net-negative reactions—whether in the form of emulation or retaliation by less morally just,” “fundamentally just,” or “minimally morally legitimate,” and our point is the same, namely, that the Constitution is normatively good enough to trigger a moral obligation on the part of public officials to adhere to its terms and to give effect to the outputs of the institutions that it both empowers and constraints—provided that those institutions operate in accordance with the Constitution’s terms. Nothing about this proposition depends upon Rawls being correct about justice or political obligation, and we do not claim—as Rawls did—that ordinary citizens who have made no promise to adhere to the Constitution and occupy no constitutional office have a general moral obligation to obey the Constitution or constitutionally authorized laws. For a recent critique of Rawls’ argument for a general obligation to obey the law, see Abner S. Greene, Against Obligation 57–62 (2012).

162. Macaulay, supra note 136, at 305.
competent officials or in the form of public disrespect for the law generally.\textsuperscript{163}

But, just as our constitutional culture takes oaths seriously, so, too, does it acknowledge the moral legitimacy of lawbreaking in dire circumstances. Frederick Schauer has observed that American history is replete with examples of

members of Congress, and countless less exalted officials and non-governmental leaders who have relatively shamelessly taken the position that immoral and at times simply unwise laws and legal decisions need not be considered binding when they conflict with what those officials and their constituents believe is moral necessity or wise policy.\textsuperscript{164}

To be sure, this history is complicated—defenders of officials who have arguably departed from the law in the name of moral principle are sometimes met with the response that such officials should either do their jobs or resign.\textsuperscript{165} Yet, can we say that the Lincoln Administration ought not to have issued passports and granted patents to Black citizens—notwithstanding the Supreme Court’s determination in \textit{Dred Scott} that Blacks could never be citizens—if Lincoln had been wrong on the law and

\textsuperscript{163}. See Goldsworthy, supra note 13, at 137–39 (raising these concerns about Jeffrey Brand-Ballard’s proposal that judges consider departing from the law in every case in which the law would lead to a morally suboptimal result).

\textsuperscript{164}. Frederick Schauer, \textit{Ambivalence About the Law}, 49 \textit{Ariz. L. Rev.} 11, 13 (2007).

Perhaps the most famous early example is Thomas Jefferson’s defense of the Louisiana Purchase, which purchase Jefferson seems to have made despite viewing it as unconstitutional. Jefferson writes:

\textit{A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.}


\textit{[A]re all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated? Even in such a case, would not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law, would tend to preserve it?}

\textit{Id.}

\textsuperscript{165}. See, e.g., Alan M. Dershowitz, \textit{Sally Yates was wrong and should have resigned}, \textit{The Hill} (January 31, 2017, 10:51 AM), https://bit.ly/3MDsq0h (“An attorney general, like any citizen, has the right to disagree with a presidential order, but unless it is clear that the order is unlawful, she has no authority to order the Justice Department to refuse to enforce it.”).
the Court correct?166 Ought Lincoln have done his job or resigned? We suspect not; and, more broadly, we find that do-your-job-or-resign arguments require the premise that the job is really not that morally bad in order to prevail. Making way for someone else to do extreme injustice that you have perceived and which you are in a position to mitigate hardly seems virtuous—indeed, it can be self-indulgent.167

The proposition that officials should not reflexively obey the law and suppress their moral judgment is itself deeply rooted in our constitutional culture. Disobeying the law is in fact sometimes the morally correct thing for officials to do. Oath-breaking should therefore have a role within constitutional decisionmaking theory. Specifically, constitutional decisionmakers ought take an approach that sounds in threshold deontology—a moral philosophical theory which holds that one should not consider the moral consequences of adhering to particular ethical norms until those consequences exceed a threshold level of gravity.168 Constitutional decisionmakers should act consistently with their oaths without regard to the moral consequences in most cases but weigh moral costs and benefits when oath-following threatens to undermine a bedrock principle on which the moral legitimacy of our constitutional order rests.169 Thus, neither of us thinks that any member of the unanimous Court that decided Brown v. Board of Education had to depart from their oaths to conclude that racial segregation in public education was forbidden by the Fourteenth Amendment.170 But deception about the Constitution’s original meaning might have been justified to avoid a moral catastrophe.

We hasten to add that misrepresentation of original meaning to avoid moral catastrophe would not, in our view, amount to constitutional change outside the strictures of the Founders’ Constitution. The issue here is similar to the idea that in the case of very large reliance interests in favor

166. See Smith v. Moody, 26 Ind. 299, 304 (1866) (“Passports are granted to free men of color, of African descent, by the executive department.”). For the record, we believe that Lincoln was right on the law.


169. See Fallon, supra note 151, at 24. Writing: Minimal or relative theories [of moral and political legitimacy] . . . address . . . when governments that may be far short of ideal, and even unjust in significant - respects, are nevertheless good enough to deserve respect or obedience (in preference to anarchy) or to justify officials in coercively enforcing the law. - Id.

170. For the record, we believe that Brown was correctly decided. See Christopher R. Green, Equal Citizenship, Civil Rights and the Constitution: The Original Sense of the Privileges or Immunities Clause 135–36 (2015).
of a precedent, the courts might sometimes be justified in leaving the original meaning unenforced—perhaps only temporarily—rather than immediately correcting earlier errors. If the Constitution today is the original Constitution, it is certainly a misstatement to use the term “Constitution” to refer to other sources of law—whether precedent or higher moral laws—that are not actually part of the Constitution. “Unconstitutional” means conflicting with the actual Constitution, not merely conflicting with the Court’s caselaw or our moral judgments. Courts may not speak untruthfully about the Constitution simply because another court did so first. But a precedent, even an erroneous one, might yet for all that put jurisdictional limits on a later court’s power to speak about the Constitution at all. Speaking only the truth about the Constitution is consistent with saying something like, “We will not address whether the Constitution itself requires X, because a precedent that the parties have not asked us to overrule requires X.” It is even consistent with saying, “Because very large reliance interests back result X, we will not consider whether the Constitution requires X.” These sorts of statements are very different from saying “Precedent or reliance interests constrain us to say that the Constitution requires X.” Neither precedent nor reliance interests can properly control how later courts use the term “unconstitutional” or “the Constitution.” Only the actual Constitution should do so, absent the sort of extreme circumstances that justify deception.

