

LIMITS OF THE BURDENS OF OATHS AND VOWS
UPON CHRISTIAN CONSCIENCES

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ABSTRACT

Christians, particularly those engaged in public service, at times may be pressured to take actions that do not appear to be God-pleasing, pursuant to the obligations of broadly written oaths required by governmental authorities. This can also occur with regard to oaths and vows taken in other settings. Through consideration of relevant passages of Scripture and commentary from confessional Lutheran theologians, this study examines the scriptural principles that pastors may bring to bear when advising Christians with regard to circumstances where the God-pleasing course of action may be to refuse to fulfill the obligations of a previously taken oath or vow, or to refuse to take a new one.

Oaths and vows taken in God's name are solemn obligations, not to be undertaken lightly; yet there are also limits to these obligations. No oath or vow has the power to override the revealed will of God by binding a person who has sworn it to sin. Moreover, where a Christian concludes that he or she may have sinned in the taking or keeping of an oath or vow and repents, that person can trust, with full confidence, in God's forgiveness in Christ.

INTRODUCTION

“Should Jonathan die?”¹

In the heat of battle against the Philistines — the mortal enemies of Israel — King Saul swore an oath and laid it upon his army, that anyone who ate before that evening, “before I have avenged myself on my enemies,” would be cursed.² Saul’s son Jonathan, through whose heroic bravery a serious defeat had already been inflicted upon the Philistines earlier in the same campaign,³ unknowingly violated his father’s oath by eating honey he found in the forest.⁴

Later that day, Saul placed himself under a second oath, swearing that whoever was found to be at fault in Israel, even if it were Jonathan, “he must die;” but none of Saul’s men disclosed what Jonathan had done, even though it had become known.⁵ After Saul had discovered what Jonathan had done,⁶ he placed himself under a third oath requiring Jonathan’s

1. 1 Sam 14:45. All Bible quotations in English herein, apart from those included within direct quotations from other authors, are taken from the NIV 2011 translation.

2. 1 Sam 14:24.

3. 1 Sam 14:1–15.

4. 1 Sam 14:27. When Jonathan was subsequently informed of Saul’s oath, he reflected upon how his father “had made trouble for the country,” and how Saul’s oath served only to impair the fighting capacity of Israel’s army.

5. 1 Sam 14:38–39.

6. Jonathan was initially identified through the casting of lots, and he then confessed that he had “tasted a little honey with the end of my staff.” 1 Sam 14:40–43.

death.⁷ But those who served under Saul refused to carry out his demand, swearing an oath of their own that no harm would come to Jonathan:

But the men said to Saul, “Should Jonathan die — he who has brought about this great deliverance in Israel? Never! As surely as the Lord lives, not a hair of his head will fall to the ground, for he did this today with God’s help.” So the men rescued Jonathan, and he was not put to death.⁸

Did Saul act in a God-pleasing way, when he swore his first oath, and when he sought to confirm its result by swearing a second oath, and then a third? By what authority did he bind the soldiers under his command to the conditions of an oath? Did the soldiers act in a God-pleasing way when they refused to carry out the will of Saul, even though this course of action was pursuant to the terms of an oath to which they had been bound by their king? The narrative report of these events in First Samuel leaves these questions hanging in the air.

The answers matter to us, because Christians today continue to find themselves bound by the terms of oaths required of them by those in authority and by oaths and vows taken on their own initiative. Solemn oaths are sworn by elected officials, civil servants, military personnel, witnesses giving testimony before courts and other tribunals, and newly naturalized citizens. Solemn promises in the form of vows are made by called workers of the church, officers and others serving in our congregations, and couples entering into marriage.

This thesis seeks to explore the question of the limits beyond which oaths and vows should not be permitted to function as a burden upon Christian consciences — under what circumstances one might properly refuse to fulfill one’s oath or vow, or to refuse to take an oath. Christians in our time, and especially public servants, may be pressured to take actions that do

7. 1 Sam 14:44.

8. 1 Sam 14:45.

not appear to be God-pleasing, on the basis of broadly written oaths to support the Constitution of the United States and the constitutions of the several states of the Union, or similar oaths required in other nations. The position advanced in this thesis is that, while there are many circumstances in which oaths and vows are properly taken (including when duly required by civil government and others in authority), there are also limits upon the obligations of oath and vows. Moreover, a Christian who recognizes that he or she has erred in such matters and repents may rely with full confidence upon God's forgiveness in Christ. "For a godless vow, made contrary to God's command, is null and void, just as ... an oath should not bind a person to sin" (AC XXVII 40).⁹

The research undertaken did not disclose any recent comprehensive attempts on the part of confessional Lutheran writers to address these specific concerns in a systematic fashion. The intention of this paper is to address the question presented through review of the academic literature; study of scriptural references and related commentary, with emphasis upon confessional Lutheran sources; and identification of some contemporary situations in which these concerns may arise. Suggestions for an approach to applying the scriptural principles are also offered. My prayer is that the gathering of pertinent passages of Scripture, doctrinal statements, and useful commentary into a convenient format, and the consideration of selected examples of modern-day situations in which these issues arise, may prove beneficial to pastors who find themselves assisting people confronted by these challenging ethical issues.

9. Robert Kolb and Timothy Wengert, eds., *The Book of Concord: The Confessions of the Evangelical Lutheran Church* (Minneapolis: Fortress, 2000), 86, 88 (translation of the German text of the Augsburg Confession). Hereafter Kolb-Wengert.

LITERATURE REVIEW

For what is better than to speak with perfect truth throughout one's whole life, and to prove this by the evidence of God himself? For an oath is nothing else but the testimony of God invoked in a matter which is a subject of doubt, and to invoke God to witness a statement which is not true is the most impious of all things.¹⁰

Academic commentary on the nature of oaths and vows and the obligations they create dates back at least to the writings of the Jewish commentator Philo in the first century B.C.¹¹ While only limited discussion appears with regard to the specific question of the circumstances under which a person may be discharged from the obligation of an oath or a vow, a considerable literature exists concerning the nature of oaths and vows generally.¹² Substantial attention has

10. Philo, *De Specialibus Legibus*, II, III (10), in Philo, *The Works of Philo, Complete and Unabridged; New Updated Edition*, trans. C.D. Yonge (Peabody, MA: Hendrickson, 1993), 568–69.

11. See generally David M. Scholer, “An Introduction to Philo Judaeus of Alexandria,” foreword to *The Works of Philo, Complete and Unabridged; New Updated Edition*, by Philo, trans. C.D. Yonge (Peabody, MA: Hendrickson, 1993), xi–xviii.

12. See, e.g., Giorgio Agamben, *The Sacrament of Language: An Archaeology of the Oath*, trans. Adam Kotsko (Stanford: Stanford University Press, 2011) (lengthy philosophical discussion of the development of oaths in several ancient societies as a means to combat perjury, the social functions of oaths, and the inherent weaknesses of oaths detached from a belief in God); Jeffrey B. Hammond, “I Swear to It: Oaths as Fundamental Language and Power,” review of *The Sacrament of Language: An Archaeology of the Oath*, by Giorgio Agamben, and *Oaths and the English Reformation*, by Jonathan Michael Gray, *Journal of Law and Religion* 31, no. 1 (March 2016): 92–98 (reviewing Agamben; at 93–94, highlighting Agamben’s “powerful claim about the ultimate orientation of oaths: they are neither purely religious nor purely legal,” but involve the intersection of both law and religion); Kyle Fruh, “Promising’s Neglected Siblings: Oaths, Vows, and Promissory Obligation,” *Pacific Philosophical Quarterly* 100, no. 3 (September 2019): 858–80 (considering oaths and vows from a secular standpoint; understanding them as being of the same general class as promises but carrying greater impact); Mitchell Dean, “Oath and Office,” *Telos* 185 (Winter 2018): 67–91 (reviewing various historical and current perspectives on the nature of an oath, with special attention to the oath of office in civil government; at 90–91, suggesting that oaths are complex and best understood in terms of several interrelated dimensions; at 89, proposing that the oath of office is “best understood as part of a ‘public service’ or liturgy that arranges and disposes a set of hierarchically arranged offices or duties devolved from a sovereign authority, and specifies the respective obligation of each individual in relation to it”).

been paid to the subject of oaths and vows in the Holy Scriptures,¹³ as well as to the function and continuing relevance of oaths and vows in modern society.¹⁴

Although some scholars have sought to identify definitional distinctions between oaths and vows, such distinctions appear to be of limited use for pastoral purposes. The following example of an attempt to draw out the distinction, emphasizing the promissory obligation involved in both oaths and vows, will suffice for the purposes of the present discussion:

The biblical vows and oaths are actually composites of smaller units. The basic building block of both vows and oaths is the promise: a person's statement of intention that he or she will or will not do something.... Old Testament oaths basically consist of a promise that is strengthened by the addition of a curse, usually in conjunction with an appeal to the deity or king who could carry out the curse.... With vows, the process characteristically moves in the opposite direction to oaths. While an oath begins with human action (or inaction) and moves from there to God's potential response, a vow

13. See, e.g., Tony W. Cartledge, *Vows in the Hebrew Bible and the Ancient Near East*, JSOTSup 147 (Sheffield: Sheffield Academic, JSOT, 1992) (helpful overview of the entire subject matter of vows, including distinctions between various kinds of Old Testament vows and oaths; a review of various examples; a review of the treatment of the topic in lexicons and encyclopedias; a comparative study with other Near Eastern cultures; a study of the vocabulary and forms of vows in the Hebrew Bible; and a discussion of the literary function of vows in Hebrew narrative); Blane Conklin, *Oath Formulas in Biblical Hebrew*, LSAWS 5 (Winona Lake, IN: Eisenbrauns, 2011) (detailed study of vocabulary and syntax of Old Testament oath formulas, with appendix addressing oath formulas in other Semitic languages, and extensive bibliography); Henry S. Gehman, "The Oath in the Old Testament: Its Vocabulary, Idiom, and Syntax; Its Semantics and Theology in the Masoretic Text and the Septuagint," in *Grace upon Grace: Essays in Honor of Lester J. Kuypers*, ed. James I. Cook. (Grand Rapids: Eerdmans, 1975), 51–63 (reviewing numerous specific Old Testament examples); Robert S. Kawashima, "Oaths, Vows, and Trust in the Bible," in *On the Word of a Jew: Religion, Reliability, and the Dynamics of Trust*, ed. Nina Caputo and Mitchell B. Hart (Bloomington: Indiana University Press, 2019): 17–35 (considering oaths and vows in the Bible as concessions to human mistrust; significance in relation to principles of trust and hospitality; oaths as "danger beliefs," sworn with the understanding that an oath breaker is accountable to divine punishment); Micha Roi, "Conditional Vows — Where They Are Made and Paid," *BN* 167 (2015): 3–24 (comparing several examples of Old Testament vows, with emphasis upon their conditional and contractual nature); Orit Malka, "On the Meaning of ָוְיָדָהּ in Biblical Hebrew: Between Summoning Witnesses and Imposing Oaths," *VT* 71, no. 4–5 (2021): 631–52 (arguing that in context, many instances of the Hebrew vocable ָוְיָדָהּ imply the imposition of an oath in connection with giving testimony); Ronald T. Hyman, "Four Acts of Vowing in the Bible," *JBQ* 37, no. 4 (October 2009): 231–38 (comparative study of Jacob's vow in Gen 28:20–22 with other vows in Num 21:2; Judg 11:30–31; and 1 Sam 1:11); Meir Malul, "More on Pachad Yitschāq (Genesis 31:42, 53) and the Oath by the Thigh," *VT* 35, no. 2 (April 1985): 192–200 (examining of oaths taken "by the thigh," or by placing a hand under the thigh, in the book of Genesis, with discussion of the probable symbolic significance thereof); Jo-Ann A. Brant, "Infelicitous Oaths in the Gospel of Matthew," *JSNT* 19, no. 63 (January 1997): 3–20 (seeking to apply the principles of "speech-act theory" to the matter of oaths); D. Edmond Hiebert, "Hearing the Word: The Worldliness of Self-Serving Oaths," *Direction* 6, no. 4 (October 1977): 39–43 (discussion of the theology and ethics of oaths in the New Testament, with specific attention to Matthew, Hebrews, and James).

14. See below, at notes 40–48.

begins with a plea for divine action, followed by a conditional promise of the worshiper's response. An oath consists of a promise which is then reinforced by a curse, but in a vow the promise serves to strengthen an earlier petition to the deity: the one praying asks some favor of God and promises some gift or service in return.¹⁵

The problem with this sort of attempt at a firm distinction is that there are so many exceptions and caveats that the general rule is not particularly helpful. Moreover, there remains considerable ambiguity with regard to these terms in modern usage. For the purposes of this study, from the point of view of practical pastoral service, it would appear sufficient to approach both oaths and vows as promises to do or not to do something, in which the promise is made either directly to God or with God as guarantor and witness. From the perspective of the burdens placed upon conscience when keeping the oath or vow involves a moral dilemma, the commonalities appear to outweigh the technical differences. A practical and beneficial implication of this, at least for the purposes of the present undertaking, is that writings concerning both oaths and vows may be profitably considered in a study of the limitations of these obligations.

15. Cartledge, *Vows in the Hebrew Bible and the Ancient Near East*, 15–17.

For another attempt to delineate the distinction, with a recognition of the challenges involved, see Moshe B. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond: Authority and Interpretation,” *ARG* 20, no. 1 (2018): 275–303, at 276–77:

The discussion of both oaths and vows under one heading of promissory language requires explanation as these are usually discussed separately, both in the ancient and in the modern sources. A vow — as this term is usually used in ancient texts — is a promise to a god, while an oath only uses the name of the god as support for a statement to a fellow human. Nevertheless, breaking an oath or vow entails a similar religious sin of disrespecting the divine through promissory language. Furthermore, though the terms for oaths and vows in ancient languages are different, they are compared and sometimes conflated by writers of all the ancient cultures discussed here.

For a similar definition of the distinction, see also Riccardo Saccenti, “Beyond the Positive Law: The Oath and Vow as a Theological Matter Between the 12th and Early 13th Centuries,” in *The Summa Halensis: Doctrines and Debates*, ed. Lydia Schumacher (Berlin: Walter de Gruyter GmbH, 2020): 251–73, at 269 (“[T]he vow is made to God while the oath is made on God, that is, the vow determines an obligation towards God, and the oath establishes an obligation with other people and has both God and human beings as witnesses”).

Philo recognized the incongruity of allowing one's oath to become the occasion for committing evil and encouraged those who had taken such an oath to abstain from fulfilling it:

And let every man who commits wicked actions because he is so bound by an oath, beware that he is not keeping his oath, but that he is rather violating one which is worthy of great care and attention to preserve it, which sets a seal as it were to what is honourable and just, for he is adding wickedness to wickedness, adding lawless actions to oaths taken on improper occasions, which had better have been buried in silence. Let such a man, therefore, abstain from committing iniquity, and seek to propitiate God, that he may grant to him the mercy of that humane power which is innate in him, so as to pardon him for the oaths which he took in his folly. For it is incurable madness and insanity to take upon himself two-fold evils, when he might put off one half of the burden of them.¹⁶

In contrast to the approach of Philo, which assumes the possibility of repentance and seeking God's forgiveness for an oath which could become the occasion for sin,¹⁷ later writers often appear to have adopted a more legalistic and conditional approach to the question of the limitations of oaths and vows.

Moshe Blidstein examines this question from the perspective of "how the power of ancient social and religious institutions was expressed in the management and even cancellation of vows and oaths."¹⁸ In his view, "[t]he question of authority over oaths and vows ... integrates three spheres of an ancient culture: legal, social and economic issues of authority in society; religious questions of guilt and expiation; and linguistic questions of the hermeneutics of

16. Philo, *De Specialibus Legibus*, II, V (14–15), in Philo, *The Works of Philo*, 569.

17. See, e.g., Philo, *De Specialibus Legibus*, II, V (16–17), in Philo, *The Works of Philo*, 569 (urging one who had taken a flagrantly anti-social vow "to seek to propitiate the mercy of God by prayers and sacrifices, so that they may find some cure for the diseases of their souls"); V (22–23), 570 (criticizing the tendency of "men newly become rich" for "introducing oaths on unfitting occasions"). Cf. Samuel Belkin, "Dissolution of Vows and the Problem of Anti-Social Oaths in the Gospels and Contemporary Jewish Literature," *JBL* 55, no. 3 (1936), 227–34, at 230, 233–34 (arguing that even "anti-social oaths" were considered indissoluble in the Old Testament, and that both Jesus and Philo were presenting a modification of that position in their opposition to fulfillment of "anti-social oaths").