Is it fair to demand that new officers swear oaths to an old Constitution? That might seem akin to a contract of adhesion—a contract, the terms of which are dictated by the offeror to an undetermined number of offerees and which are in no meaningful sense the product of bargaining, given power imbalances. Richard Fallon has argued, “Not everyone agreed, or would have agreed, to be bound by the Constitution at the time of its ratification. No one alive today has ever been asked to

171. See Caleb Nelson, Stare Decisis and Demonstrably Erroneous Precedents, 87 VA. L. REV. 1, 20 n.62 (2003); Christopher R. Green, Constitutional Theory and the Activismometer: How to Think About Indeterminacy, Restraint, Vagueness, Executive Review, and Precedent, 54 SANTA CLARA L. REV. 403, 462 (2014) (“[T]he power to retain and follow old precedent without re-asserting the correctness of the precedent—that is, without saying that the precedent is authorized by the Constitution—simply assigns the power to interpret the Constitution to the Court at time 1, not the Court at time 2.”); Amy Coney Barrett, Precedent and Jurisprudential Disagreement, 91 TEX. L. REV. 1711, 1735–36 (2013) (“Not even originalists claim a responsibility to exhume and rectify every nonoriginalist precedent in the United States Reports. Assuming arguendo that a justice thinks any particular superprecedent was wrongly decided, the question of its soundness is not one that she will be asked—or likely want—to decide.”).

agree to its unglossed original meaning as part of a fair, uncoerced bargain.”

However, all officers have agreed to be bound by the Constitution, through Article VI, and as explained above, it is uncontroversial that that means the same Constitution by which George Washington agreed to be bound. If the content of the Founders’ Constitution amounts to its original textually expressed meaning—a proposition Fallon does not contest in the neighborhood of this argument—then officers today have likewise been asked to agree to it. And if they really have been asked to do so in the same form Washington was asked to do so, then that original meaning is indeed unglossed. So, if original-meaning devotees are right that the Founders’ Constitution is the original textually expressed meaning, Fallon’s argument only works if the demand on officers is unfair or coercive or if the terms to which they are bound are deeply immoral.

In our view of the moral issue, the Constitution is reasonably just and capable of supporting a defeasible moral obligation to give effect to its content. Are Article VI’s conditions on officers unduly coercive, then? We think not: Prospective officers have no right to exercise offices created by the Founders and their Constitution without conditions. Justice Story had it right:

That all those, who are entrusted with the execution of the powers of the national government, should be bound by some solemn obligation to the due execution of the trusts reposed in them, and to support the Constitution, would seem to be a proposition too clear to render any reasoning necessary in support of it. It results from the plain right of society to require some guaranty from every officer, that he will be conscientious in the discharge of his duty.

We might put the point in terms of the familiar question, quo warranto—by what right? If “this Constitution” doesn’t authorize present officers to offer use of the federal government on different terms than those of the Founders and present officers do not appear to understand themselves or to understood by others to be offering use on different terms, by what right would officers exercise their offices on different terms?

We doubt that any compelling reason can be given for consistent neglect of the Founders’ terms. Oath-takers may be surprised to discover that the terms that were offered were more onerous than they fully appreciated upon accepting them. But, although allowing them to effectively adjust the terms in their favor may leave public officials with more agency space to act in accordance with their preferences, it threatens

174. STORY, supra note 28, § 1838, at 702.
to leave the rest of us with a worse scheme of social cooperation than currently exists. Given the social benefits of the Constitution that oath-takers do promise to adhere to, those who use the Constitution’s institutions ought to be made to accept the risk that the terms offered and accepted may prove unwelcome. Independent of any such consequentialist concerns, the voluntary seeking-out and acceptance of the benefits of operating the founders’ institutions, only to operate them in ways inconsistent with one’s public promises, seems to convey more than a bit of moral disrespect for one’s fellow citizens. In effect, an official who does so is free-riding not only on the efforts of the founders to whom they are indebted for having established their offices in the first place but also on the efforts of all members of the American public who recognize the value of the institutions that the Founders created, and who do their parts to preserve those institutions. It may not make that much of a practical difference—isolated acts of free-riding often won’t have the consequence of vitiating a cooperative scheme—but it still seems to reflect poorly on the official’s moral character.

Finally, on this score, what about professors or other scholars who have never taken an oath? Are they, at least, free to use the term “the Constitution” any way they want? We think not, to the extent that they direct their work toward officers who have taken the Article VI oath. As oaths to adhere to a reasonably just constitution are presumptively morally binding, the encouragement of oath-breaking should be presumed to constitute complicity in wrongdoing. Accomplices to crimes are sometimes unable to commit those crimes personally as principals; think of a non-prisoner helping a prisoner escape. Likewise, it is not right, absent Nazis-at-the-door-style countervailing considerations, for anyone to speak about the Constitution in ways that encourage oath-takers to become oath-breakers.

F. A Stable Constitutional Identity Over Time

We come, then, to the main lesson of this Article: If and to the extent that the Constitution today is alive—that it has changing attributes relevant to its requirements—it must have been alive in the same way at the Founding as well.


176. See DAVID LUBAN, LAWYERS AND JUSTICE 38 (1988) (arguing that “in cases when a law is a generally beneficial scheme of social cooperation that won’t work unless most people comply, it is unfair to the compliant majority for you to accept the law’s benefits without yourself complying”).
Joseph Raz is one of the very few to consider the implications of interpretive theory for the identity over time of the Constitution: “If the courts make the constitution, does it not follow that many people who believe that, let us say, they are living under a constitution adopted two hundred years ago are mistaken?” Raz thinks they are not mistaken and that he can vindicate the same-Constitution-as-the-Founding part of present constitutional culture. His grounds for such vindication, however, seem poor.

Raz analogizes departures from original meaning to repairing or redecorating a house built 200 years ago. He admits that people might object to repairs and redecorations on the ground that the house “would not be the same” but maintains that “it is still the same house and so is the Constitution.” However, Raz does not explain why the changes he describes do not create a new entity. We agree with Raz that rearranging furniture or replacing blinds does not a new house make. But, if every one of the structural components of my house is replaced one-by-one with new materials—like the planks of Theseus’s ship—does it remain my house? If a house’s essence consists only in its structural and formal continuity, it would. But material continuity may matter as well. If my house is demolished and its constituent materials are used to construct a building that I would not recognize were I shown a picture of it, and I would get lost in were I to attempt to find my way around inside of it, is the building still my house? If I insist that the latter building is indeed my house because I would prefer living in it to living in the original structure, does that matter? Why or why not? Presumably, some changes can yield a new entity, but Raz does not explain what kind of changes would be required to produce either new houses or new constitutions and does not adequately justify his position that a Constitution which can be unilaterally amended by judges is the same Constitution as the original document that oath-takers claim to follow today.

Americans who go along with the culture’s commonplaces about the age of the Constitution will, of course, not generally talk about the Constitution in metaphysical terms. Nonetheless, philosophy can give those commonplaces more rigor. To claim that our current, operational Constitution is old is to make a simple claim about the ability of the Constitution to persist over time. Understanding this claim is easier if we use Aristotle’s distinction between “essential” properties, without which

177. Raz, supra note 157, at 370.
178. Id.
an entity would not survive, and “accidental” properties, which an entity could lose without becoming a new object.  

Sorting between essential and accidental properties is, of course, difficult, and those who disparage metaphysics would give it up as a fool’s errand: hopeless, meaningless, or incoherent. Since the work of P.F. Strawson,181 Ruth Barcan Marcus,182 David Wiggins,183 Saul Kripke,184 and others, however, individual essences are much more in favor in the philosophical world. As Strawson put it, “[W]e must have criteria or methods of identifying a particular encountered on one occasion, or described in respect of one occasion, as *the same individual* as a particular encountered on another occasion, or described in respect of another occasion . . . . [I]dentifying involves thinking that something is *the same* . . . .”185

Many philosophers have understood our social practices of naming as reflecting an implicit metaphysics of essence: To call an entity by the same name (or “rigid designator”) over time is to say that it has undergone only accidental, not essential, change. Under the influence of this tradition in the philosophy of language, metaphysics in the last several decades has, indeed, rehabilitated a word first used by John Duns Scotus and his followers in the thirteenth and fourteenth centuries to describe individual essences: “haecceity,” from “haec,” the singular feminine nominative for “this” in Latin.186 In English, philosophers in the reinvigorated essentialist tradition regularly speak of “thisness:” the “concrete objective reality of a thing,”187 or the properties in virtue of which a particular entity is the particular entity. Asking for the essence of the Constitution is therefore asking for the “thisness” of “this Constitution.”

180. *See Aristotel*, *Topics* 10 (350 B.C.E.). If one is a skeptic about the essences of artifacts, as distinguished from natural kinds with distinctive micro-constitutions—say, “water,” with its two hydrogen atoms and one oxygen atom, every and always—never fear. We agree that, like all artifacts, the Constitution is answerable to human purposes, intentions, and uses, as is the practice of promising to follow it. Our claim is not that the object of the oath *could not* change but that it *has not* done so.


185. Strawson, supra note 181, at 31–32.


As we noted earlier, Article V makes a claim about the “thisness” of the Constitution: Amendments are “valid to all [i]ntents and [p]urposes, as [p]art of this Constitution, when ratified . . . .” 188 Even after amendments, the Constitution is still the same entity—“this Constitution.” Taken at face value, the “[p]art of this Constitution” locution means that the use of the Article V amendment process reflects only accidental change and does not replace our old Constitution with a new one.

Living constitutionalisms of various stripes are similarly implicit claims about the Constitution’s essence: Despite changes of various sorts in how that the same Constitution is applied by interpreters, it is the same Constitution being applied. Akhil Amar has famously claimed that Article V has never been the only means of changing the Constitution; indeed, the sort of judicial updating characteristic of living constitutionalism can be seen as a special case of non-Article-V amendment. 189 But one need not reject such claims to reject post-founding abiogenesis. Hostility to post-Founding abiogenesis only requires that this power of the Constitution to survive plebiscitarian change, if possessed today, must have been possessed (as, indeed, Amar himself claims) at the Founding, too.

If any properties of the Founders’ Constitution can be said to be essential, the original processes of constitutional change should be among them. If identity over time is transitive—as befits calling it a form of “identity”—then the ability to survive change over time must itself be an essential property, not an accidental one that can be acquired later. If entity \( A \) at time 1 can become entity \( B \) at time 2, which in turn can become entity \( C \) at time 3, then (on ordinary understandings of what we mean by “become”) entity \( A \) has itself survived the transition all the way to time 3. Accordingly, the ability of \( B \) to become \( C \) must itself be possessed by \( A \).