18. Blidstein, "Loosing Vows and Oaths in the Roman Empire and Beyond," 275.

promissory speech acts.”¹⁹ Blidstein’s wide-ranging review covers ways in which oaths and vows were avoided, left unfulfilled, or canceled in Greek and Roman society,²⁰ in the Hebrew Old Testament and in rabbinic literature,²¹ and in Islamic society;²² but of most direct relevance to this study are his observations regarding how these matters were addressed in the first several centuries of the Christian church. He notes that at least from the fourth century onward, Christian authorities including Augustine and Jerome viewed certain kinds of oaths as legitimate. Moreover, unlike many vows of the pagan Roman world, early Christian vows involving asceticism and good works were not viewed as conditional upon some specific divine action and “could therefore not be managed in the Roman fashion” (*i.e.*, readily voided or annulled).²³

Christians probably could not easily develop mechanisms of vow and oath-management for two reasons. The first is the very harsh view of oaths in the Gospels, which meant that any possibility of perjury was taken very seriously. The second was the central place of vows and promises of asceticism for Christian society and ideology. *Individual promises were seen as a source of life-long obligation*, whether in baptism or in monastic and ascetic vows more generally, *with such promises considered not only as specific actions of a person but as the basis for the person’s very status*. Furthermore, for Christians, religious promises were essentially individual and even anti-institutional, so that the priesthood had only a minor role in managing them. Nevertheless, ... by the seventh century priests arrogated a certain role in this realm, at least in the case of specific vows and promises.²⁴

19. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 277.

20. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 277–78, 280–86, 299.

21. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 277–79, 287–92, 299–300.

22. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 298–99.

23. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 292.

24. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 299 (emphasis added).

Blidstein finds “a consensus among Christian writers that oaths and vows clearly against the will or law of God are not binding.”²⁵ Richard Helmholz also observes that medieval canon law, seeking to avoid the perverse result that Christians could be bound to perform an oath to do evil in the same way that Herod had considered himself bound by the oath that led to the execution of John the Baptist (Matt 14:1–12), had “devoted considerable attention to tracing out a path of reasoning ... [that] offered relief from other kinds of iniquitous oaths.”²⁶

Blidstein’s review, however, focuses on several grounds upon which cancellation of vows and oaths had been approved in “less clear-cut cases, in which an oath or vow poses other problems for the promiser or the community and there is therefore an interest in annulling it.”²⁷ Rationales noted include those from Origen (suggesting the novel view that one’s guardian angel could render one free from blame for an improvident vow by assuming responsibility for it);²⁸ Basil of Caesarea (seeking grounds of relief in the technical form of the oath and the frame of mind in which it was given; deeming vows of asceticism made by parents for their children invalid if against the child’s wishes);²⁹ Ambrose of Milan (accepting rationales given by Cicero; disallowing “a criminal oath to murder;” allowing changes to an oath for the sake of God’s honor);³⁰ John Cassian (allowing for wide latitude for abandoning a prior oath or promise, in

25. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 292. At 292–93 n. 40, Blidstein cites for this proposition: Origen, *Homilies on Jeremiah* 20.7, *Commentary on John* 32.95; Ambrose, *De Officiis* 3.12; Barsanuphius, *Ep.* 615; Moschus, *Pratum Spirituale* 45; Isidore of Seville, *Sentences* 2.31.8; Gregory the Great, *Moralia in Iob* 32.36–39; Second Council of Orleans, c. 12; Eighth Council of Toledo, c. 2.

26. Richard H. Helmholz, “Pope Innocent III and the Annulment of Magna Carta,” *JEH* 69, no. 1 (January 2018), 1–14, at 12–13, 13 nn. 62–68 (citing Gratian and papal decretals included in the *Liber Extra*).

27. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 292–93.

28. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 293, 293 n. 41.

29. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 293–94, 294 n. 43.

30. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 294, 294 n. 44.

view of present intentions and circumstances; presented in contrast to the more strict views of Augustine with regard to the keeping of oaths in accordance with the expectations of the one to whom the oath was given);³¹ and Paulinus of Nola (allowing for a substitute vow in a case of impracticability).³²

Blidstein observes that, while the foregoing examples generally involve “appeal to the terms of the oath or its logic in order to cancel it,” beginning “in the sixth and seventh century texts appear which speak of the authority of clergy over oaths.” Such authority in the priesthood was claimed on the basis of “the power to bind and loose on earth and in heaven.”³³ However, instances also continued to appear where the breaking of an oath was treated simply “as a matter of confession and penance,” with no mention made of priestly authority to cancel the obligation of the oath.³⁴

A historically prominent example of the increasing claims of authority on the part of the clergy over the obligation of oaths is presented by Richard Helmholz, in his discussion of Pope Innocent III’s discharging of King John from his oaths in connection with the Magna Carta in 1215.³⁵ Helmholz argues that, although the papal bull *Etsi karissimus* was vague as to the pope’s precise justification for releasing the king from his oath and annulling the Magna Carta,³⁶ the

31. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 294–96, 295 nn. 45, 46.

32. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 296, 296 nn. 48, 49.

33. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 296–97, 297 nn. 51–53 (at 297: “[A] person who swore to do evil should also repent and loosen his oath through a priest. The earliest euchologion extant is the Barberini Gr. 336, from the eighth century; it indeed includes a prayer for this case: ‘A prayer for one who fails to keep his oath’, with the priest’s loosing and binding role emphasized.”).

34. Blidstein, “Loosing Vows and Oaths in the Roman Empire and Beyond,” 297, 297 n. 54.

35. Helmholz, “Pope Innocent III and the Annulment of Magna Carta,” 1–14.

36. The papal bull referred generally to Jeremiah 1:10 (“See, today I appoint you over nations and kingdoms to uproot and tear down, to destroy and overthrow, to build and to plant.”) and Isaiah 58:6 (“Is not this the

popes' recitations did establish a valid cause for dissolving the oath under canon law, in that this involved successive and inconsistent oath obligations, and in that it could be deemed a *vinculum iniquitatis* ("chain of iniquity," an oath involving a commitment to an evil act).³⁷ Whatever Innocent's actual reasons, the fact remains that he assumed the authority to discharge the king of England from an oath given to his barons. Helmholz documents that, by that time, it had become well established that both ecclesiastical and secular courts could, in proper instances, take jurisdiction over matters involving the solemn obligations of oaths.³⁸

Nicholas Aroney explains that it is the inherently religious character of the oath which can create moral tensions for modern public officeholders who have sworn an oath of office:

[H]ere, then, is the paradox: The oath binds officeholders to their public duties by appealing to their deepest convictions. Thus, *the oath uses the personal convictions of officeholders to compel them to perform their duties even if this is contrary to their personal convictions*. Or, at least, this is how the oath is meant to work in a liberal-democratic state established on secular principles. As a consequence, the use of the oath gives rise not only to a paradox but also to a tension and a potential instability in liberal-democratic regimes, because *an oath appeals not only to the convictions of the officeholder but also invokes divine authority as its guarantor....*

The divine witness thus looms very large in the picture — as an authority that is separate from the political order, and in a sense stands above it. *This opens the possibility that this "other sovereign" may make demands that supersede those of the political order*. And this is why religious freedom is the first and most important human right: for religion has

kind of fasting I have chosen: to loose the chains of injustice and untie the cords of the yoke, to set the oppressed free and break every yoke?"). "It was otherwise silent about the source of authority for Pope Innocent III's action." Helmholz, "Pope Innocent III and the Annulment of Magna Carta," 2.

37. Helmholz, "Pope Innocent III and the Annulment of Magna Carta," 12–14.

38. Helmholz, "Pope Innocent III and the Annulment of Magna Carta," 7–11. *See also* James A. Brundage, *Medieval Canon Law and the Crusader* (Madison: The University of Wisconsin Press, 1969), 131–38 (exploring the reasons and the terms under which release was granted from vows related to crusades and pilgrimages, the control of this process by the papacy, and the increase of scandal through the twelfth and thirteenth centuries as obtaining release from such vows increasingly became simply a matter of the payment of money). It bears noting that the Roman Catholic Church has never relinquished its claims of exclusive clerical authority to grant dispensation from fulfilling the obligations of oaths and vows in many circumstances. *See* Canons 696, 701 (religious vows); 1142 (certain marriages); 1196–97 (vows, generally); 1203 (oaths, generally). Canon Law Society of America, *Code of Canon Law: Latin-English Edition; New English Translation* (Washington, DC: Canon Law Society of America, 1998), 228, 230, 356–57, 372, 374.

the potential to challenge the authority of the state like no other claim on human life. Religious freedom is the ultimate test of the willingness of the state to recognize human rights.³⁹

Jeffrey Hammond uses the example of Edward Snowden, who claimed that the obligations of his oath to the United States Constitution justified his “leaking” of classified national security secrets, to introduce his examination of the proposition, “the principle that ‘oaths do matter’ is a significant one at the intersection of both law and religion.”⁴⁰ Hammond identifies a similarity between the role of the oath in the moral dilemmas faced by those in sixteenth-century England who objected to the oaths required by Henry VIII in support of his reign,⁴¹ and well-known recent American cases involving Snowden and former Kentucky county official Kim Davis:

Since the Snowden revelations, issues of oath swearing and conscience have emerged in another highly publicized case. Kim Davis, the county clerk in Rowan County, Kentucky, denied marriage licenses to same-sex couples as a matter of conscientious objection based on her religious beliefs — an action that many argued violated her oath of office. Davis’s case has similarities to the Henrician oaths sworn during the English Reformation, in which some subjects held out when confronted with an oath text that was odious to them, trying to change it through an accommodation that was more agreeable. Specifically, Davis wanted an accommodation to match the employment responsibilities she was willing to undertake with the requirements of the job as expressed in the oath. *In*

39. Nicholas Aroney, “The Rule of Law, Religious Authority, and Oaths of Office,” *Journal of Law, Religion and State* 6 (2018): 195–212, at 200 (emphasis added). For a classic American statement of the primacy of one’s “duty towards the creator” over “the claims of civil society,” see James Madison, “A Memorial and Remonstrance on the Religious Rights of Man” (1784), in *Cornerstones of Religious Freedom in America*, ed. Joseph L. Blau (New York: Harper & Row, 1964), 84–90, at 84–85.

40. Jeffrey B. Hammond, “I Swear to It: Oaths as Fundamental Language and Power,” 93. See also Harold J. Berman, *The Interaction of Law and Religion* (Nashville: Abingdon, 1974), 29 (making explicit the quasi-religious nature of the law and its proceedings, within which context one can partially understand the functional role of oaths as they are used in the legal system):

Law itself, in all societies, encourages the belief in its own sanctity. It puts forward its claim to obedience in ways that appeal not only to the material, impersonal, finite, rational interests of the people who are asked to observe it but also to their faith in a truth, a justice, that transcends social utility — in ways, that is, that do not fit the image of secularism and instrumentalism presented by the prevailing theory.

41. Jeffrey B. Hammond, “I Swear to It: Oaths as Fundamental Language and Power,” 95–98 (discussing oaths required by Henry VIII and the objections made thereto, described in the context of Hammond’s review of *Oaths and the English Reformation*, by Jonathan Michael Gray).

these accommodation contexts, there is a mismatch between the text of the oath and the action that it requires or the truth that it asks the oath swearer to affirm. The Snowden and Davis cases are two recent cases that have brought questions of conscience and the meaning and import of oath swearing — particularly oaths sworn to the state or its agencies — at a time in which the concepts of conscience and conscientious objection are receiving renewed attention in law and religion.⁴²

Hammond describes the burden of conscience that an oath can impose upon one who has sworn it, especially in the face of changed circumstances, in sweeping terms:

Oaths restrict and channel belief and action. They affirm and create a new reality and identity for the oath swearer. *Once the reality that was first represented by oath changes, the swearer has the hard choice of whether acting in conscience it is a better course to remain faithful to the oath or deviate and closely adhere to her more cherished ideals and principles.* Whatever is chosen, oaths are not meaningless as some are wont to argue. Rather they are essential in binding the mind and bending the will. This is the power of oaths on conscience and action.⁴³

The centrality that Hammond accords to the role of the oath is not universally held. Other commentators contend or simply assume that, in the understanding of many people in our times, these solemn promises are substantially or entirely devoid of meaningful theological significance and ramifications.⁴⁴ A purely secular understanding, separated from the foundation of God's

42. Jeffrey B. Hammond, "I Swear to It: Oaths as Fundamental Language and Power," 98 (emphasis added). The Davis case will receive further consideration *below*; see discussion at nn. 132–136.

43. Jeffrey B. Hammond, "I Swear to It: Oaths as Fundamental Language and Power," 98 (emphasis added).

44. See, e.g., Trui P.S. Steen and Mark R. Rutgers, "The Double-Edged Sword: Public Service Motivation, the Oath of Office and the Backlash of an Instrumental Approach," *Public Management Review* 13, no. 3 (2011): 343–61 (at 358 n. 3: "An oath is not just a (special) promise, but was traditionally even regarded as a religious act ... [internal citations omitted]. In all modern states the oath and the (solemn) affirmation are therefore regarded as equivalent according to law."); Fruh, "Promising's Neglected Siblings," 863, acknowledging the possibility of "a divine counterparty" to an oath, while at the same time undercutting the significance of this:

[P]erhaps oaths have a divine counterparty. This proposal would render many oaths inert, since those taking oaths often enough aren't directing the oath to God, or do not even think that would be possible, but do nonetheless attempt to take on a moral commitment by swearing an oath. The view that takes God as a counterparty to oaths might, for many contemporary oaths not sworn to God, ascribe to them 'mere mesmeric force.' The idea would be akin to an oath error theory: Oaths not directed to a divine counterparty would fail to be genuine oaths and so would fail to generate moral obligations. This is an ambitious view, one that has sweeping and disconcerting results that are hard to believe.

Word, would seem to be incapable of providing reliable guidance as to what limitations, if any, exist with regard to these obligations.⁴⁵ Nonetheless, commentators recognize that oaths and vows continue to fulfill important functional⁴⁶ and ritualistic⁴⁷ purposes in modern society,

Cf. John Stuart Mill's famous description of the paradox inherent in the English common law rule which prohibited sworn testimony from anyone who did not profess belief in a divine being. Mill noted that the rule "admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood." John Stuart Mill, *On Liberty* (Lanham, MD: Rowan & Littlefield, 2005), 56–57.

45. For one recent attempt in this direction, see Alida Liberman, "On the Rationality of Vow-Making," *Pacific Philosophical Quarterly* 100, no. 3 (September 2019): 881–900 (arguing the vows are intrinsically not subject to any "excusing conditions," but that to be "rational," they should be considered as no longer binding if one changes one's "personal identification" or "social role;" at 896–97, anticipating the criticism that this paradigm could make avoidance of vows "too easy").

46. See, e.g., Todd Butler, "The Oath of Allegiance, Hannah Arendt, and the Trials of Jacobean Political Theology," *Journal for Early Modern Cultural Studies* 18, no. 2 (Spring 2018): 60–82 (at 64–66, reviewing Hannah Arendt's philosophical observations as to the function of oaths in connection with promise-making that reduces uncertainty and stability in human relations, in Arendt, *The Human Condition*, and in modern governmental arrangements "of covenant or contracting," "in which isolated individuals agreed to resign their power or independence, and accept the rule of some form of external authority," in Arendt, *On Revolution*); Sari Nauman, "Peripheral Promises: Political Oaths as Instruments of Trust and Control, Sweden 1520–1720," *Seventeenth Century* 37, no. 3 (May 2022): 477–97 (at 478–80, noting the persistence and even reintroduction of oath requirements in modern governments, and considering the function of oaths as a "performative means of enabling trust," that contributes to establishing "a form of truth concerning future behavior"); see also James S. Bowman and Jonathan P. West, "Classical Rationalism and Contemporary Realism: Oaths of Office as Empty Formality or Empowering Function?," *Public Integrity* 24, no. 2 (March 2022): 202–16 (at 206–09, examining the efficacy of oaths through the lenses of classical philosophical theory and contemporary behavioral theory).

47. The administering and taking of oaths, such as those taken by public officeholders and by witnesses in court, has an undeniably ritualistic component. Berman explores the power of such ritual in the context of the law:

The rituals of law (including those of legislation, administration, and negotiation, as well as of adjudication) like the rituals of religion are a solemn dramatization of deeply felt values. In both law and religion the dramatization is needed not only to reflect those values, not only to make manifest the intellectual belief that they are values useful to society, but also to induce an emotional belief in them as part of the ultimate meaning of life. More than that, the values have no existence, no meaning, outside the process of their dramatization. By virtue of their symbolic station in judicial, legislative, and other rituals, the ideals of legal justice come into being not primarily as ideals but rather as shared emotions: a common sense of rights, a common sense of duties, a demand for a fair hearing, an aversion to inconsistency, a passion for equality of treatment, an abhorrence of illegality, and a commitment to legality.