Thomas Reid’s famous criticism of Locke’s memory criterion of personal identity uses transitivity of identity as a critical component. 191 Reid imagines a brave officer capturing a standard in his first campaign; at the time, the officer can remember being flogged as a boy at school for robbing an orchard. Later, when made a general, the officer can remember capturing the standard, but not the boyhood flogging. On Locke’s view

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188. U.S. Const. art. V.
189. See, e.g., Akhil Reed Amar, Philadelphia Revisited: Amending the Constitution Outside Article V, 55 U. Chi. L. Rev. 1043 (1988); see id. at 1043, 1044 (comparing “relying on the federal judiciary to act as a kind of continuous constitutional convention” to “constitutional amendment by direct appeal to, and ratification by, We the People of the United States”).
190. See Wiggins, supra note 183, at 4 (“[T]he traditional concept of identity [is] the logicians’ concept of identity defined by Leibniz’ law [i.e., the necessity of identity statements, i.e., truth in all possible worlds] and the principles of transitivity, reflexivity, and symmetry.”).
that conscious memory is the basis for personal identity, the boy would be the
officer, and the officer would be the general, but the boy would not be
the general: impossible. Memory, Reid compellingly argues, cannot be the
basis for identity, because memory is not transitive, but identity is.

A change in the sorts of changes that an entity can survive is, by its
nature, an essential change. To obtain a new ability to change, lacked
before, is to become a new entity. Consider the change Pinocchio
undergoes at the end of the story (spoiler alert!) from a wooden marionette
into a real boy. One reaction to the story is that it is conceptually
confused: Becoming a real boy is simply not the kind of change that
something made of wood could undergo. This sort of response, however,
would not make sense: “Sure, a wooden marionette couldn’t become a real
boy directly, but maybe first he acquired the ability to change into a real
boy, and only then he exercised that ability.” To shift one’s boundary
between essential and accidental properties is to undergo substantial
change—to become a new entity. Accordingly, abiogenesis—the change
from non-living (non-changing) to living (changing) status—is a change
in kind and essence, not degree and accident. Only a Constitution that
already possesses the ability to survive change in a particular way can
undergo that change without becoming a new and different Constitution.

What does all of this mean for Richard Re’s claim that different
Justices have different obligations based on the timing of their oaths? Re
claims that Justice Stevens’s oath in 1975 required an interpretation of the
Second Amendment different from the one to which Justice Scalia’s oath
in 1986 obliged him. “[T]o the extent that there was a consensus on the
substantive meaning of the Second Amendment in 1975, it no longer
existed in 1986. Justice Scalia was thus well within the parameters of his
oath when he authored the majority opinion in Heller. And, in dissenting,
Justice Stevens acted in accord with his oath.” But if Justices Scalia and
Stevens were both right, they did not really disagree, because they were
talking about two different subject matters. It is as if two helpful, long-
time local residents gave the same newcomer to the neighborhood
different directions to “the bank”—one in the belief that the newcomer
was looking for the nearest financial institution, the other in the belief that
the newcomer was planning a fishing outing. Justice Stevens, discharging
his oath, was talking about The Constitution; Justice Scalia,
discharging his, was talking about The Constitution.

Re’s claim permits change in the Constitution’s essential properties
by permitting change in the Constitution’s abilities to change. It thus

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192. See CARLO COLLIDI, PINOCCHIO: THE ADVENTURES OF A MARIONETTE 211
(Walter Cramp trans., 1904) (first serialized in 1880).

193. Re, supra note 8, at 331 (citing District of Columbia v. Heller, 554 U.S. 570
(2008)).
permits the substitution of the Constitution with other objects. Because our constitutional culture doesn’t acknowledge a plurality of constitutional objects and because Re’s claim rests upon constitutional culture, his claim fails.


Of course, our constitutional culture may be confused. It may be that are no substantive disagreements between Justices in the majority and dissenters, only verbal ones. Perhaps, although they all speak of “the Constitution,” they are speaking about different things, and their disputes could be clarified and perhaps improved, or dissolved, by acknowledging as much. Perhaps the same is true of discourse about the oath. Perhaps public officials only deploy same-oath, same-Constitution discourse because it is cheap and politically useful, not because they really understand themselves to be obliged to refer to the original document when making constitutionally salient decisions. Perhaps officials would speak differently if they thought that they would be obliged to do as they promised.194

Perhaps. As it stands, however, officials *have* been promising the original Constitution since the Founding, and they *do* take on a defeasible moral obligation to deliver on that promise. Having made that promise and entered into an office not of their own making, they take on a debt both to the dead—those who built and maintained the institutions that they now occupy—and to the living—those who presently enjoy the benefits of a reasonably just scheme of social cooperation that depends for its successful operation on official fidelity to its terms. Insofar as our constitutional culture connects the oath to the original Constitution, it appears to have gotten both the legal and moral force of Article VI’s requirements right.

G. Objections

Critics might dispute both the accuracy of the constitutional ontology that we have presented and its normative significance.

In his book, The Second Creation, Jonathan Gienapp endeavors to demonstrate that the Constitution was not initially understood to be “an authoritative text circumscribed in historical time.”195 Rather, Gienapp claims that at the moment of ratification “the Constitution’s basic ontology still needed to be mapped.”196 If true, Americans haven’t always been taking an oath to the same Constitution—the Constitution wasn’t even a thing until some years after ratification.

This is not the place for an extended refutation of Gienapp’s unfixed-ontology claim. We have elsewhere adduced evidence that the Constitution’s ontology was mapped at ratification, and we won’t reproduce that evidence here.197 This Article’s claims are more limited. We have documented a longstanding consensus—however historically inaccurate—that the Constitution’s ontology was fixed at the Founding. We have argued that properties of adaptability are essential to constitutional identity. It follows that the Constitution couldn’t have gained properties of adaptability that it didn’t originally possess while remaining the Constitution.

Far from undermining these claims, Gienapp’s evidence supports them. According to Gienapp, an ontology was fixed in the 1790s and has been the object of a shared cultural consensus ever since. Since the 1790s, the Constitution has been “a common object born of a common understanding of fixity organizing a common field of vision and argumentation;”198 its contents have been considered to be “locked in time;”199 its content is not susceptible of change through, as Madison put it, “the changes to which the words and phrases of all living languages are constantly subject.”200 Gienapp’s book ends with an exhortation to “imagine anew, in our own way, what the Constitution ought to be.”201 Basically, Gienapp wants to disrupt entrenched ontological hegemony.

In short, even if Gienapp is correct that the Constitution’s ontology wasn’t mapped at ratification—and we have contended elsewhere that he is not202—he shows that it was mapped shortly thereafter. So, those who

196. Id. at 128.
197. See generally Green, supra note 7.
198. Gienapp, supra note 195, at 326.
199. Id. at 289.
201. Gienapp, supra note 195, at 334 (emphasis added).
202. See Bernick & Green, supra note 8, at 266–77.
argue for a contemporary-meaning-based constitutional ontology still must deal with centuries of ontological hegemony. And that hegemony is highly probative of the contemporary meaning of officials’ promises.

But (turning to normative significance) so what? It is a commonplace in moral philosophy that one cannot derive an “ought” from an “is.” Andrew Coan argues that the Constitution’s status as a written document does not have any significant implications for normative constitutional theory. In particular, Coan contends that “writtenness” does not entail originalism. He claims that a number of nonoriginalist theories of constitutional interpretation can credibly claim to be faithful to the written Constitution.

Coan’s criticism of arguments from writtenness is sound but inapplicable here. We acknowledge that one can do many different things with a written document, consistent with a mandate to “support” it. We doubt, however, that one can reliably implement a Constitution with a closed portfolio of processes for change if one’s interpretive theory is aimed at a different constitutional object—specifically, a constitution that permits change through different processes. Put differently, constitutional epistemology must be well-calibrated to constitutional ontology.

The constitutional ontology presented here does not preclude living constitutionalism or other forms of nonoriginalism. It does, however, require nonoriginalists to shoulder the burden of demonstrating how their interpretive theories position constitutional decisionmakers to avoid changing the Constitution’s identity. Given a choice between two interpretive theories, one of which seems better-calibrated to prevent constitutional identity change than another, decisionmakers are obliged by their promise to the Constitution to choose the former, as a matter of what might be called “moral due process.” From the first-order moral obligation to follow a particular Constitution flows a second-order moral obligation to adopt the decisionmaking procedure that one believes to be

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205. *See id.* at 1028.

206. *See id.* at 1047.

207. Chelsea Rosenthal, *Why Desperate Times (But Only Desperate Times) Call for Consequentialism*, in 8 OXFORD STUDIES IN NORMATIVE ETHICS 211, 215 (Mark Timmons ed., 2018) (arguing that “we’re morally required to use a good strategy when trying to be moral” and “that being reckless or using a bad strategy would, itself, be morally bad”).
best-tailored to implement that Constitution. Like the first-order obligation, the second-order obligation is defeasible, but it binds in the absence of an exceptional set of circumstances.

Another objection related to normative significance is that we offer too much: To accuse those with a different understanding of the nature of the Constitution of infidelity is to insist that they be impeached, or worse. Cass Sunstein, for instance, though he himself has agreed that the Constitution is old, 208 says that associating the oath with a particular view of the nature of the Constitution is a very bad thing to say: “horrible,” “ugly,” “shameful,” “unpleasant,” and a “howl of rage,” akin to chanting “lock her up” regarding Hillary Clinton. 209 But as noted above, error about the nature of the Constitution can, if honest, certainly sometimes be an excuse. That doesn’t mean that it is not still an error. Assessments of the extent of particular interpreters’ good or bad faith would of course be required in order to decide exactly how far such an excuse might go. Sunstein himself has noted, “It’s terrible for a president to violate the oath of office, but doing so is not, by itself, an impeachable offense.” 210 Rooting our view of the nature of the Constitution in the oath need not be the prelude to mass impeachments.

H. A Summary in Argument Form

As a summary of our argument and guide to interlocutors, we can reduce our argument for second-order originalism to an argumentative cocktail with five ingredients as premises: three ethical, one sociological, and one metaphysical. A final historical piece would be required to move from second-order originalism—binding us today to the nature of the original Constitution—to a first-order-originalist commitment to its original meaning.

(1) Officers today take oaths to support “this Constitution,” and that oath is morally binding unless overriding considerations exist.

(2) Such overriding considerations do not exist.

(3) The objective content—rather than an oath-taker’s subjective understanding—of an oath, as an observer would understand it, is binding.

(4) Our current oath-taking constitutional culture uses the phrase “this Constitution” to refer to something that is the same for all oath-takers and the same as it was at the time of the Founding; people today think George Washington swore the same oath to support the same Constitution.

208. See Sunstein, supra note 101 and accompanying text.
as do current office-holders and that America has the oldest currently-operational written Constitution.

(5) A constitution with different powers to change is a different constitution.

These five premises entail our conclusion—second-order originalism, or originalism about the Constitution’s nature:

(6) Our Constitution has the same powers to change that it did at the Founding.