Berman, *The Interaction of Law and Religion*, 32–33. For elaboration of the unique role of oaths of office at the intersection of law and religion, see, e.g., Aroney, "The Rule of Law, Religious Authority, and Oaths of Office," 195–212.

including by serving to create heightened expectations of commitment and responsibility on the part of those who swear them.⁴⁸

The academic discussion of these considerations may assist in informing our understanding of the contexts in which Christians today swear their oaths and make their vows, and the attitudes and beliefs that they bring to this undertaking. The present inquiry is more limited in scope, looking to the objective significance of oaths and vows and the limitations of these obligations from a biblical perspective, with the ultimate goal of providing comfort and consolation to Christian consciences from the Word of God. To that end, an attempt is made in the next section to identify the relevant scriptural references and principles.

48. *See, e.g.*, Steen and Rutgers, “The Double-Edged Sword,” 349:

The oath of office is a highly symbolic, traditional and morally loaded carrier of civil service motivation, irrespective of the question of whether one ‘believes’ in the actual effects and meaning of oaths in contemporary society. The recurring argument for the oath of office is that a public function brings with it special responsibilities that justify asking for the highest assurance and commitment a person can give.

See also Mark R. Rutgers, “The Oath of Office as Public Value Guardian,” *The American Review of Public Administration* 40, no. 4 (2010): 428–44, at 443–44; Bowman and West, “Classical Rationalism and Contemporary Realism,” 212 (suggesting that the oath of office “functions as a kind of glue that holds together many of the norms of democratic government, mores that provide guidelines for political behavior”); James S. Bowman and Jonathan P. West, “Oaths of Office in American States: Problems and Prospects,” *Public Personnel Management* 50, no. 1 (March 2021): 109–32 (comparing oath formats and procedures in the states; at 122, emphasizing the oath of office as “a starting point of shared values, demonstrating an unwavering commitment to the Constitution”); Fruh, “Promising’s Neglected Siblings,” 875 (describing oaths and vows as “ways of expressing and confirming a commitment to embracing certain limits to one’s moral freedom and of positioning other agents relative to that commitment”). *But see* Eric Longley, “Oaths and Affirmations in Anglo-American History,” *STRev* 43, no. 1 (Christmas 1999): 61–77 (at 77, concluding that the oath procedure no longer serves a valuable purpose and could well be dispensed with altogether).

WHAT SCRIPTURE TEACHES CONCERNING THE LIMITS OF OATHS AND VOWS

The biblical doctrine guiding our consideration of this matter will be examined briefly with regard to the following specific aspects: the nature of the obligation of oaths and vows; matters relating to particular types of oaths and vows, with emphasis on oaths required by the government; the solemnity of the obligation of oaths and vows; limitations upon the obligation of oaths and vows; and God's forgiveness with regard to failure to keep an oath or vow.

The Nature of Oaths and Vows

When God made his promise to Abraham, since there was no one greater for him to swear by, he swore by himself, saying, "I will surely bless you and give you many descendants." And so after waiting patiently, Abraham received what was promised.

People swear by someone greater than themselves, and the oath confirms what is said and puts an end to all argument. Because God wanted to make the unchanging nature of his purpose very clear to the heirs of what was promised, he confirmed it with an oath. God did this so that, by two unchangeable things in which it is impossible for God to lie, we who have fled to take hold of the hope set before us may be greatly encouraged. (Hebrews 6:13–18)

Martin Luther, in comments on Genesis 22:16, reflects upon the gospel comfort and assurance to be found in the perfect oaths that God swears upon his own name:

[T]he fact that God swears by Himself is something great and wonderful. The author of the Epistle to the Hebrews saw this here and weighed it carefully (6:13). For it is an indication of a heart burning with inexpressible love and with a desire for our salvation, as though God were saying: "I desire so greatly to be believed and long so intensely to have My words trusted that I am not only making a promise but am offering Myself as a pledge. I have nothing greater to give as a pledge, because as surely as I am God, there is nothing greater than I. If I do not keep My promises, I shall no longer be he who I am."

This is surely something astounding and worthy of the highest degree of attention. For this is what the divine truth wants to point out: “You, man, are fickle, inconstant, and changeable; therefore I am adding My unalterable oath. With this I want to bear witness that rather than deceive you I shall not be God.”⁴⁹

However, for sinners who neither make nor keep oaths and vows in perfect accordance with God’s will, these solemn promissory obligations⁵⁰ involve Second Commandment implications. The Second Commandment considerations regarding lawful and unlawful uses of the Lord’s name are summarized in Luther’s Large Catechism.⁵¹

49. Martin Luther, “Lectures on Genesis, Chapter 22” (1539), in *Luther’s Works, American Edition* 4:91–186, at 142–143, in *Luther’s Works, American Edition*, vols. 1–30, ed. Jaroslav Pelikan (St. Louis: Concordia, 1955–76); vols. 31–55, ed. Helmut Lehmann (Philadelphia/Minneapolis: Muhlenberg/Fortress, 1957–86); vols. 56–82, ed. Christopher Boyd Brown and Benjamin T.G. Mayes (St. Louis: Concordia, 2009–). Hereafter AE.

50. General comments concerning the nature of oaths and vows set forth above under the literature review section will not be repeated here.

51. Kolb-Wengert, 392–93:

If you are asked, “What does the Second Commandment mean?” or, “What does it mean to take the name of God in vain or to misuse it?” you should answer briefly: “It is a misuse of God’s name if we call upon the Lord God in any way whatsoever to support falsehood or wrong of any kind.” What this commandment forbids, therefore, is appealing to God’s name falsely or taking his name upon our lips when our heart knows or should know that the facts are otherwise — for example, when taking oaths in court and one party lies about the other. God’s name cannot be abused more flagrantly than when it is used to lie and deceive. Let this be the simplest and clearest explanation of this commandment.

From all this people can figure out for themselves when and in how many ways God’s name is abused, although it is impossible to enumerate all its misuses. To discuss it briefly, however, misuse of the divine name occurs first of all in business affairs and in matters involving money, property, and honor, whether publicly in court or in the marketplace or wherever someone commits perjury and swears a false oath in God’s name or by his own soul. This is especially common in marriage matters when two people secretly betrothe themselves to each other and afterward deny it with an oath. The greatest abuse, however, is in spiritual matters, which affect the conscience, when false preachers arise and present their lying nonsense as God’s Word. (LC I 51–53)

Here you have the substance of the entire commandment explained. When it is understood in this way, you have easily solved the question that has troubled many teachers: why swearing is forbidden in the gospel, yet Christ, St. Paul, and other saints often took oaths. The explanation is briefly this: We are not to swear in support of evil (that is, to a falsehood) or unnecessarily; but in support of the good and for the advantage of our neighbor we are to swear. This is a truly good work by which God is praised, truth and justice are confirmed, falsehood is refuted, people are reconciled, obedience is rendered, and quarrels are settled. For here God himself intervenes and separates right from wrong, good from evil. (LC I 65–66)

See also Martin Chemnitz, *Loci Theologici Part II–III*, Chemnitz’s Works 8, trans. J.A.O. Preus (St. Louis: Concordia, 1989, repr. 2008), 688–90.

Martin Chemnitz affirms that “to take an oath in the name of God is worshiping Him,” and that “[a]n oath is a confession that He is the true God by whom we are swearing.”⁵² By its very nature, an oath (and by implication, also a vow) is inseparably connected with the honor due to the name of God:

What is taking an oath? It is a calling upon the name of God in which we ask that God be a witness of our intention, because we do not wish to deceive men in that matter about which we are making an assertion. At the same time, we are asking that God punish us if we are lying, and that we are obligating ourselves to punishment with Him as our witness, according to His own warning.... Note that he who in a legitimate oath does not want to take the name of God in vain must have fear toward God, piety, faith, etc. For unless the name of God is used this way in an oath, it is being taken in vain [citing Deut 6:12–13; 10:20–21].... Note that in taking an oath we must consider the blessings which we both have received and expect through the name of God, and that by this confession the name of God may be glorified. Otherwise it is being used in vain [citing Isa 45:23–24; Jer 4:1–2].⁵³

See also Luther's discussion of Jesus's admonition against oaths (Matt 5:34–37), identifying the types of false and unnecessary oaths Christ was condemning in the Sermon on the Mount, and contrasting them with oaths properly taken out of obedience to the government or other duty, or out of love for the good of our neighbor, in Martin Luther, “The Sermon on the Mount” (1532), AE 21:99–104, at 104:

[Christ's] conclusion, “Let what you say be simply yes or no,” is obviously addressed to those who have neither authorization nor need for swearing. As we have said, no one should swear on his own authority at all. But the addition of these two elements, either a command or a necessity, means that you are no longer swearing on your own authority. You are not doing it on your own behalf, but on behalf of him who demands it of you — your government or your neighbor's need or God's commandment.

With regard to specific Eighth Commandment considerations relating to bearing false witness under oath, *see* LC I 262–63, 274 (Kolb-Wengert, 421–23); Chemnitz, *Loci Theologici Part II–III*, 771–73 (concerning Eighth Commandment implications of oaths). *See also* Martin Luther, “Ten Sermons on the Catechism” (1528), AE 51:135–93, at 142 (re: the Second Commandment: “Likewise, the name of God is honored when an oath is required in court. There too the first commandment is intermixed. For he who does not trust God does not call upon God.”).

52. Chemnitz, *Loci Theologici, Part II–III*, 694 (citing Isa 19:18–19; 45:23; 65:16).

53. Chemnitz, *Loci Theologici, Part II–III*, 693. At 696, Chemnitz gives his interpretation of what it means to swear in truth, justice, and righteousness, in line with Jeremiah 4:2:

(1) Swearing in truth is taken on behalf of something which conscience dictates is true. (2) Swearing in justice refers to not swearing regarding an uncertain thing and where one should not swear to an unproved thing. Here justice or judgment is exhibited because it should take place with deliberate intention. Thus we should consider in such a case what our duty is in making an oath. (3) Swearing in righteousness takes place by confirming a promise by an oath regarding a righteous matter, something which is lawful and can possibly be done, which is not in conflict either with faith or love.

Martin Chemnitz and Johann Gerhard both identify various types of oaths. Chemnitz distinguishes between oaths of assertion and oaths of promise:

There are many kinds of swearing, of which we shall review only a few. There is the oath of assertion, as when a person asserts something or denies something regarding a present or past matter. There is the oath of promise regarding something in the future which is possible and legitimate. This kind of oath is either voluntary or forced; and it is correct to say that in such an oath there is an obligation which cannot be ignored because it takes place before God.⁵⁴

Gerhard further distinguishes between oaths given between private parties and oaths imposed by the governing authority:

Another [type of lawful oath] is *promissory*, which binds us to do or not to do something. One is *voluntary*, when someone gives himself to an oath voluntarily. Another is *compulsory*, when someone is forced to swear unwillingly. One is *private* and is used by private citizens in partnerships and contracts; another is *alien* and is imposed [from without] by a magistrate.⁵⁵

Chemnitz provides several examples of types of oaths in conflict with the Second Commandment. These include “rash and futile oaths given in insignificant matters;” perjury, including lying under oath, breaking an oath, and giving an oath which one has no intention to honor; oaths to perform an act that is wrong in itself or an act impossible to perform; “imprudent” oaths concerning “ill-considered” matters; swearing by created things that are not gods; the requiring of oaths by a magistrate who knows that the person is going to swear falsely; using “a shameful formula” to swear by God’s name; and swearing to something wrongfully in

Note the similarity between Chemnitz’s definition of an oath and that proposed in the first century B.C. by Philo, *De Specialibus Legibus*, II, § III, ¶ 10, in Philo, *The Works of Philo*, 569: “For an oath is nothing else but the testimony of God invoked in a matter which is a subject of doubt, and to invoke God to witness a statement which is not true is the most impious of all things.” Regarding the medieval understanding of the conditions that must exist for a vow or oath to be valid and to create an obligation that must be honored, see, e.g., Saccenti, “Beyond the Positive Law: The Oath and Vow as a Theological Matter Between the 12th and Early 13th Centuries,” 270–72.

54. Chemnitz, *Loci Theologici*, Part II–III, 694.

55. Johann Gerhard, *On the Law of God*, Theological Commonplaces (Commonplaces XV and XVI), ed. Benjamin T.G. Mayes and Joshua J. Hayes, trans. Richard J. Dinda (St. Louis: Concordia, 2015), 124–25 (Commonplace XV, § 118) (emphasis in original),

the manner of Herod, which involves “a double sin, both in the swearing and in the action involved.”⁵⁶ Gerhard also offers the following observations relating specifically to oaths, in his listing of sins forbidden by the Second Commandment:

(7) To refuse a lawful oath. To perjure, which happens if we confirm a lie with an oath, if we violate our oath, if we swear in order to deceive. To swear unlawfully, which happens in many ways: If we swear foolishly and rashly in unnecessary situations. If our oath does not have these three concomitants: judgment, justice, and truth. (On the part of the one taking an oath is required the judgment of discretion; on the part of the defendant, the truth is required both in the conscience and in the speech of the person swearing; and on the part of the case, justice is required.) If we swear about an unlawful or impossible thing, or about a doubtful or uncertain thing. If we swear by created things or by fictitious deities. If the form of the oath insults God. Also, it conflicts with a legitimate oath to tender an oath to those who are obviously and certainly going to swear falsely, to discharge wickedly what was promised by an unlawful oath, etc. The Scholastics say that there are six ways that perjury is committed: (a) when one knowingly swears falsely, (b) when one swears deceitfully a truth which is thought to be false, (c) when in ignorance one swears to an untruth which he thinks is true, (d) when one does not keep a promise affirmed by an oath, (e) when one swears an illicit thing or something that leads to a destructive end, (f) when one swears without discretion.⁵⁷

Particular Types of Oaths and Vows

In Holy Scripture, we find descriptive accounts and discussion of oaths and vows taken under various circumstances and for particular purposes. These include oaths and vows taken or refused at the instance of a civil governing authority, or directly involving a civil governing authority;⁵⁸ oaths and vows regarding civil matters, marriage, treaties, contractual agreements,

56. Chemnitz, *Loci Theologici*, Part II–III, 697.

57. Gerhard, *On the Law of God*, 121 (Commonplace XV, § 115(7)).

58. The examples given here and in the categories which follow should not be taken as exhaustive lists. See, e.g., 1 Sam 14:24–46 (King Saul's oath binding his troops, discussed *above*); 1 Sam 24:16–22 (David's oath to Saul); 1 Kgs 8:31 (oath in Solomon's temple dedication prayer; also in 2 Chr 6:22); 1 Kgs 18:7–17 (Obadiah

and the like;⁵⁹ oaths and vows taken at the instance of a religious governing authority;⁶⁰ oaths and vows taken at the instance of another person in authority;⁶¹ and other examples of oaths and vows made to God or calling upon God as witness.⁶² In certain cases, some overlap may be

recounts the wicked oath Ahab forced others to swear, concerning Elijah); 1 Kgs 2:36–38 (Solomon has Shimei swear an oath not to leave the place where he was allowed to reside; *cf.* vv. 41–46); 2 Chr 36:13 (Zedekiah’s oath required by Nebuchadnezzar, which he soon violated; the fall of Jerusalem is described in the ensuing verses; *cf.* Ezek 17:19); Neh 5:9–13 (Nehemiah requires an oath of the Jews who had been taking advantage of their fellow Jews); Neh 10:28–29 (the people of the return community place themselves under oath to serve the Lord; with many details described in the following verses); Neh 13:23–27 (Nehemiah requires an oath forbidding intermarriage); Eccl 8:2 (“Obey the king’s command, I say, because you took an oath before God.” — in a section on obedience to the king).

59. *See, e.g.*, Gen 21:22–31 (settling matters between Abraham and Abimelek); Gen 25:33 (Esau’s oath, selling his birthright to Jacob); Gen 26:28–31 (settling matters between Isaac & Abimelek); Exod 22:10–11 (re: settling of civil disputes); Num 5:11–31 (involving the examination of a wife accused of unfaithfulness); Num 30 (pledges of unmarried women, married women, widows); Prov. 29:24 (re: sworn testimony: accomplices of criminals refuse to testify); Josh 2:12–14, 17–20 (oath of Joshua’s spies to Rahab); Josh 9:15–20 (treaty between the Israelites and the Gibeonites).

60. *See, e.g.*, 1 Sam 3:17 (Eli places Samuel under oath re: God’s message); 2 Kgs 11:4 (Jehoiada requires an oath of those guarding Prince Joash from Athaliah); Ezra 10:1–6 (re: the intermarriage matter); Matt 26:62–64 (Jesus confesses who he is, when charged by the high priest to answer under oath).

61. *See, e.g.*, Gen 24:7, 8, 9, 37, 41 (Abraham and his servant); Gen 50:4–5 (Jacob and Joseph); Gen 50:24–25 (Joseph and the Israelites, re: Joseph’s burial); Exod 13:19 (same); Neh 6:17–19 (many nobles of Judah were under oath to Nehemiah’s adversary Tobiah).

62. *See, e.g.*, Gen 14:21–22 (Abram and the king of Sodom); Gen 28:20 (Jacob’s vow at Bethel, after his dream); Lev 7:16 (mention of offerings made to fulfill a vow); Lev 22:17–25 (regulations re: offerings made to fulfill a vow); Lev 23:38 (mention of offerings made to fulfill a vow); Lev 27:2, 8–13 (regulations re vows to dedicate a person to the Lord; vows fulfilled with animal offerings); Num 6:1–21 (regulations re: Nazirite vows); Num 15: 3, 8 (mentions of offerings made to fulfill a vow); Num 21:2 (Israel’s vow re: the cities of the Canaanite king of Arad); Deut 12:6, 11, 17, 26 (mentions of offerings made to fulfill a vow); Deut 29:12–15 (the Israelites renew the covenant upon oath); Deut 30:19 (Moses: “This day I call the heavens and the earth as witnesses against you that I have set before you life and death, blessings and curses.”); Judg 11:29–40 (Jephthah’s improvident vow — both he and his daughter, who becomes its victim, insist that he keep it); Judg 21:1–7, 18, 22 (Israelites’ oath to give no wives to the Benjamites); Ruth 1:17 (Ruth’s oath to Naomi); Ruth 3:13 (Boaz to Ruth); 1 Sam 1:11, 21–28 (Hannah’s vow re: her prayer for a child); 1 Sam 14:44 (Saul’s additional oath, after discovering that Jonathan had violated his earlier oath by eating during the battle: “May God deal with me, be it ever so severely, if you do not die, Jonathan.”); 1 Sam 19:6 (Saul’s oath not to have David killed); 1 Sam 20:1–3, 12–17 (David to Jonathan; Jonathan to David); 2 Sam 3:8–11 (Abner’s oath in response to Ish-Bosheth’s accusation); 2 Sam 3:35–37 (David’s oath during his mourning for Abner); 2 Sam 19:11–13 (David’s oath re: Amasa, as he was returning to Jerusalem); 2 Sam 15:7–9 (Absalom lies to David about a vow to worship the Lord); 2 Sam 19:22–23 (David’s oath to Shimei); 1 Kgs 2:23 (Solomon’s oath re: Adonijah, after he asked for Abishag); 1 Kgs 1:28–30 (David’s oath to Bathsheba, re: Solomon and the kingdom); 1 Kgs 19:1–2 (Jezebel’s oath, re: killing Elijah); 1 Kgs 20:10 (Ben-Hadad’s oath to Ahab, re: destruction of Samaria); 2 Kgs 6:31 (King Joram places himself under oath, re: Elisha); 2 Kgs 25:24 (Gedaliah takes an oath intended to reassure the leading men of Judah; appears also in Jer 40:9); 2 Chr 15:14–15 (the people’s oath on the occasion of King Asa’s reforms); Ps 95:11 (the psalmist takes an oath in his anger at those who have strayed from the Lord; later quoted as the words of the Holy Spirit, Heb 3:11; 4:3); Ps 119:106 (“I have

observed among these categories. For the purposes of this thesis, attention will be directed primarily to issues involving oaths taken at the instance of a civil governmental authority.

Oaths Taken at the Instance of a Civil Governing Authority

A comprehensive overview of the Lutheran exposition of the doctrine of church and state, often referred to as the doctrine of the “two kingdoms” or “two realms,” is beyond the scope of this thesis.⁶³ Of particular interest here are the conclusions of the Lutheran Confessions and of confessional Lutheran theologians with regard to the powers of the state and the duties of the individual in relation to oaths, according to the teachings of Scripture.

taken an oath and confirmed it, that I will follow your righteous laws.”); Ps 132:2 (David’s oath to the Lord; *cf.* v. 11, the Lord’s oath to David); Isa 65:16 (invocations and oaths shall be in the name of the one true God); Jer 38:15–16 (Zedekiah’s secret oath to Jeremiah); Jonah 1:16 (the sailors’ vow to bring offerings, in fear of the Lord); Jonah 2:9 (in Jonah’s prayer while in the belly of the great fish); Matt 14:6–12 (Herod’s improvident oath that led to execution of John the Baptist; also recorded at Mark 6:21–29); Acts 18:18 (Paul cuts off his hair to fulfill a vow); Acts 21:20–26 (Paul goes with and joins the men fulfilling purification vows). There are also several instances in which the apostle Paul calls upon God as his witness, in his epistles. *See* Rom 1:9; 2 Cor 1:23; 11:31; Gal 1:20; Phil 1:8; 1 Thess 2:5, 10.

63. *See generally, e.g.,* C.F.W. Walther, *All Glory to God*, Walther’s Works (St. Louis: Concordia, 2016), 461–98 (theses regarding the powers and the limitations of the secular authorities, with detailed discussion); Daniel M. Deutschlander, *Civil Government: God’s Other Kingdom*, People’s Bible Teachings (Milwaukee: Northwestern, 1998); John F. Brug, “The Lutheran Doctrine of the Two Kingdoms: Current Problems Concerning Christian Citizenship and the Separation of Church and State” (Summer 1999) (Mequon, WI: WLS Essay File, 1999) (general treatment of the subject with extensive bibliography of major resources); Joel Biermann, *Wholly Citizens: God’s Two Realms and Christian Engagement with the World* (Minneapolis: Fortress, 2017) (at 1–35, reviewing Luther’s writings on this doctrine; at 36–106, reviewing development and criticism of the doctrine of the two kingdoms in the twentieth century; at 107–78, suggesting contemporary applications for the church, pastors, and individual Christians; at 175, arguing that for individual Christians, the proper approach to the tension between the two kingdoms “is to reject both rebellion and quietism, and instead, adopt the position of submissive Christian activism and resistance”); William J. Wright, *Martin Luther’s Understanding of God’s Two Kingdoms: A Response to the Challenge of Skepticism*, Texts and Studies in Reformation & Post-Reformation Thought (Grand Rapids: Baker Academic, 2010) (reviewing interpretations and applications made of Luther’s explanation of the two kingdoms in the nineteenth and twentieth centuries, as well as in the earlier Renaissance and post-Renaissance era; reviewing and discussing many of Luther’s writings). For an exploration of the development of the doctrine of the two kingdoms and the particular controversies at issue in the uniquely stressful context facing Lutherans in Nazi Germany, *see, e.g.,* Lowell C. Green, *Lutherans Against Hitler: The Untold Story* (St. Louis: Concordia, 2007), 159–249.

The Augsburg Confession affirms that “lawful civil ordinances are good works of God,” and that Christians may properly participate in the life of the temporal state, including by taking “an oath when required by magistrates” (AC XVI 1–2).⁶⁴ This is stated in the context of the general principles concerning the power of the state and its limits (AC XVI 5–7):

[T]he gospel does not undermine government or family but completely requires both their preservation as ordinances of God and the exercise of love in these ordinances. Consequently, Christians owe obedience to their magistrates and laws except when commanded to sin. For then they have greater obedience to God than to human beings (Acts 5[:29]).⁶⁵

In taking this view, the Augsburg Confession followed the reasoning of Martin Luther in his 1523 treatise, “Temporal Authority: To What Extent It Must Be Obeyed.”⁶⁶ Luther explained that God’s eternal spiritual kingdom and temporal civil government each have their place in God’s created order, and each serve necessary and beneficial purposes:

For this reason one must carefully distinguish between these two governments. Both must be permitted to remain; the one to produce righteousness, the other to bring about external peace and prevent evil deeds. Neither one is sufficient in the world without the other. No one can become righteous in the sight of God by means of the temporal government, without Christ’s spiritual government. Christ’s government does not extend over all men; rather, Christians are always a minority in the midst of non-Christians. Now where temporal government or law alone prevails, there sheer hypocrisy is inevitable, even though the commandments be God’s very own. For without the Holy Spirit in the heart no one becomes truly righteous, no matter how fine the works he does. On the other hand, where the spiritual government alone prevails over land and people, there

64. Kolb-Wengert, 49. *See also* Ap XVI 1 (Kolb-Wengert, 231) (affirming “that it is permissible ... to take an oath when magistrates require it”); FC Ep XII 15 (Kolb-Wengert, 521) (rejecting the error “That Christians may neither swear an oath with good conscience nor pay homage with an oath to their prince or lord.”); FC SD XII 20 (Kolb-Wengert, 658) (rejecting the error “That Christians may not with good conscience swear an oath in court or pay feudal homage to their prince or lord with an oath.”); Chemnitz, *Loci Theologici Part II–III*, 691–693, 1366 (over against the understanding that Matthew 5:34 and James 5:12 categorically prohibit Christians in the New Testament era from taking oaths, affirming the position that it is proper in many circumstances to take oaths calling upon God as a witness, citing many passages of Scripture); Gerhard, *On the Law of God*, 122–24 (Commonplace XV, §§ 116, 117) (affirms the propriety of taking oaths by Christians and rejecting the contrary errors of the Anabaptists); Deutschlander, *Civil Government: God’s Other Kingdom*, 102–04.

65. Kolb-Wengert, 49, 51.

66. Martin Luther, “Temporal Authority: To What Extent It Must Be Obeyed” (1523), AE 45:75–130.

wickedness is given free rein and the doors open for all manner of rascality, for the world as a whole cannot receive or comprehend it.⁶⁷

Luther understands the civil government to be “God’s servant” and affirms the propriety of Christians serving in the various functions of civil government.⁶⁸ He specifically asserts that “constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation.”⁶⁹ Many of these vocations, of course, require the swearing of oaths.⁷⁰

Nonetheless, the temporal power of the government has limits. For Luther, the civil government exceeds its God-given function when it presumes to intrude upon the spiritual realm:

The temporal government has laws which extend no further than to life and property and external affairs on earth, for God cannot and will not permit anyone but himself to rule over the soul. Therefore, where the temporal authority presumes to prescribe laws for the soul, it encroaches upon God’s government and only misleads souls and destroys them. We want to make this so clear that everyone will grasp it, and that our fine gentlemen, the princes and bishops, will see what fools they are when they seek to coerce the people with their laws and commandments into believing this or that.

67. Luther, “Temporal Authority: To What Extent It Must Be Obeyed,” AE 45:92.

68. Luther, “Temporal Authority: To What Extent It Must Be Obeyed,” AE 45:95–97, 99–100.

69. Luther, “Temporal Authority: To What Extent It Must Be Obeyed,” AE 45:103–04.

70. Luther approved the swearing of oaths for this purpose. Luther, “Temporal Authority: To What Extent It Must Be Obeyed,” AE 45:103. *See also* Martin Luther, “Notes on Ecclesiastes” (1526), AE 15:3–187, at 135 (commenting on Ecclesiastes 8:2, Luther describes the close connection between one’s obligations to God and one’s duty of obedience to the ruler that are involved in taking an oath):

Whatever the magistrate commands in accordance with the laws, that you must do. And keep the oath of God. Understand this oath to be not that by which God swears but that which one swears to God. “Obey the magistrate,” he says, “in accordance with the oath of God, that is, as you have sworn to God.” For he who swears to the magistrate, swears not to man but to God. Here you see in a remarkable way that political obedience is included in obedience to God. Thus also Paul wants servants to be obedient to their masters not as to men but as to God (Eph. 6:7).

See also Chemnitz, *Loci Theologici Part II–III*, 695–6:

Because useless and rash oaths are forbidden, the question arises: In what situation is it permissible to take an oath and for what reason may we swear? The correct answer is that it is permissible to take an oath either when the magistrate demands and requires it or when our calling requires it. This principle can be clearly and easily understood from the scriptural examples cited for the use of oaths, ...[citing Gen 21:23; 26:28; 31:52–53; Exod 22:11; Deut 21:1–7; Judg 11:10].

When a man-made law is imposed upon the soul to make it believe this or that as its human author may prescribe, there is certainly no word of God for it... with such a wicked command the temporal power is driving souls to eternal death. For it compels them to believe as right and certainly pleasing to God that which is in fact uncertain, indeed, certain to be displeasing to him since there is no clear word of God for it. Whoever believes something to be right which is wrong or uncertain is denying the truth, which is God himself. He is believing in lies and errors, and counting as right that which is wrong.⁷¹

One implication of this conclusion is that the individual's duty of obedience to the civil governing authority ends where the temporal government is in the wrong. Moreover, Luther seems unwilling to permit the individual to feign ignorance in such matters, but instead suggests that there exists a moral duty to do what one can to determine the true state of affairs:

What if a prince is in the wrong? Are his people bound to follow him then too? Answer: *No, for it is no one's duty to do wrong; we must obey God (who desires the right) rather than men [Acts 5:29].* What if the subjects do not know whether their prince is in the right or not? Answer: So long as they do not know, *and cannot with all possible diligence find out*, they may obey him without peril to their souls.⁷²

71. Luther, "Temporal Authority: To What Extent It Must Be Obeyed," AE 45:105. At 110–16, Luther further elaborates the distinctions between the temporal authority over earthly things and the divine authority over spiritual matters. *See also* Walther, *All Glory to God*, 461 (Thesis VII: "Furthermore, the Lutheran Church believes, teaches, and confesses according to God's Word that secular authorities do not have the right or the power to rule over their subjects in matters of faith and conscience."); 462 (Thesis VII, 1, citing Romans 13:1–7 as the *sedes doctrinae* regarding temporal government):

The Lutheran Church believes, teaches, and confesses according to God's Word that (A) citizens may not exercise violence and disobeying secular governments, even if governments illegally violate their rights, but (B) that secular government has no right to commanded subjects to do what God has forbidden, or to prohibit what God has commanded, and that, in general, government has no power to force people to do anything that is contrary to their conscience... Christianity is not concerned with changing governments; it is only concerned with changing the hearts of men.

72. Luther, "Temporal Authority: To What Extent It Must Be Obeyed," AE 45:125–26 (emphasis added).

See also Walther, *All Glory to God*, 462 ("[W]e insist that the government has no right to demand anything that violates His [God's] command, for God is also Lord of the government. In such a case, we must refuse to obey the government. In all other matters, however, we are obliged to obey the government.") At 462–67, Walther considers the Christian's duty of obedience to government as God's representatives. At 464, citing AC XVI 6: "Therefore, *it is necessary for Christians to be obedient to their rulers and laws. The only exception is when they are commanded to sin.* Then they ought to obey God rather than men (Acts 5:29)" (emphasis Walther's). At 467:

What happens when the government commands us to do something that is sin? On this point, our church teaches that we must refuse to obey such a law. God has not given us a law to obey, when such obedience

C.F.W. Walther expands upon the logic of this point, concerning the limits of the power of the secular authority:

However, just because the government permits something, that does not make a divine prohibition any less binding on Christians. For example, even if the government allows sinful pleasures, divorces based on invalid grounds, licensing of drinking establishments, a Christian is not free to make use of any such privileges. The government has to allow such things “because of the hardness of people’s hearts,” in order to prevent rioting, murder, and manslaughter. [Walther goes on to discuss Matthew 19:7–8.]

On the other hand, the government does not have the right to command sin. If it does so anyway, then the command of God takes precedence over the command of the government. This is clearly taught in the passages that follow.

At Matthew 22:21, Jesus says, “Render to Caesar the things that are Caesar’s,” and then adds the admonition, “and to God the things that are God’s.” This admonition clearly imposes limits on the preceding statement. The point that Christ is making is this: There is a king who is above all kings; His commands, therefore, supersede by far the commands of any human king. If the latter’s commands are in conflict with the former’s, then the latter’s commands are obviously null and void. As a matter of fact, [a Christian] may not, under any circumstances, obey kings rather than **the King**, for that would be robbing God of the honor that is His due. [Walther goes on to discuss Exod 1:17–21; 1 Sam 22:17; Dan 6:5–10.]⁷³

Neither the permission nor the command of the civil government justifies pursuing an ungodly course of action:

Just as little as the permission of civil authority excuses a course of action that God has forbidden, even so little does it justify us before God, if we allow civil authority (government) to force us to do something that is sinful. For example, a Christian soldier should be ready to sacrifice life and limb, rather than to engage in an unjust war on the orders of his king.⁷⁴

would require us to sin by breaking one of His commandments. For then we would be sinning, whether we obeyed or whether we disobeyed.