To get from this conclusion to first-order originalism, we would need a historical premise:

(7) At the Founding, the text of the Constitution imposed its requirements by expressing meaning on the basis of the legal interpretive conventions that existed at the time, applied to the original context.

This entails first-order originalism about the meaning originally expressed by its text:

(8) The meaning expressed by the text of the Constitution, on the basis of the legal interpretive conventions that existed at the time, applied to the original context, binds office-holders today.

IV. CONCLUSION: AGAINST POST-FOUNDING CONSTITUTIONAL ABIGENESIS

The Constitution’s repertoire today of powers to change is the same as its original portfolio: no greater, but also no smaller. This conclusion has implications for fans and critics of a living Constitution.

Fans of flexibility have a choice. Behind door number 1, they can fight on historical and empirical grounds, arguing that our original Constitution had the properties of adaptability they hope the Constitution to have today. Behind door number 2, they can normatively campaign to change our current constitutional culture’s view of its relationship to the Constitution, either by encouraging officers to abandon claims of identity with the Constitution of the Founding or by explicitly encouraging Americans to repudiate the original Constitution with a new one.

For their part, stability-loving critics of a living constitution must defend their views not merely by touting the normative virtues of originalism but by tying their understanding of the Constitution’s nature to its nature at the Founding. Rejecting post-Founding constitutional abiogenesis might be called “meta-originalism” or “second-order originalism:” Whatever our theory of constitutional decisionmaking is, we should get it from the Founders’ Constitution. The evidence canvassed in

211. See Green, supra note 7, at 1648–67.

212. Thus ceding our place on the oldest-currently-operational-Constitution leaderboard to the Netherlands.
this Article shows that second-order originalism is both true and important. For both legal and moral reasons, devotees of original meaning must be second-order originalists as well as first-order.

APPENDIX: REPRODUCTION OF THE STATE OATH FORMULAS

1. Alabama
All members of the legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation: “I, . . ., solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God.”\textsuperscript{213}

2. Alaska
All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . to the best of my ability.”\textsuperscript{214}

3. Arizona
In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of the office or employment, the officer or employee shall take and subscribe the following oath or affirmation:

\textbullet\ State of Arizona, County of ______________
\textbullet\ I, _____________________ (type or print name) do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of ______________________ (name of office) ______________________ according to the best of my ability, so help me God (or so I do affirm).

\textsuperscript{215}

\textsuperscript{213} ALA. CONST. art. XVI, § 279.
\textsuperscript{214} ALASKA CONST. art. XII, § 5.
\textsuperscript{215} ARIZ. REV. STAT. § 38-231(E) (2023).
Each justice, judge and justice of the peace shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Arizona, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.\textsuperscript{216}

4. \textit{Arkansas}

Senators and Representatives, and all judicial and executive, State and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices, shall take and subscribe to the following oath of affirmation: “I, \underline{\hspace{2cm}}, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of \underline{\hspace{2cm}}, upon which I am now about to enter.”\textsuperscript{217}

5. \textit{California}

Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: “I, \underline{\hspace{2cm}}, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

\underline{\hspace{2cm}} (If no affiliations, write in the words “No Exceptions”) and that during such time as I hold the office of \underline{\hspace{2cm}} (name of office) I will not

\textsuperscript{216} \textit{Ariz. Const.} art. VI, § 26.
\textsuperscript{217} \textit{Ark. Const.} art. 19, § 20.
advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means.  

6. Colorado

Every civil officer, except members of the general assembly and such inferior officers as may be by law exempted, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Colorado, and to faithfully perform the duties of the office upon which he shall be about to enter.

7. Connecticut

Members of the general assembly, and all officers, executive and judicial, shall, before they enter on the duties of their respective offices, take the following oath or affirmation, to wit:

You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of . . . . . . . . to the best of your abilities. So help you God.

8. Delaware

Members of the General Assembly and all public officers executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: “I, (name), do proudly swear (or affirm) to carry out the responsibilities of the office of (name of office) to the best of my ability, freely acknowledging that the powers of this office flow from the people I am privileged to represent. I further swear (or affirm) always to place the public interests above any special or personal interests, and to respect the right of future generations to share the rich historic and natural heritage of Delaware. In doing so I will always uphold and defend the Constitutions of my Country and my State, so help me God.”

218. Cal. Const. art. XX, § 3.
219. Colo. Const. art. XII, § 8. Note that, while fuller than the federal Article VI, this constitution does not prescribe a particular verbal formula.
221. Del. Const. art. XIV, § 1.
9. Florida

Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm: “I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.” 222

10. Georgia

Every public officer shall:

(1) Take the oath of office;

(2) Take any oath prescribed by the Constitution of Georgia;

(3) Swear that he or she is not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;

(4) Swear that he or she is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;

(5) Swear that he or she is otherwise qualified to hold said office according to the Constitution and laws of Georgia;

(6) Swear that he or she will support the Constitution of the United States and of this state; and

(7) If elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws of this state. 223

11. Hawaii

All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as . . . . . . . . . . . . . . . to best of my ability.” As used in this section, “eligible public officers” means the governor, the lieutenant governor, the members of both houses of the legislature, the members of the board of education, the members of the national guard, State or county employees who possess police powers,

district court judges, and all those whose appointment requires the consent of the senate.224

12. Idaho

The members of the legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: “I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of Idaho, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the best of my ability.” And such oath may be administered by the governor, secretary of state, or judge of the Supreme Court, or presiding officer of either house.225

Before any officer elected or appointed to fill any office created by the laws of the state of Idaho enters upon the duties of his office, he must take and subscribe an oath, to be known as the official oath, which is as follows:

“I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of (insert office) according to the best of my ability.”226

13. Illinois

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation: “I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of . . . . to the best of my ability.”227

14. Indiana

Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office.228

224. HAW. CONST. art. XVI, § 4.
225. IDAHO CONST. art. III, § 25.
227. ILL. CONST. art. XIII, § 3.
228. IND. CONST. art. XV, § 4.
15. Iowa

Members of the general assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: “I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of senator, (or representative, as the case may be,) according to the best of my ability.”

Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the constitution of the United States, and of this state, and also an oath of office.

16. Kansas

All state officers before entering upon their respective duties shall take and subscribe an oath or affirmation to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of their respective offices.

17. Kentucky

Members of the General Assembly and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of . . . according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.
18. Louisiana

Every official shall take the following oath or affirmation: “I, . . . , 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 that I will faithfully and impartially discharge and perform all the duties incumbent upon me as . . . , according to the best of my ability and understanding, so help me God.” 233

19. Maine

Every person elected or appointed to either of the places or offices provided in this Constitution, and every person elected, appointed, or commissioned to any judicial, executive, military or other office under this State, shall, before entering on the discharge of the duties of that place or office, take and subscribe the following oath or affirmation: “I _______ do swear, that I will support the Constitution of the United States and of this State, so long as I shall continue a citizen thereof. So help me God.” “I do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as _______ according to the Constitution and laws of the State. So help me God.” 234

20. Maryland

Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath, or affirmation: I, . . . . . . . . . , do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of . . . . . . . . . , according to the Constitution and Laws of this State, (and, if a Governor, Senator, Member of the House of Delegates, or Judge,) that I will not directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as . . . . . . . . . . . . . . 235

234. Me. Const. art. IX, § 1.
21. Massachusetts

Every commissioned officer, before entering upon the performance of official duties or exercising any command, shall take and subscribe the following oath and declaration:

I, ____, do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the constitution thereof and the constitution of the United States, that I will obey the lawful orders of all my superior officers, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as ____ according to the best of my ability and understanding, agreeably to the rules and regulations of the constitution and the laws of the commonwealth and the United States. So help me, God. 236

22. Michigan

All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of . . . . . . . . . . according to the best of my ability. 237

23. Minnesota

Each member and officer of the legislature before entering upon his duties shall take an oath or affirmation to support the Constitution of the United States, the constitution of this state, and to discharge faithfully the duties of his office to the best of his judgment and ability. 238

Each officer created by this article before entering upon his duties shall take an oath or affirmation to support the constitution of the United States and of this state and to discharge faithfully the duties of his office to the best of his judgment and ability. 239

24. Mississippi

Members of the Legislature, before entering upon the discharge of their duties, shall take the following oath: “I, __________, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and of the State of Mississippi; that I am not disqualified from holding office by the Constitution of this state; that I will faithfully discharge my

236. MASS. GEN. LAWS ch. 33, § 24.
237. MICH. CONST. art. XI, § 1.
238. MINN. CONST. art. IV, § 8.
239. MINN. CONST. art. V, § 6.
duties as a legislator; that I will, as soon as practicable hereafter, carefully read (or have read to me) the Constitution of this State, and will endeavor to note, and as a legislator to execute, all the requirements thereof imposed on the Legislature; and I will not vote for any measure or person because of a promise of any other member of this Legislature to vote for any measure or person, or as a means of influencing him or them so to do. So help me God.”  

The judges of the several courts of this state shall, before they proceed to execute the duties of their respective offices, take the following oath or affirmation, to-wit: “I, _______, solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ________ according to the best of my ability and understanding, agreeably to the Constitution of the United States and the Constitution and laws of the State of Mississippi. So help me God.”

All officers elected or appointed to any office in this State, except judges and members of the Legislature, shall, before entering upon the discharge of the duties thereof, take and subscribe the following oath: “I, ________, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of ________; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.”

25. Missouri

Before taking office, all civil and military officers in this state shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this state, and to demean themselves faithfully in office.

26. Montana

Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: “I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States,
and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God).”

27. Nebraska

Executive and judicial officers and members of the legislature, before they enter upon their official duties shall take and subscribe the following oath, or affirmation. “I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Nebraska, and will faithfully discharge the duties of . . . . . according to the best of my ability, and that at the election at which I was chosen to fill said office, I have not improperly influenced in any way the vote of any elector, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office, for any official act or influence (for any vote I may give or withhold on any bill, resolution, or appropriation).”

28. Nevada

Members of the legislature, and all officers, executive, judicial and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath:

I, . . . . . . . . . do solemnly [sic] swear (or affirm) that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of . . . . . . . . , on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.

29. New Hampshire

Any person chosen governor, councilor, senator, or representative, military or civil officer, (town officers excepted) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declaration, viz.

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244. Mont. Const. art. III, § 3.
I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. *So help me God.*

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all duties incumbent on me as ......................, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. *So help me God.*

Any person having taken and subscribed the oath of allegiance, and the same being filed in the secretary’s office, he shall not be obliged to take said oath again.

*Provided always,* when any person chosen or appointed as aforesaid, shall be of the denomination called Quakers, or shall be scrupulous of swearing, and shall decline taking the said oaths, such person shall take and subscribe them, omitting the word “*swear,*” and likewise the words “*So help me God,*” subjoining instead thereof, “*This I do under the pains and penalties of perjury.*”

30. New Jersey

Every person who is or shall be required by law to give assurance of fidelity and attachment to the Government of this State shall take the following oath of allegiance:

“I, , do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people So help me God.”

31. New Mexico

Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.