73. Walther, *All Glory to God*, 468 (emphasis in original). At 469–74, Walther continues with several examples drawn from multiple sources, further expounding the principle that consciences may be bound only by the Word of God.

74. Walther, *All Glory to God*, 470. See also Ryan C. MacPherson, “Political Resistance in Lutheran Theology: The Lawful Authority of Romans 13 versus the Two Beasts of Revelation 13,” in *My Savior’s Guest: A Festschrift in Honor of Erling Trygve Teigen*, ed. Thomas Rank et al. (Lake Mills, IA: Thomas Rank, 2021), 127–147 (exploring situations in which resistance to political authority may be God-pleasing and the forms such resistance may take, in the context of the historical development of the Lutheran doctrine of the two kingdoms; with attention given to the Magdeburg Confession of 1550, the Confessing Church in Nazi Germany, and the Church of

Walther quotes Luther as applying this principle in the case of a “pledge” — presumably an oath of homage or fealty — given to a temporal ruler:

For no one is *obliged, but is rather forbidden to obey and keep a pledge to princes and rulers to his own soul's damnation, that is in opposition to God and justice*. It is written, “*Hoc possum, quod jure possum*” (I have the right to do, what I can justly do). (*Exhortation to Peace to Elector Joh. Friederich and Duke Moritz of Saxony Regarding the Sudden Rebellion That Has Arisen Around Wurzen, April 1542; W¹ 17:1813ff.*)⁷⁵

Werner Elert suggests a direct connection between the power of the state as God’s representative to require the taking of oaths and God’s Eighth Commandment interest in protecting the truth.⁷⁶ Elert therefore agrees that it is the duty of a Christian to swear an oath as a witness, when required to do so in connection with testimony in court: “It is not the oath which constitutes a misuse of the name of God in the context of the Second Commandment, but its perversion into perjury.”⁷⁷ He reaches the same conclusion with regard to loyalty oaths demanded by a government; but he finds within such a demand of the civil government an implied condition that the loyalty oath must not subsequently be used as a purported justification to require participation in evil, for that would be an abuse of the state’s power as God’s representative on earth:

The “loyalty oath” which many governments require is likewise intended to prevent the rise of evil. *It presupposes that the relationship between government and citizen is “in order,” that the government is true, and that the oath is not degraded into a “bond of iniquity.”* The loyalty oath assumes that truth prevails as an order between government and citizen, and the oath itself is intended to preserve it. *The religious language of the oath is likewise a confession on the part of state and subject by which both acknowledge the authority of God and their alignment to each other.*

Norway under Nazi occupation); Anthony Plughoeft, “Lutheran Political Resistance: The Magdeburg Confession of 1550 and the Doctrine of the Lesser Magistrate,” master’s thesis, Wisconsin Lutheran Seminary (2022), 19–59.

75. Walther, *All Glory to God*, 474 (emphasis appears to be Walther’s).

76. Werner Elert, *The Christian Ethos*, trans. Carl J. Schindler (Philadelphia: Muhlenberg, 1957), 135–39.

77. Elert, *The Christian Ethos*, 137.

It has been objected that the promissory oath arises from the belief that man can freely determine his future moral choice but that this belief is entirely unfounded. This argument is not convincing. For the same reason a man might object to the vow of fidelity in the marriage service. *A loyalty oath is rather the acceptance of an obligation in full awareness of our responsibility before God.* This is an obligation which can properly be demanded of us, and where that is the case we are bound to fulfill it. The Lutheran Confessions approve the loyalty oath like any other oath which the state imposes.⁷⁸

It seems plausible to infer that Elert, who was writing in Germany only a few years after the fall of the Nazi regime,⁷⁹ was seeking to clarify the nature of the long-standing assertion of governmental power to require oaths of loyalty or fealty, in view of the manner in which such oaths had abused by the Nazis — not “to prevent the rise of evil,” but often effectively to demand that those who had taken the oath become accessory to evil. Elert leaves unstated the obvious corollary to his proposition: that a loyalty oath required by civil government that is subsequently “degraded” into a “bond of iniquity” is no longer binding upon one who has sworn it, at least with regard to the specific evil in view. To hold otherwise would violate the implied condition that the loyalty oath was required by the state and sworn by the individual pursuant to God’s authority, and with a full understanding on the part of both parties of their respective responsibilities toward God.

78. Elert, *The Christian Ethos*, 138 (emphasis added) (at 138 n.8, citing FC Ep XII 4; AC XVI 2; Ap XVI 53 [*sic*; perhaps intended Ap XVI 13]; AC XXVII 40 [re: *vinculum iniquitatis*, “bond of iniquity”]; LC I 65). Centuries earlier, Martin Luther had expressed essentially the same thought. See Luther, “Psalm 117,” AE:14:35 (quoted *below* at n. 106).

79. The German edition of Elert’s *The Christian Ethos* was published in 1949.

The Solemnity of the Obligation of Oaths and Vows

Moses said to the heads of the tribes of Israel: “This is what the Lord commands: When a man makes a vow to the Lord or takes an oath to obligate himself by a pledge, he must not break his word but must do everything he said. (Numbers 30:1–2)

In Scripture we find many passages expressing the seriousness of the undertaking involved in an oath or vow.⁸⁰ Numerous specific instances point to the importance that people who appear in Scripture attached to particular oaths and vows that they and others had made.⁸¹ Martin

80. *See, e.g.*, Deut 6:13 (oaths to be taken in the name of the true God); Deut 23:18 (vows not to be fulfilled with proceeds of sin), 21–23 (vows taken are to be performed); Job 22:27 (words of Eliphaz the Temanite, re: fulfillment of vows); Ps 15:4 (commending the person “who keeps an oath even when it hurts”); Ps 22:25 (a Psalm of David; re: fulfillment of vows); Ps 50:14–15 (a Psalm of Asaph; re: fulfillment of vows); Ps 56:10–13 (a Psalm of David; re: fulfillment of vows); Ps 61:4–8 (a Psalm of David; re: fulfillment of vows); Ps 65:1 (a Psalm of David; re: fulfillment of vows); Ps 66:13–15 (re: fulfillment of vows); Ps 76:11 (a Psalm of Asaph; re: fulfillment of vows); Ps 116 (re: fulfillment of vows); Prov 20:25 (admonition against rashly made vows); Eccl 5:4–7 (“It is better not to make a vow than to make one and not fulfill it.”); Isa 19:21 (the Egyptians, facing God’s wrath, “will make vows to the Lord and keep them”); Isa 48:1 (warning to the descendants of Jacob “who take oaths in the name of the Lord and invoke the God of Israel — but not in truth or righteousness”); Jer 44:24–26 (the Lord condemns idolatrous vows); Hos 10:4 (calling out the hypocrisy in Israel of those who swear oaths); Amos 2:11–12 (the Lord condemns the Israelites for causing the Nazirites to break their vows); Nah 1:15 (fulfillment of vows as thanksgiving for deliverance); Mal 1:14 (condemnation of cheating on fulfilling vows); Matt 23:16–22 (Jesus reprimands the teachers of the Law and the Pharisees for introducing man-made technicalities into their teachings concerning oaths).

81. In addition to a number of the instances cited previously, *see, e.g.*, Josh 6:22 (Joshua directs his men to fulfill their oath to Rahab); Josh 9:15–20 (the Israelites’ oath to the Gibeonites honored despite having been procured by fraud); Judg 11:29–40 (both Jephthah and his daughter insist that Jephthah’s improvident vow be performed, despite the dire consequences for the daughter, who was without fault); 2 Sam 21:7–9 (David spares Mephibosheth on account of his oath to Saul); Prov 7:14 (warning re: an adulterous woman who offers the meat of her vow offering to a lover). Jephthah’s vow in Judges 11, in particular, has been the subject of abundant commentary. Although a thorough examination of this account is beyond the scope of this thesis, for one review of the English exegetical commentary in the post-Reformation era, *see* Henry M. Knapp, “Jephthah’s Daughter in English Post-Reformation Exegesis,” *WTJ* 80, no. 2 (Fall 2018): 279–97 (reviewing the controversies of that time regarding whether Jephthah sinned in the making and/or in the keeping of his vow and regarding attitudes toward Jephthah’s daughter, and comparing these with more recent scholarly perspectives).

Chemnitz summarizes: “The duty of taking an oath must involve a matter of great obligation in accord with the definition.”⁸²

The importance and solemnity of the oath obligation is reinforced in Old Testament passages describing severe punishments and consequences connected with the violation of particular oaths and vows.⁸³ As an illustrative example, consider the strong words of Moses in a discourse concerning the renewal of the Sinaitic covenant:

When such a person hears the words of this oath and they invoke a blessing on themselves, thinking, “I will be safe, even though I persist in going my own way,” they will bring disaster on the watered land as well as the dry. The Lord will never be willing to forgive them; his wrath and zeal will burn against them. All the curses written in this book will fall on them, and the Lord will blot out their names from under heaven. The Lord will single them out from all the tribes of Israel for disaster, according to all the curses of the covenant written in this Book of the Law. (Deuteronomy 29:19–21)

Limitations upon the Obligation of Oaths and Vows

Despite those stern words, the books of Moses also teach that the obligations of an oath or a vow were never absolute and irrevocable in the sight to God. In Leviticus 5:2–6, we read that — just as in the case where a person would happen to touch something ceremonially unclean — if a person becomes aware that they have taken a thoughtless “oath to do anything, whether good or

82. Chemnitz, *Loci Theologici Part II–III*, 696 (at 696–97, reviewing several Old Testament examples and the apocryphal example of Antiochus, 2 Macc 9:5).

83. *See, e.g.*, Josh 6:26 (Joshua’s oath/curse upon Jericho; the fulfillment noted at 1 Kgs 16:34); Ezek 17:11–21 (terrible consequences for Zedekiah of breaking his oath to the king of Babylon); Dan 9:11 (in Daniel’s prayer for the exiles: “Therefore the curses and sworn judgments written in the Law of Moses, the servant of God, have been poured out on us, because we have sinned against you.”).

evil” or has sworn “carelessly,”⁸⁴ he or she is to confess the sin and bring a sin offering to the priest, who “shall make atonement for them for their sin.”⁸⁵

As noted above, Numbers 30 begins with a strong general statement regarding the solemnity of the obligation of oaths and vows.⁸⁶ However, this is followed immediately by specific limitations upon that principle. In cases of a vow or a pledge under oath made by a young woman still living in her father’s household without her father’s approval, or by a married woman without the approval of her husband, the obligation would stand if the father or husband confirmed the obligation or said nothing after hearing about it; however, if the father or the husband “forbids her when he hears about it,” the vow or pledge was nullified — and in both cases, it is stated that “the LORD will release her.”⁸⁷ However, “[a]ny vow or obligation taken by a widow or divorced woman will be binding on her.”⁸⁸

Martin Chemnitz identified additional Old Testament examples which he understood as permitting “an exception, limitation, or dispensation in certain cases” concerning the keeping of vows. He cites Leviticus 27:8, 1–12 (dispensation to make an adjustment in the cost of the vows of the poor; substituting the value of an unclean animal instead of using the unclean thing to pay a vow); Deuteronomy 23:18 (vows not to be paid with the earnings of prostitutes); Proverbs 20:25 (a pledge made impulsively is a trap); Ecclesiastes 5:4–6 (warning against hasty vows).⁸⁹

84. Lev 5:4.

85. Lev 5:6.

86. Num 30:2.

87. Num 30:3–8, 10–15.

88. Num 30:9.

89. Martin Chemnitz, *Examination of the Council of Trent, Part III*, Chemnitz’s Works 3, trans. Fred Kramer (St. Louis: Concordia, 2007), 89–90.

Commenting specifically with regard to the examples found in Leviticus 27 and Numbers 30, Chemnitz summarizes:

Indeed, God with His own voice showed a most beautiful gentleness in the Old Testament in the matter of dispensing and commuting vows even in matters themselves good and lawful, when they could not be fulfilled, lest snares for consciences be made out of vows.⁹⁰

Descriptive Examples of Nullification in Scripture

In the book of First Samuel, we find instances of nullification of oaths, on the part of those bound by an oath given by one with authority over them, as well as on the part of the person who took the oath. These may be taken as descriptive instances, as we are given no direct statements as to the Lord's view of these matters.

In the example cited at the beginning of this thesis, Saul's soldiers refused to be bound by the improvident oath under which Saul had placed his army, that would have resulted in the execution of Saul's son Jonathan, who had violated the condition of the oath unawares (1 Samuel 14:24–46).

At Abigail's urging, David repented of his oath taken in anger to kill Nabal and his men (1 Samuel 25:20–39). Abigail was explicitly seeking to prevent David from carrying out an oath which would cause him to sin, so that he would “not have on his conscience the staggering burden of needless bloodshed or of having avenged himself.”⁹¹ David praised God and thanked Abigail for her wise counsel: “May you be blessed for your good judgment and for keeping me

90. Chemnitz, *Examination of the Council of Trent, Part III*, 89–90.

91. 1 Sam 25:31.

from bloodshed this day and from avenging myself with my own hands.”⁹² David repented of his oath and praised God for having kept him from doing wrong.⁹³

The Principle that Oaths and Vows Cannot Bind One to Sin

From the time of the Reformation forward, confessional Lutheran theologians have recognized oaths and vows as human acts which cannot supersede the commands of God and which therefore cannot bind a person to sin. In Luther’s time, the necessity of addressing the limitations of these promissory obligations upon the conscience arose in an immediate and practical way, in the context of people such as Luther himself, who renounced the monastic vows they had previously taken. The contradictions inherent in such vows and the reasons they could not be deemed binding on those who had taken them are addressed at some length in the writings of Luther and Chemnitz and in the Lutheran Confessions.

Articles XXIII and XXVII of the Augsburg Confession emphasize that such vows were actually contrary to the commands of God, and therefore invalid.

Paul calls the prohibition of marriage a teaching of demons (1 Tim. [4:1,3]).... However, just as no human law can nullify a command of God, so no vow can do so. Consequently, Cyprian advised that women who could not keep the promise of chastity should marry. These are his words (Book I of Epistle II): “But if they are unwilling or unable to persevere, it is better for them to marry than to fall into the fire through their lusts; they certainly should not give offense to their brothers and sisters.” (AC XXIII 22, 24–25)⁹⁴

92. 1 Sam 25:32–34.

93. 1 Sam 25:35, 39.

94. Kolb-Wengert, 67. *See also* AC XXIII 6–8 (Kolb-Wengert, 63). Article XXIII further observes that medieval canon law recognized the difficulty and showed “great lenience and fairness toward those who have made vows in their youth, as is the case with large numbers of priests and monks who entered their vocations out of ignorance when they were young” (AC XXIII 26, German text; Kolb-Wengert, 68; at 68 n. 141, citing Gratian, *Decretum* II, chap. 20, q. 1, c. 5, 7, 9, 10, 14, 15).

In the first place, concerning those who marry our people teach that this is lawful for all who are not fit for celibacy, because vows cannot abrogate the institution and command of God.... [1 Corinthians 7:2 and Genesis 2:18 are cited] ... What objection can be raised to this? No matter how anyone exaggerates the obligation of the vow, it still cannot be made to abrogate the command of God. The canons teach that every vow is subject to the right of the superior. How much less valid are the vows that are contrary to the commands of God! (AC XXVII 18–23)⁹⁵

Article XXVIII goes on to affirm that the church has no power to impose any practices, including the keeping of vows, contrary to the commands of God:

[T]he bishops could easily retain lawful obedience if they did not insist on keeping traditions that cannot be observed with a good conscience. Now they impose celibacy, and they accept no one unless he swears that he will not teach the pure doctrine of the gospel.... But if it is impossible to obtain a relaxation of observances that cannot be kept without sin, we must obey the apostolic injunction [Acts 5:29] which commands us to obey God rather than human beings. (AC XXVIII 69–70, 75)⁹⁶

95. Kolb-Wengert, 85. The Apology expands upon these thoughts, enumerating a series of scriptural objections regarding monastic vows as they were practiced. Kolb-Wengert, 278–79:

We are discussing the kind of teaching that the architects of the Confutation are now defending, not the question of whether vows should be kept. We hold that legitimate vows should be kept, but we are arguing about other things: whether such acts of devotion merit the forgiveness of sins and justification; whether they are satisfactions for sin; whether they are equal to baptism; whether they are the observances of commandments and counsels; whether they are evangelical perfection; whether they have the merits of supererogation; whether those merits save others when transferred to them; whether vows made on the basis of these notions are legitimate; whether vows that are undertaken under the pretext of religion merely for the sake of the belly and out of laziness are legitimate; whether they are true vows when they have been extorted either from the unwilling or from those who due to age were not able to have a say about their type of life, whom parents or friends pushed into the monasteries so that they might be taken care of at the public expense without the loss of private patrimony; whether vows are legitimate if they openly tend toward an evil end, either because weakness prevents their observance, or because those who are in these orders are compelled to approve and support the abuses of the Mass, the godless worship of saints, and savage conspiracies against good people. (Ap XXVII 9)

See also Ap XXVII 51–52 (Kolb-Wengert, 285–86) (in paragraph 52: “It is indeed strange that with such dangers and scandals swirling before their very eyes, our opponents defend their traditions contrary to the clear command of God. There also undaunted by the voice of Christ [Matt. 15:3, 9] upbraiding the Pharisees for setting up traditions contrary to the command of God.”).

96. Kolb-Wengert, 103.

In setting forth these principles, the Confessions followed the lead of Luther in his 1521 treatise, “The Judgment of Martin Luther on Monastic Vows.”⁹⁷ Luther wrote that only those vows which “are godly, good, and pleasing to God” “must be considered as vows.”⁹⁸

Further, we are trying to show how we may distinguish vows which are ungodly, evil, and displeasing to God, vows which would not otherwise be regarded as vows; for example, if a man were to vow to kill his neighbor or commit adultery and call that godliness. In such a case there is no need to discuss whether vows of this kind are to be kept or broken. Nothing has ever been instituted — no matter how godly and holy it was — that has not been perverted by distorted zeal and godless hypocrisy.⁹⁹

Luther considered all vows that obligated people to obey merely human commands, including specifically monastic vows, to be ungodly and impermissible limitations on Christian freedom and contrary to the gospel of Christ:

The Scriptures clearly compel us to condemn whatever is only a matter of rules, statutes, orders, schools of thought, and, in addition, whatever falls short of, is contrary to, or goes beyond Christ, even if these things had been handed over by angels from heaven or confirmed by mighty miracles. . . .

Therefore, to begin with, let this principle be laid down: Whatever is commanded which is contrary to or beyond Christ is condemned, whether a man takes it upon himself or whether he is following the example and teaching of the saints. This is but a human course, long forbidden by divine authority. Moreover, a man is not at liberty to take vows or set himself under oath or a compulsory rule of life. And, if a man has taken the vows already, he must neither fulfill them nor keep them, but must be released and set free. For this rock stands unassailed: “I am the way,” and there is none other. Any other way is wrong, slippery, and dark.¹⁰⁰

For Luther, this matter was not merely speculative. Observing that monastic vows in practice were often deployed in a manner contrary to the principles of Christian love, he wrote:

97. Martin Luther, “The Judgment of Martin Luther on Monastic Vows” (1521), AE 44:243–400.

98. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:252.

99. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:252.

100. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:254; *see also* 256–61 (Luther’s rejection of all purported “counsels” that are said to be greater than the gospel and God’s divine commands as blasphemous).

“Under the pretext of this kind of obedience they exonerate themselves very nicely from those works of mercy which Christ warns will be expected of them in the day of judgment, Matthew 25[:35–40].”¹⁰¹ Luther called out the inconsistency that would permit the obligation of a vow to occupy a higher place in the life of a Christian than the clear Word of God:

If you could break but one of God’s commandments on account of a vow, you could break them all and deny God completely. If, however, you cannot deny God or any of his commandments, you cannot deny or break a single one, not even the least. The monastic vow ought to be efficacious for the commandments of God, not against them, and ought always to give way to them, even if it means that in the long run the vows have to be given up and eventually abolished. Have no doubt about it, God himself cannot demand a vow of you or recognize a deed that is contrary to a single iota of his commandment. He is faithful and true; he cannot deny himself [II Tim. 2:13].¹⁰²

A commandment that is of God cannot be transgressed, not even on the authority of angels, not to mention the pope’s authority or any other human authority. The statement still holds true, “We must obey God rather than men” [Acts 5:29]. Otherwise, by the same argument, theft, murder, adultery, and disobedience to parents would be permissible on the strength of a human authority and a human obedience. In short, you could deny God by means of his own commandments. If it is permissible to transgress one commandment, then it must be permissible to transgress all of them. The result of all this is that either it is impossible for a vow of this kind to be a divine precept, or, alternatively, all monks who have been created bishops are necessarily guilty [of breaking] this vow and stand condemned.¹⁰³

Drawing his reasoning from Galatians, Luther concluded that the taking of irrevocable monastic vows not commanded by God was an example of a restriction upon Christian freedom that involved a denial of the gospel of Christ and a return to the slavery of the law:

But we now go further and deny that a vow is or ever could be a precept, just as the works of the law are not and never could be precepts. For God is not a God who wants ungodliness (Psalm 5[:4]). In fact, we are proving that evangelical freedom forbids vows. Paul is asserting evangelical freedom when he says in Galatians 1[:8], “But if an angel or someone else from heaven were to teach anything other than what you have heard, let him be anathema.” And later, “You, brethren, are called to freedom” [Gal. 5:13]. And again, “He that is unsettling your minds, whoever he be, will bear his judgment” [Gal.

101. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:329.

102. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:331.

103. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:359–60.

5:10]. You can take it from this that no man may teach or permit anything that is against evangelical freedom. This freedom comes from divine authority. God ordained it. He will never revoke it. He can neither accept anything that runs counter to it, nor allow anyone to violate it even by the most insignificant ordinance. It is, however, not only that freedom which reigns in the spirit and conscience (about which we spoke earlier and by which we are neither accused nor defended by any works we do); it is also that freedom under which all the commandments of men are summed up, as well as what may be regarded as outward ceremonies, which include such matters as food, clothing, persons, gestures, places, vessels, and days, things a man may observe or not observe, for as long as, where, how, when, and as often as he likes or the occasion demands. Everything not specifically commanded by God is abrogated and made a matter of free choice.¹⁰⁴

In an exposition of Psalm 117, Luther observed that “in the New Testament, the offering of thanks is to be the true worship of God,” and suggested that many vows found in Scripture involved only worship and thanksgiving, as opposed to the purportedly works-righteous vows of those who intend “to do business and haggle with God” rather than to trust in his grace.¹⁰⁵

Luther then applied the same principles he had set forth in regard to monastic vows made to God to oaths and vows given among mankind. Luther contended that any vow or oath in conflict with God’s will can never be a genuine vow or oath at all:

Now when vows conflict with the promise to give thanks, then they should be condemned and annulled, as in the case of monastic vows and others mentioned above. For these vows are made with the godless and damnable intent of buying God’s favor and of deserving grace; they do not leave the way open for pure, undeserved grace. The Pope himself says: “One need not keep bad vows.” Similarly, *when we promise something to man, it should and must be done with the understood provision, even though not stated, that it not be contrary to God. For one can promise nothing against God.* When, for instance, the emperor, at his coronation, swears this and that to the pope and finds afterwards that one or more points are contrary to God, then he needs no absolution from his oath; for it never was a genuine oath and could never have been meant or sworn in the power of an oath. Long before, at Baptism, he swore not to do anything contrary to God, but to help, praise, and glorify His name and Gospel. In the face of such an oath the pope can demand nothing from him, no matter what it may be.¹⁰⁶

104. Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:309–10.

105. Martin Luther, “Psalm 117” (1530), AE 14:3–39, at 34–35.

106. Luther, “Psalm 117,” AE:14:35 (emphasis added).

While still upholding the seriousness and solemnity of the obligation of oaths, Luther recognizes that it is possible to err in the making of an oath. In such a case, one should trust in God's grace rather than to fulfill the oath:

But what I have said of the emperor's oath I say of all men's oaths. One cannot deny that some oaths are bad, and in taking an oath one can err just as easily as in all other matters. Therefore one should not put up such a howl, protesting: "Yes, yes, you have vowed and sworn; hence you must keep it." My dear fellow, it is not enough that I have sworn something. I might swear that I want to be a Turk or a Jew; but I promised God more at my Baptism, and I am more obligated to keep this than any other vow. And if my later vows deviate a hairbreadth from my first promise, then I shall trample them underfoot in order not to deny my God or despise His grace. It is highly necessary to make a careful and sharp distinction between oaths, because these are serious and solemn matters and are likewise a divine service. Even distinguished ecclesiastical personages can easily make a mistake here. And this is not a matter for just anyone to judge, as some wild and insolent fellows think.¹⁰⁷

In his *Examination of the Council of Trent*, Martin Chemnitz also devotes considerable attention to the question of monastic vows, and specifically to what Scripture teaches with regard to the keeping of vows. While recognizing that "[t]here is no controversy about the fact that vows were both made and performed in the Old Testament,"¹⁰⁸ Chemnitz summarizes his detailed study of many specific instances of such vows by identifying the following types of situations in which a vow need not be kept:

[T]hese cases were excepted in the Old Testament in the making and paying of vows: 1. When the vow was about an impious, illicit, and foolish matter; 2. When the vow could not be kept without sin; 3. When it was not in the power of the one who made the vow to pay it; 4. When the purpose of the vow was not right (Ps. 50:9 ff.; 51:16 ff.).¹⁰⁹

Sounding many of the same themes regarding New Testament Christian freedom that Luther had raised, Chemnitz cautioned that:

107. Luther, "Psalm 117," AE 14:35–36.

108. Chemnitz, *Examination of the Council of Trent, Part III*, 85–90.

109. Chemnitz, *Examination of the Council of Trent, Part III*, 90.

In the New Testament we have neither a command nor a promise nor an example to the effect that the worship of God in the New Testament consists of making vows. Neither do we have a sure or express word indicating about which matters and how vows ought to be made.¹¹⁰

In keeping with the principles of Christian freedom, Chemnitz recommends a very limited and wholly optional role for vows made to God, in the lives of New Testament believers. No vow should be taken “with respect to the things which neither in the Old nor in the New Testament have a word or command from God, but are only doctrines and commandments of men.”¹¹¹

Moral matters, however, that is, matters which pertain to faith and charity, are the same in the Old and in the New Testament. And if these things, which are owed because they are commanded, are promised to God, put forward with a special obligation, with calling upon the divine name, and this is not done with the idea that it is meritorious, gains righteousness, remission of sins, and eternal life, nor with the idea that it is a better and more excellent worship of God if it is done because it has been vowed rather than if it is done from obedience, on account of the command of God, but only in order that the constancy of the human will may be more sharply pressed, as has been said above, it does not militate against the Word of God.¹¹²

In in a similar vein, with regard to oaths, Johann Gerhard embraces the teachings of earlier writers that an oath must not be kept if doing so would require one to sin.

§ 121. (V) The question arises: What oaths must be kept?

We respond: “Rescind your promise in promising evil things; in a shameful vow, keep the decree silent which you vowed carelessly, that you do not do it. Wicked is the promise that is fulfilled by iniquity,” as Isidore states ([*Ius canonicum*,] causa 22, q. 4, c. *In malis*). “What is sworn badly is fulfilled worse. It is a wretched exigency that is eased by parricide,” says Ambrose (*De officiis*, bk. 3, ch. 12), where he is discussing Herod’s oath. “An oath should not bind one to wickedness,” as Ambrose also says, releasing Hubaldus from an oath that he made to a concubine.

** Jerome says that an oath stands on the basis of three conditions: “truth, judgment, and justice.” On truth, that one swear what his conscience dictates is true. On

110. Chemnitz, *Examination of the Council of Trent, Part III*, 90.

111. Chemnitz, *Examination of the Council of Trent, Part III*, 91. At 92, Chemnitz makes clear that monastic vows fit within this classification. At 114–18, he applies the principle specifically to vows of perpetual celibacy and reviews the inconsistent approaches of the ancient and medieval church with regard to such vows and the circumstances under which they could be rescinded.

112. Chemnitz, *Examination of the Council of Trent, Part III*, 91.

judgment, that one apply judgment with a deliberate mind, swear about a certain and known matter, and pay careful attention to the sanctity of the oath. On justice, that one take an oath about a just, lawful, and possible matter which does not conflict with faith and love. **

Philo writes beautifully (*De specialibus legibus ad tria Decal. Praecepta*, p. 491): “A person who swears behaves badly and adds fault to fault since he is abusing the oath when he ought rather to have abstained from wickedness. Therefore let him abstain and as a suppliant beseech God to forgive him out of His kindness for his ill-advised rashness by which he acted without thinking in taking an oath. For it is near incurable madness to double your crime when you could unburden yourself of half your guilt.”¹¹³

Rejection of Oaths and Vows as Meritorious Works Before God

The Reformation-era writers also found it necessary specifically to address the false premise that had taken hold in the medieval church, that monastic vows had extraordinary value because they were in and of themselves a meritorious work before God.

People said the vows were equal to baptism, and they taught that vows merited forgiveness of sins and justification before God through this kind of life. Indeed, they added that monastic life merited not only righteousness before God but even more: that it kept not only precepts are also the evangelical counsels. In this way they were convinced that the monastic profession was far better than baptism and that the monastic life was more meritorious than the life of the magistrates, pastors, and the like, who are subject to God’s commands in their callings without artificial religious observance. None of these things can be denied, for they appear in their books. (AC XXVII 11–14)¹¹⁴

This was unequivocally rejected as contrary to the doctrine of justification by grace alone through faith in Christ:

Moreover, although God’s command concerning marriage appears to free many from their vows, our people offer still another reason why vows may be invalid: every service of God instituted and chosen by human beings without the command of God, in order to merit justification and grace, is ungodly, just as Christ says [Matt. 15:9]: “In vain do they

113. Gerhard, *On the Law of God*, 127–8 (Commonplace XV, § 121) (emphasis in original).

114. Kolb-Wengert, 83. See also Martin Chemnitz, *Examination of the Council of Trent, Part II*, Chemnitz’s Works 2, trans. Fred Kramer (St. Louis: Concordia, 2007), 152–53 (contrasting the baptismal vow, a “general profession” which follows the statement of Christ in Matthew 28:20, with monastic vows that entangle consciences in man-made works, purport falsely to be “more excellent” than baptism, and conflict with the freedom of the New Testament Christian from the law).

worship me, teaching human precepts as doctrines.” Paul also teaches everywhere that righteousness is not to be sought in our observances or acts of worship devised by human beings, that it comes through faith to those who believe that they are received by God into grace on account of Christ.

However, very clearly the monks have taught that their humanly invented observances make satisfaction for sins and merit grace and justification. What is this but to detract from the glory of Christ and to obscure and deny the righteousness of faith? It follows, therefore, that such customary vows were ungodly acts of worship and are invalid for that reason. For an ungodly vow made contrary to God’s command is invalid. For no vow ought to be a bond of iniquity, as the canon says.

Paul says [Gal. 5:4]: “You who want to be justified by the law have cut yourselves off from Christ; you have fallen away from grace.” Therefore those who want to be justified by vows fall away from Christ and are cut off from grace. For those who ascribe justification to vows, ascribe to their own works what properly belongs to the glory of Christ.... It is no minor scandal in the church to propose to the people a certain act of worship invented by human beings without a command of God and to teach that such worship justifies human beings. For the righteousness of faith, which ought to be taught in the church most of all, is obscured when these astonishing angelic observances and this pretense of poverty, humility, and celibacy are blinding people. (AC XXVII 36–43, 48)¹¹⁵

Earlier, Luther had contrasted the purported works-righteousness basis of monastic vows with the unconditional gospel of the baptismal vow:

In baptism it is God who makes the promise and the offer; we vow nothing else but to accept Christ who is offered us. It is a happy vow indeed which does not promise to give anything, but which only accepts good things and holds onto what has been accepted.

115. Kolb-Wengert, 87, 89. At Kolb-Wengert, 88, n. 197, under the translation of the German text of AC XXVIII, the canon referred to is identified as Gratian, *Decretum* II, chap. 22, q. 4, c. 22. See also Ap XXVII 11–14 (Kolb-Wengert, 279); Ap XXVII 57 (Kolb-Wengert, 286–87).

See also SA III 14 1–3 (Kolb-Wengert, 325):

Because monastic vows are in direct conflict with the first and chief article, they should simply be done away with. It is about these that Christ spoke in Matthew 24[:5] (“I am Christ ...”). For those who vow to live a monastic life believe that they lead a better life than the ordinary Christian, and through their works they intend to help not only themselves but others get to heaven. This is known as denying Christ, etc. They boast, on the basis of their St. Thomas, that monastic vows are equal to baptism. This is blasphemy against God.

See also Luther, “The Judgment of Martin Luther on Monastic Vows,” AE 44:273–95, 317–26 (rejecting all trust for one’s salvation in vows as a work of the law). At 273:

Here let us lay our rock and foundation, our first principle of faith, namely, the words of Paul in Romans 14[:23], “Everything that is not of faith is sin.” From this we infer that monastic vows, if not of faith, are sins. Moreover, if these vows are lifelong, compulsory, and not optional, they are not of faith. One ought to be in a position to keep them at one time or to renounce them at another.