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249. N.M. Const. art. XX, § 1.
32. New York

Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: “I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of . . . . . , according to the best of my ability;” and no other oath, declaration or test shall be required as a qualification for any office of public trust, except that any committee of a political party may, by rule, provide for equal representation of the sexes on any such committee, and a state convention of a political party, at which candidates for public office are nominated, may, by rule, provide for equal representation of the sexes on any committee of such party. 250

33. North Carolina

Every member of the General Assembly and every person elected or appointed to hold any office of trust or profit in the State shall, before taking office or entering upon the execution of the office, take and subscribe to the following oath:

“I, __________, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.” 251

34. North Dakota

Members of the legislative assembly and the executive and judicial branches, except such inferior officers as may be by law exempted, before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation: “I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of ________ according to the best of my ability, so help me God” (if an oath), (under pains and penalties of

250. N.Y. CONST. art. XIII, § 1.
perjury) if an affirmation, and any other oath, declaration, or test may not be required as a qualification for any office or public trust.252

35. Ohio

Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office.253

36. Oklahoma

All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation:

“I, . . . . . . . . , do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as . . . . . . . . to the best of my ability.”254

37. Oregon

The members of the Legislative Assembly shall before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation;—I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Oregon, and that I will faithfully discharge the duties of Senator (or Representative as the case may be) according to the best of my Ability.255

Every judge of the supreme court, before entering upon the duties of his office, shall take and subscribe, and transmit to the secretary of state, the following oath:

“I, ____________, do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Oregon, and that I will faithfully and impartially discharge the duties of a judge of the supreme court of this state, according to the

253. Ohio Const. art. XV, § 7. Statutes prescribe particular oaths for categories of offices.
255. Or. Const. art. IV, § 31.
Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.257

38. Pennsylvania

Senators, Representatives and all judicial, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths.

“I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity.”258

39. Rhode Island

The members of the general assembly, the judges of all the courts, and all other officers, both civil and military, shall be bound by oath or affirmation to support this Constitution, and the Constitution of the United States.259

Every person, except the justices of the supreme and superior courts, elected to office by the general assembly, or by either house thereof, or under the provisions of the law in relation to public schools, or appointed to office, civil or military, by the governor, or by any other appointing authority, to a state board, agency or commission, shall, before he or she shall act therein, take the following engagement before some person authorized to administer oaths, namely: I, [naming the person], do solemnly swear (or affirm) that I will faithfully and impartially discharge the duties of the office of [naming the office] according to the best of my abilities, and that I will support the Constitution and laws of this state, and the Constitution of the United States, so help me God: [Or: This affirmation I make and give upon the peril of the penalty of perjury.]260

40. South Carolina

Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before

257. Or. Const. art. XV, § 3.
258. Pa. Const. art. VI, § 3.
they enter upon the practice of their profession, shall take and subscribe the following oath: “I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God.”

41. South Dakota

Members of the Legislature and officers thereof, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any other official act.

Every person elected or appointed to any office in this state, except such inferior offices as may be by law exempted, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States and of this state, and faithfully to discharge the duties of his office.

42. Tennessee

Every person who shall be chosen or appointed to any office of trust or profit under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this State, and of the United States, and an oath of office.

Each member of the Senate and House of Representatives, shall before they proceed to business take an oath or affirmation to support the Constitution of this State, and of the United States and also the following oath: I do solemnly swear (or affirm) that as a member of this

263. S.D. CONST. art. XXI, § 3.
264. TENN. CONST. art. X, § 1.
General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State.\footnote{265}

\section*{43. Texas}

All elected and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

“I, _______________________, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _______________ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”

All elected or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

“I, _______________________, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.”\footnote{266}

\section*{44. Utah}

All officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: “I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Utah, and that I will discharge the duties of my office with fidelity.”\footnote{267}

\footnote{265. \textit{Id.} at § 2.}
\footnote{266. \textit{TEX. CONST.} art. XVI, § 1(a)-(b).}
\footnote{267. \textit{UTAH CONST.} art. IV, § 10.}
45. Vermont

I ____________, do solemnly swear/affirm that I will support the Constitution of the United States. So help me God. / Under the pains and penalties of perjury.268

46. Virginia

All officers elected or appointed under or pursuant to this Constitution shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation:

“I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as . . . . . . . . . . . . according to the best of my ability (so help me God).”269

47. Washington

Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.270

The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and insurance commissioner, shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation in substance as follows: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the state of Washington, and that I will faithfully discharge the duties of the office of (name of office) to the best of my ability.271

48. West Virginia

Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath or affirmation that he will support the constitution of the United States and the constitution of this state, and that he will faithfully discharge the duties

268. 3 App. V.S.A. ch. 3, ex. ord. 04-22.
269. VA. CONST. art. II, § 7.
270. WASH. CONST. art. IV, § 28.
271. WASH. REV. CODE 43.01.020 (1965).
of his said office to the best of his skill and judgment; and no other oath, declaration, or test shall be required as a qualification, unless herein otherwise provided.\textsuperscript{272}

49. Wisconsin

Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall before they enter upon the duties of their respective offices, take and subscribe an oath or affirmation to support the constitution of the United States and the constitution of the state of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.\textsuperscript{273}

50. Wyoming

Senators and representatives and all judicial, state and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the constitution of the United States, and the constitution of the state of Wyoming; that I have not knowingly violated any law related to my election or appointment, or caused it to be done by others; and that I will discharge the duties of my office with fidelity."\textsuperscript{274}

\textsuperscript{272} W. VA. CONST. art. IV, § 5.
\textsuperscript{273} WIS. CONST. art. IV, § 28.
\textsuperscript{274} WYO. CONST. art. VI, § 20.