Here it is quite clear that nothing is vowed by us either of our own possessions or of the gifts which are in the hands of God. In fact, if you consider the matter properly, God makes the vow for us, and the vow comes from God, who makes the promises and at the same time gives the grace and all that his commandments demand.”¹¹⁶

Article XXVIII of the Augsburg Confession specifically rejects the teaching that there is something superior in the monastic life, as compared with other God-pleasing vocations:

Others err still more, for they judge that all magistracy and all civil offices are unworthy of Christians and in conflict with an evangelical counsel.

Cases can be read of people who, deserting marriage and participation in the administration of the state, withdrew into a monastery. They called this “fleeing from the world” and “seeking a holy kind of life.” They did not see that God is to be served in those commands he himself has handed down, not in commands invented by human beings. The good and perfect kind of life is one that has God’s command. (AC XXVIII 55–58)¹¹⁷

God’s Forgiveness, Particularly Regarding Improvident Oaths and Vows

The Old Testament procedure for the making of a sin offering for the atonement of a rashly spoken oath was described above (Lev 5:2–10). In the New Testament, we find the dramatic example of Christ’s free forgiveness of Peter. In Matthew 26:72–75, during Jesus’ trial before

116. Luther, “The Judgment of Martin Luther on Monastic Vows,” 385. The Apology of the Augsburg Confession elaborates that certain types of Old Testament vows did not involve claims of works righteousness and therefore could not be properly understood as supports for the system of monastic vows. Ap XXVII 58, 60–61 (Kolb-Wengert, 287):

Here they quote against us the example of the Nazarites from the Old Testament [Num 6:2ff.]... The ritual of the Nazarites was intended to exercise or give testimony to their faith before the people, not to merit the forgiveness of sins before God or to win justification before God... Hence it is not right to compare monasticism (invented without a Word of God as an act of worship to merit forgiveness of sins and justification) with the ritual of the Nazarites (which had a Word of God and was taught not as a way to merit the forgiveness of sins but as an outward exercise like the other ceremonies of the Old Testament). The same can be said about other vows described in the Old Testament...

Besides, examples ought to be interpreted according to the rule [of faith], that is, according to sure and clear passages of Scripture, not contrary to the rule or the passages. It is absolutely certain that our observances do not merit the forgiveness of sins or justification. When the Rechabites are praised, therefore, we must know that they did not observe their way of life in the belief that they would merit forgiveness of sins by it, or that this work was itself an act of worship that justified, or that because of it (and not by the mercy of God because of the promised Seed) they would attain eternal life.

117. Kolb-Wengert, 91.

the high priest, on the second and third occasions when Peter denied knowing the Lord, we read that Peter added an oath, cursing, and swearing to his denial.¹¹⁸ After the resurrection, having asked Peter three times whether Peter loved him and having heard Peter's answer, Jesus reinstated Peter as his disciple, calling him once again, "Follow me!" (John 21:15–19).

Luther encouraged those who had bound themselves by monastic vows to place their trust in God's promise of forgiveness, rather than to remain bound by vows which were likely to lead them into sin (and which, as discussed above, were intrinsically sinful in Luther's view). What Luther applies here specifically to a monastic vow of chastity can be applied by analogy to a vow or oath involving any self-chosen human work:

In Romans 7[:18–23] Paul confesses that there is in his flesh sin of such a kind that he could never be free of it in this life. Without a shadow of doubt this sin is against the law of God, but for the sake of faith, which fights in the spirit, this sin is overlooked and not imputed, even though the law demands there be no sin in us. The law of the Spirit of life in Christ Jesus, on the other hand, succors us, so that our not being able to keep the law in no sense works condemnation in us as long as we walk according to the Spirit and not according to the flesh [Gal. 5:16].

Therefore, I argue from the greater to the lesser. God, in the laws he himself gave, is forbearing and pardons our inability to keep it. The inability to keep his laws remains in us, but it constitutes no danger even though real sin is there. If, then, God deals with us in this way, how much more ought we to have confidence in this goodness and believe that the vow of chastity will not be counted against us if it proves impossible to keep and if the danger of lust threatens. We need only abide within the limits of the humbler chastity of marriage and not walk according to the flesh. After all, it was not God who commanded chastity, nor did he counsel or recommend it. It was introduced by human temerity and ignorance. Will he be more severe in his demands in the case of a vow invented by our own foolishness than he is in the case of his laws laid down in all his wisdom?¹¹⁹

Perhaps it is precisely because there are so many passages in Scripture that speak to the solemnity of the obligation of oaths and vows, and because these promissory obligations directly

118. *See also* Mark 14:71–72.

119. Luther, "The Judgment of Martin Luther on Monastic Vows," AE 44:375–76.

involve the invocation of the name of God, that faithful Christians may be particularly susceptible to experiencing terrors of conscience with regard to the prospect of failing to keep such promises. Walther includes the example of perjury, which involves the violation of an oath, among sins that can come to take precedence over all other sins in a person's thinking, while at the same time leading him or her away from the gospel assurance of forgiveness for that sin as well as for all others:

Luther says that, when he had grasped for the first time the meaning of the word *repentance*, no words seemed sweeter to him. It did not mean that he had to do penance for his sins, but simply that he had to be alarmed on account of his sins, desiring the mercy of God. The word *repentance* was the true Gospel to him. From that moment on, he finally understood that God had brought him to the point of acknowledging that he was a poor and the lost sinner, that he needed Jesus. Now Luther could go to God with the assurance that he would receive him as Luther was — with all his sins and anguish and misery....

The statement that God is satisfied when a person merely desires contrition is evidence of mingling Law and Gospel, for a statement such as that describes contrition as a merit on account of which God is gracious to sinners and forgives them their sins. That is the same mistake as when a pastor is completely satisfied with only a slight sign of contrition in his parishioners. For example, the conscience of wicked people who have lived in sin and shame for a long time can suddenly awaken and say, "You have perjured yourself. Woe to you!" Fear and terror grasped them. Or their conscience may rebuke them: "You have blood on your hands! You are a murderer!" However, these people do not become alarmed by thinking: "I am a poor sinner." No, only that particular deed frightens them. With the exception of that one sin, they imagine that they are good at heart.¹²⁰

The more an oath or a vow is seen in a person's mind as a special sort of work of extraordinary importance, the more it may also seem that its violation could be a sin that God could not or would not forgive.¹²¹ This falls into the category of what Walther describes as "the

120. C.F.W. Walther, *Law and Gospel*, Walther's Works, ed. Charles P. Schaum et al., trans. Christian C. Tiews (St. Louis: Concordia, 2010), 277–78 (italics in original).

121. Consider in this regard the understanding of a vow as an obligation toward God so serious that it could be discharged only by the pope himself, and how this understanding contributed to the enhancement of the ecclesiastical authority of the Roman Catholic Church in the late medieval era. *See, e.g.*, Saccenti, "Beyond the Positive Law: The Oath and Vow as a Theological Matter Between the 12th and Early 13th Centuries," 272–73. It

most common way people mingle Law and Gospel,” by “transform[ing] the Gospel into a doctrine of meritorious works” and “a law such as Moses proclaimed.”¹²² Contemplation focused only upon certain details of what Scripture says regarding the solemn obligation of oaths and vows may lead earnest and well-meaning Christians into a dark place:

The devil approaches poor Christians who are in anguish of death and in their last hour seeks to pluck them away from the Gospel. When Christians are departing into eternity, they reflect on whether they are worthy. They may review a multitude of texts and stumble upon one like this: “If you would enter life, keep the Commandments,” not considering that is also Law. Then their heart tells them: “You are not fit; you cannot be saved.” They cannot distinguish between Law and Gospel.¹²³

Walther points out the error in this way of thinking by directing attention to the Lord’s promise of grace in Jeremiah 31:31–34.¹²⁴ The general principle that Walther sets forth here can be readily applied to the more specific matter of oaths and vows. Israel had repeatedly broken what one might well understand as the most solemn of all recorded oath obligations, the covenant made at Mount Sinai. Yet the Lord promises that he “will make a new covenant” with his people (Jer 31:31), that he “will forgive their wickedness and will remember their sins no more” (Jer 31:34). Walther describes verse 34 as “a summary of the Gospel of Christ: forgiveness of sin by the free grace of God, for the sake of Jesus Christ.”¹²⁵ Christ “did not come to issue new laws” — including any that sinners may imagine with regard to the keeping of oaths and vows — “but to fulfill the Law for us, so that we may share in His fulfillment.”¹²⁶

was this erroneous conception of the nature of a vow that Luther was writing against in 1521, in “The Judgment of Martin Luther on Monastic Vows,” AE 44:243–400 (*see discussion above*, at nn. 97–104)

122. Walther, *Law and Gospel*, 79–80 (re: Thesis V).

123. Walther, *Law and Gospel*, 55.

124. Walther, *Law and Gospel*, 79–80.

125. Walther, *Law and Gospel*, 80.

126. Walther, *Law and Gospel*, 84 (citing Matt 5:17).

Thus, with regard to terrors of conscience concerning obligations undertaken pursuant to oaths or vows, as with all other sins, it is necessary to avoid the danger of mingling law and gospel, which causes the merits of Christ to be hidden and leads to hearts being “plagued with doubts.”¹²⁷

The preacher will not rightly proclaim these facts [forgiveness of sins for Christ’s sake] unless the distinction between Law and Gospel is burned into his brain. Only then can the listener lie down and die in peace on his deathbed. Even if the devil whispers every kind of insinuation at him, he can say to Satan: “So what if your charges against me are quite correct? I have another doctrine that tells me something altogether different. I am glad that the Law has put me in such a woeful situation, for now I can appreciate the Gospel all the more.”¹²⁸

The Gospel contains nothing but grace and truth. How important this is! When we read the Law, when we think about it, when we measure our conduct against its teaching, we are terrified by the multitude of demands it makes upon us. If that were all we ever heard, we would be hurled into despair and would be lost. But God be praised! There is still another doctrine: the Gospel. And to that we cling.¹²⁹

127. Walther, *Law and Gospel*, 73–74 (citing Isa 1:18; Matt 11:28; FC SD V 1, 27).

128. Walther, *Law and Gospel*, 73.

129. Walther, *Law and Gospel*, 14 (citing John 1:17).

POTENTIAL AREAS OF STRUGGLE AND CONFLICT FOR CHRISTIAN CONSCIENCES,
IN MATTERS OF KEEPING OR TAKING OATHS AND VOWS

The emergence of the same-sex marriage issue, the decision of the United States Supreme Court on that subject in June 2015,¹³⁰ and court decisions involving related issues since then¹³¹ have led to a renewed interest in questions relating to religious freedom and conscience for judges, elected officeholders, and other civil servants. The case of former Rowan County (Kentucky) Clerk Kim Davis, mentioned above, focused national media attention on the question of conflicts arising between matters of conscience and the obligations of the oath of office.

The responsibilities of Davis's office included the issuance of marriage licenses. After the decision of the Supreme Court in *Obergefell v. Hodges*, Davis sought a religious accommodation that would have allowed her to avoid personally participating in the issuance of marriage licenses to same-sex applicant couples.¹³² Her requested relief was denied, and Davis ultimately spent time in jail under a contempt order in connection with her refusal to issue a

130. *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584 192 L. Ed. 2d 609 (2015) (holding that a right to same-sex marriage exists under the Constitution of the United States). For a description of the context and procedural history of the case and summary of the decision and dissenting opinions, *see, e.g.*, https://www.law.cornell.edu/wex/obergefell_v._hodges. For the full text of the *Obergefell* decision, *see, e.g.*, <https://www.law.cornell.edu/supremecourt/text/14-556>.

131. *See, e.g., Pavan v. Smith*, 582 U.S. ___, 137 S. Ct. 2075, 198 L. Ed. 2d 636 (2017); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. ___, 138 S. Ct. 1719, 201 L. Ed. 2d 35 (2018); *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

132. *See* Jeffrey B. Hammond, "I Swear to It: Oaths as Fundamental Language and Power," 98; Jeffrey B. Hammond, "Kim Davis and the Quest for a Judicial Accommodation," *Faulkner Law Review* 7, no. 1 (Fall 2015): 105–28.

marriage license to a same-sex couple.¹³³ In 2020, the Supreme Court of the United States ultimately declined to hear Davis’s appeal, with two justices dissenting.¹³⁴ Recent news reports indicate that federal court litigation related to her case continued at least into 2022.¹³⁵

Davis’s case brought into sharp relief the question of the relationship between the oath of office and the religious principles of the individual officeholder. Davis’s litigation opponents and critics have contended that the obligations of oath of office supersede any claim of right to decline to perform specific duties on the basis of objections of religious belief or conscience.¹³⁶

The specific issues raised in the Davis case confront not only public servants charged with the issuance of marriage licenses, but also judges and other public officials authorized to solemnize wedding ceremonies. Judicial ethics opinions issued in some states in the aftermath of the *Obergefell* decision explicitly tied the responsibility to solemnize same-sex weddings to a judge’s oath of office:

133. See, e.g., Adam Beam, “Jailed Kentucky Clerk Vows Not to ‘Betray Her God.’” *Time.com* (September 11, 2015).

134. *Davis v. Ermold*, 592 U.S. ___, 141 S. Ct. 3, 4, 208 L. Ed. 2d 137 (2020) (Justice Thomas, dissenting):

Due to *Obergefell*, those with sincerely held religious beliefs concerning marriage will find it increasingly difficult to participate in society without running afoul of *Obergefell* and its effect on other antidiscrimination laws.... By choosing to privilege a novel constitutional right over the religious liberty interests explicitly protected in the First Amendment, and by doing so un-democratically, the Court has created a problem that only it can fix.

The Supreme Court denied review on *certiorari* from the decision of the Sixth Circuit of the United States Court of Appeals, denying Davis qualified immunity from suit for damages in connection with her refusal to issue a marriage license to a same-sex couple. *Ermold v. Davis*, 936 F.3d 429 (6th Cir. 2019).

135. “Former Kentucky Clerk Kim Davis Violated Rights of Same-Sex Couples, Judge Rules,” *CBSNews.com* (March 19, 2022), <https://www.cbsnews.com/news/kim-davis-lawsuit-violated-rights-of-same-sex-couples-ruling/>.

136. See, e.g., Stephen L. Carter, “Kim Davis and Her Oath to Uphold Only the Just Laws,” *Bloomberg.com* (September 14, 2015) (“Davis’s argument for relying on her oath of office as justification for disregarding the law of the land is well grounded in history. It’s also dangerous. The nation will not long survive open defiance of court orders by elected officials.”); Noah Feldman, “What Oath of Office Means to County Clerk Kim Davis,” *Bloomberg.com* (September 3, 2015); Brittney Cannon, “Clerks: Davis Courageous, but Law Must Prevail,” *The Clovis News Journal* (NM) (September 9, 2015).

Emphasizing that judges take an oath when they take office, the opinions also rely on the Rule 1.1 requirement that “a judge shall comply with the law.” For example, the Ohio opinion explains:

A judge’s oath to support the constitutions of the United States and the State of Ohio requires the judge to recognize and adhere to binding court interpretations of the same. A judge’s unilateral decision to refuse to perform same-sex marriages based on his or her own personal, religious, or moral beliefs ignores the holding in *Obergefell* and thus, directly contravenes the oath of office....

A judge is always required to comply with the law and has a higher duty than ordinary citizens to comply.... The definition of “law” encompasses court rules, the Code of Judicial Conduct, the Rules of Professional Conduct, statutes, constitutional provisions, and decisional law.... Consequently, a judge is required to comply with the U.S. Constitution and binding decisional law interpreting its provisions. A judge’s refusal to marry same-sex couples, while continuing to marry opposite-sex couples, is contrary to the holding in *Obergefell*, and thus not in accord with the judge’s obligation to comply with the law.

Similarly, the Wisconsin opinion states: “That the 14th Amendment to the U.S. Constitution requires states to license same-sex marriages ... is now the law of the land which judicial officers in Wisconsin under their oath have sworn to support.” The Arizona opinion advises that, “refusing to perform a marriage because participants are of the same sex is a refusal to follow the law and thus a violation of the Code.” ...

A judge cannot refuse to perform a same-sex ceremony even if the judge refers the couple to another court or individual who is willing to do so (*see* the Arizona and Nebraska opinions) and even if the judge only conducts opposite-sex ceremonies at locations other than court facilities (*see* the Arizona opinion). The Arizona and Nebraska committees do allow a judge to choose to conduct marriage ceremonies only for friends and relatives as long as the judge does not refuse to conduct a same-sex ceremony for a friend or a relative. The Pennsylvania article, however, questioned whether that exception was appropriate.¹³⁷

While some states allowed judges the discretion to decline to perform any marriage ceremonies after *Obergefell*, others specifically directed that a judge could not make this choice on the grounds of an objection of conscience involving same-sex marriages:

Because performing marriages is discretionary, the Arizona, Nebraska, and Wisconsin committees allow a judge to choose not to conduct any marriages to avoid personal or religious conflicts. Other agencies, however, disapprove that option. For example, the Ohio opinion states that a “judge may not decline to perform all marriages in order to

137. Cynthia Gray, “Analyzing the same-sex marriage advice,” *National Center for State Courts Judicial Ethics Blog* (August 25, 2015), <https://ncsjudicialethicsblog.org/2015/08/25/same-sex-marriage/> (quoting Ohio Advisory Opinion 2015–1; citing Wisconsin Advisory Opinion 2015–1; Arizona Advisory Opinion 2015–1; Nebraska Advisory Opinion 2015–1; *Pennsylvania Judicial Conduct Board Newsletter* (Summer 2014)).

avoid marrying same-sex couples based on his or her personal, moral, or religious beliefs” because doing so “may reflect adversely on perceptions regarding the judge’s performance of other judicial functions and duties.”

A judge may reasonably be perceived as having a personal bias or prejudice based on sexual orientation if he or she elects to perform opposite-sex marriages, but declines to perform same-sex marriages. Even if a judge decides not to perform any marriages, but does so only after *Obergefell*, the judge may face the prospect of disqualification in matters where the sexual orientation of the parties is at issue.¹³⁸

Judges in several states have been warned or censured by state judicial ethics authorities or by the state supreme court, concerning their unwillingness to solemnize same-sex weddings while continuing to perform ceremonies for opposite sex couples.¹³⁹ The American Bar Association has recommended that approach of the Ohio advisory opinion should be the standard in all states.¹⁴⁰

A case arising in Wyoming involved Magistrate Judge Ruth Neely, a member of the Lutheran Church-Missouri Synod who had specifically objected to performing same-sex

138. Cynthia Gray, “Analyzing the same-sex marriage advice,” (quoting Ohio Advisory Opinion 2015–1). See also Danny Wicentowski, “Opposed to Gay Marriages, Some Missouri Judges Opt Out of Marriage Altogether,” *Riverfronttimes.com* (September 16, 2015). I served as an associate circuit judge in Scotland County, Missouri, 1999–2018, and was one of the Missouri state judges who opted no longer to solemnize marriages after June 26, 2015.

139. Cynthia Gray, “Refusing to perform same-sex marriages,” *National Center for State Courts Judicial Ethics Blog* (January 7, 2020), <https://ncscjudicialethicsblog.org/2020/01/07/3257/> (citing instances from Texas, Washington, Wyoming, and Alabama).

140. Cynthia Gray, “Refusing to perform same-sex marriages” (quoting *ABA Formal Opinion 485* (2019)):

In 2019, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued a formal opinion on judges and same-sex weddings. *ABA Formal Opinion 485* (2019). The opinion advised that, in a jurisdiction in which judges are obligated to perform marriages, a judge may not decline to perform marriages for same-sex couples. In a jurisdiction in which performing marriages is a discretionary judicial function, the committee stated, a judge may not decline to perform marriages for same-sex couples if the judge agrees to perform opposite-sex marriages but may refuse to perform all marriages for members of the public while still performing marriages for family and friends as long as they do not refuse to perform same-sex marriages for family and friends.

marriages on religious grounds. In its decision censuring her, the Supreme Court of Wyoming explicitly linked its criticism of Judge Neely to her obligations pursuant to the oath of office:

Allowing Judge Neely to opt out of same-sex marriages is contrary to the compelling state interest in maintaining an independent and impartial judiciary. Judge Neely, like all judges, has taken an oath to enforce all laws, and the public depends upon an impartial judiciary, regardless of religious sentiment.¹⁴¹

In a similar vein, a Nebraska advisory opinion held that a judge may not recuse from hearing a petition for adoption filed by a same-sex couple on religious grounds:

The Nebraska Judicial Ethics Committee has issued an opinion advising that a judge may not disqualify himself or herself from cases involving the adoption of children by a same-sex married couple based on strongly held religious beliefs with regard to the couple's sexual orientation. *Nebraska Advisory Opinion 2016–2*.

The committee emphasized that the code of judicial conduct requires a judge to perform the duties of judicial office without bias or prejudice, expressly including bias or prejudice based on sexual orientation. The opinion explained:

Presiding over adoption proceedings is a duty of judicial office. If a judge is willing to preside over the adoption proceedings of a child of a non-same-sex married couple but not a proceeding involving a same-sex married couple, this would be a manifestation of bias or prejudice based on sexual orientation even if the judge states that the reason is based on sincerely held religious beliefs or upon

141. *Inquiry Concerning Neely*, 2017 WY 25, 390 P.3d 723, 740 (Wyo. 2017). Two justices who dissented in the case, however, did so not only on specific facts of the case and on straightforward grounds of religious freedom, but also on the theory that the majority opinion had, in effect, created a constitutionally impermissible test oath:

Third, this statement in our Constitution [Constitution of Wyoming, Article 1, § 18] goes far beyond the U.S. Constitution in protecting service in public office. While Article VI of the U.S. Constitution bans “religious test[s]” for public office, our Constitution prohibits any government action that renders any person incompetent from holding “any office of trust” based on “any matter of religious belief whatever.” (Emphasis added). In Wyoming, persons are protected not just from the narrow test oaths often imposed when our country was founded, but from any type of disqualification from office based on religion.

Inquiry Concerning Neely, 2017 WY 25, 390 P.3d 723, 764 (Kautz, J., dissenting). See also Cynthia Gray, “Deeds, not faith,” *National Center for State Courts Judicial Ethics Blog* (March 14, 2017), <https://ncscjudicialethicsblog.org/2017/03/14/deeds-not-faith/> (reviewing the facts of the *Neely* case and the court opinion); Keeley O. Cronin, “Judicial Ethics — Judicial Words May Speak Softer Than Actions, But They Do Still Speak: The Code of Judicial Conduct; *Neely v. Wyo. Comm'n. on Judicial Conduct & Ethics*, 2017 WY 25, 390 P.3d 728 (Wyo. 2017),” *Wyoming Law Review*, 18, no. 1 (2018) (detailed discussion of the case, taking a position supportive of the court's decision). Concerning the development of constitutional safeguards against test oaths and other protections against denials of civil rights based on religious belief in the American states, see, e.g., Chester James Antieau, Phillip Mark Carroll, and Thomas Carroll Burke, *Religion Under the State Constitutions* (Washington, DC: Institute for Church-State Laws, Georgetown University, 1965), 100–19.

a personal belief. [The code] acknowledges that while each judge comes to the bench with a unique background and personal philosophy, “a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.” Thus, a refusal to preside over or a disqualification from presiding over such a proceeding, based on the married couple’s sexual orientation, manifests bias or prejudice, and violates the Code.¹⁴²

Conflicts between the terms of an oath, the expectations of a public or private employer, and principles of conscience are of course not limited to public officials directly impacted by same-sex marriage and related issues. Similar ethical conflicts often arise involving health care professionals, particularly in matters concerning abortion and euthanasia.¹⁴³ Military personnel also confront these sorts of questions on a regular basis, often in matters immediately involving life and death.¹⁴⁴

The examples presented here are intended to be illustrative rather than exhaustive. The potential for conflicts between the tenets of one’s religious faith and/or deeply held principles, on the one hand, and the obligations of an oath or a vow that one has taken in the past or is now being required to take by a governmental authority, on the other, may arise in many contexts, including those not now foreseen. Nor is there any reason to anticipate that such conflicts will be

142. Cynthia Gray, “Same-sex marriage,” *National Center for State Courts Judicial Ethics Blog* (April 5, 2016), <https://ncsejudicialethicsblog.org/2016/04/05/same-sex-marriage-2/> (citing Nebraska Advisory Opinion 2016–2).

143. See, e.g., Professional Ethics Committee of American Association of Pro-Life Obstetricians and Gynecologists, “Committee Opinion 1: Hippocratic Objection to Killing Human Beings in Medical Practice,” *Issues in Law & Medicine* 34, no. 2 (Fall 2019): 209–19 (at 216–18, observing that many actions performed by medical professionals that were legal at the time have since been condemned as “heinous crimes against humanity;” at 219, arguing that “the right of conscientious objection and conscientious refusal of medical professionals to perform euthanasia or abortion must be upheld and vigorously defended”).

144. A thorough examination of the types of situations likely to confront military personnel, involving potential conflicts between their oath and their faith, is beyond the scope of this thesis. Martin Luther’s classic treatment of the subject appears in Martin Luther, “Whether Soldiers, Too, Can Be Saved” (1526), AE 46:89–137 (at 130–31, specifically addressing the situation where a soldier knows that the ruler he or she serves is in the wrong). See also Deutschlander, *Civil Government: God’s Other Kingdom*, 93–97. For a study of the changing usage and specific language of oaths in the military setting, see, e.g., Peter Haldén, “From Total to Minimal Transformation: German Oaths of Loyalty 1871–2014,” in *Transforming Warriors: The Ritual Creation of Force*, ed. Peter Haldén and Peter Jackson (London: Routledge, 2016): 163–82.

less frequent in the future. Hermann Sasse’s analysis of the moral deficiencies of the modern state, offered over 90 years ago, remains applicable in our time:

A governing authority which bears the sword in vain, which no longer has the fortitude to decisively punish the law breaker, is in the process of burying itself [*gräbt sich selbst das Grab*]. A state which removes the concepts “right” and “wrong” from jurisprudence and replaces them with “useful” and “injurious,” “healthy” and “ill,” “socially valuable” and “socially inferior,” [a state] which in the place of the principle of remuneration places the principle of inoculation [*Unschädlichmachung*], a state which in its civil law dissolves marriage and family — [such a state] ceases to be a constitutional state and thus the governing authority. A governing authority which knowingly or unknowingly makes the interests of social position or class the norm for the formation and definition of law, or which allows the norms of the law to be dictated by the so-called “legal consciousness” of the time, sinks to the level of raw power.

This danger exists now — and this is not addressed by the Augustana — for all governing authorities, and shall for all time. It exists especially in the modern democratic forms of government and in the dictatorship. For the result of the secularization process of the last century has been that the consciousness of eternal legal norms which are not determined by man has nearly perished. But where this consciousness ceases to exist, their God-given power is changed into demonic power, resulting in ruin among peoples and states. But wherever on earth a governing authority — irrespective of which form — is conscious of a [civil] righteousness independent of its will, exercises the power of its office, upholds the law and guards the peace, there it is “God’s good gift,” there it is “by the grace of God.”¹⁴⁵

Applying the Scriptural Principles

The prospect of breaking of a solemn oath or vow holds no terror for a person who does not fear God; but for a sincere Christian who loves the Lord, the breaking of an oath may heavily burden the conscience and invoke the fear of divine punishment. The nearly infinite number of settings in which potential conflicts may arise between a Christian’s duties toward God and the obligations of an oath preclude the possibility of seeking to analyze every conceivable situation

145. Hermann Sasse, “The Social Doctrine of the Augsburg Confession and Its Significance for the Present” (1930), in *The Lonely Way: Selected Essays and Letters, Vol. 1 (1927–1939)*, by Hermann Sasse, trans. Matthew C. Harrison et al. (St. Louis: Concordia, 2001): 89–100, at 98–99.

in detail. Instead, a preliminary attempt will be offered here to distill the principles discussed above into a series of analytical questions, in the hope that these may be helpful when such potential conflicts are under prayerful deliberation.

1. *Where an oath or vow is contemplated but has not yet been taken, does it give glory to God in view of its subject matter and purpose?*
2. *Where an oath or vow is contemplated but has not yet been taken, is it under such circumstances that ordinary words of promise made without invoking the name of the Lord would suffice?*
3. *Where an oath or vow is contemplated but has not yet been taken and is demanded by another party, does that other party have the God-given authority to make such a demand?*

As explained above, Scripture does not prohibit Christians from taking broadly written oaths of office or of allegiance required by a temporal government; but under certain circumstances, Scripture may set limits upon the performance of the obligations of such oaths. In this regard, the insight that every oath required by a temporal authority necessarily includes an implied limitation — that the government may not properly use that oath to demand that a person violate his or her responsibilities toward God — takes on immediate and practical significance.¹⁴⁶

4. *Where an oath or vow has already been taken and a particular course of action is contemplated pursuant to the obligations of that oath or vow, is the particular action in view God-pleasing, or is it sinful and therefore to be avoided, according to the revealed will of God in Holy Scripture?*

146. See discussion at notes 76–79, above (re: commentary of Werner Elert, *The Christian Ethos*, 135–39).

It is in this area that many difficult questions are likely to arise, for the individual Christian often may not be able to determine with a reasonable degree of certainty whether the governing authority is in the right. In such cases, doubts should be resolved in favor of obedience to the presumptively lawful commands of the governing authority, at least until further reliable information can be obtained that changes the result of the analysis. But it is also in this area that the principles set forth above — particularly the principle that no oath or vow may bind a person to sin, and the principle concerning the inherent limits of the God-given power of the temporal authorities in relation to eternal souls — may offer the greatest comfort and consolation.

It must be recognized that determining the God-pleasing course of action, in so far as we are given the wisdom to do so in light of the principles revealed in Scripture, is a separate and distinct analytical question from attempting to estimate the potential costs and sacrifices that may accompany the decision to pursue what appears to be that God-pleasing course of action. The financial, reputational, professional, legal, and other harms that may ensue do not determine the rightness or the wrongness of a particular action. Rather, to the extent that such hardships may come, they represent aspects of the Christian life under the cross, for which we ask God to grant the strength to accept such costs and sacrifices, borne for Christ's sake, willingly and joyfully (Mark 8:34–38).¹⁴⁷

Moreover, in accordance with the principles of Romans 14, a reasonable space must be allowed to respect differing decisions that individual Christians may reach in doubtful matters,¹⁴⁸

147. See generally Daniel M. Deutschlander, *The Theology of the Cross: Reflections on His Cross and Ours* (Milwaukee: Northwestern, 2008), 1–4, 7–13, 18–20, 23–32, 65–112, 223–26.

148. A thorough exposition of this point would lie beyond the scope of this thesis. See generally FC Ep III 11 (Kolb-Wengert, 496); Glen L. Thompson, “The Concept of the Weak Brother in the New Testament and in the Church Today” (paper presented to the North Atlantic South Pastoral Conference, October 23, 1991) (Mequon, WI: WLS Essay File, 1991); Douglas J. Moo, *The Letter to the Romans* (2nd ed.), NICNT (Grand Rapids: William B. Eerdmans, 2018), 843–80 (re: Romans 14).

with regard to whether specific directives of a governing authority may be properly fulfilled pursuant to an oath.¹⁴⁹

5. Where it appears that an action that may at least arguably be required by the terms of an oath or vow previously taken is indeed sinful and therefore must be avoided, is the person who has sworn the oath or vow correctly distinguishing between law and gospel and placing his or her trust in God's forgiveness in Christ?

In this area, timely pastoral counseling may help the individual to overcome any erroneous mingling of law and gospel by addressing any false understandings concerning the inviolability of an oath or a vow, the purported quality of an oath or vow as some sort of meritorious human work, or the circumstances under which one may be discharged from fulfilling its obligations. “[T]he blood of Jesus, his Son, purifies us from all sin”¹⁵⁰ — including our sins against the Second Commandment involving oaths and vows.

149. While I was serving as a judge in the state of Missouri, I found certain analytical questions to be helpful in my own imperfect analysis of such “doubtful matters” that arose or had the potential to arise in the course of the performance of my official duties. I share these here not as prescriptive, but merely as food for thought. If the thing which the law required me to do appeared to be simply a pronouncement of the consequences of a generally applicable temporal law, as a result of decisions and arrangements that others themselves had made, then ordinarily I would consider it as within the God-given authority of the state to apply human reason to the management of problems resulting from the hardness of men's hearts. *See* Matt 19:8; Mark 10:5; Rom 13:1–7; Titus 3:1; 1 Pet 2:11–17. However, where the thing which the law required (or permitted) me to do appeared to be something that would rise to the level of participating in the sins of others (*see* Eph 5:11; 1 Tim 5:22) by involving myself in the creation of new arrangements, or of sending a public message that might lead others into sin (*see* Matt 18:6; Mark 9:42; Luke 17:2; 1 Cor 8:11–12), then it appeared to me that I could not perform that function, even where it appeared to be required by the obligation of my oath of office. The concern for avoiding participation in the sins of others seemed to me to be the greatest, in cases where performance of an official act would make me a party to creating an arrangement that had not existed before and that was openly and manifestly sinful. Obviously, the answers were not always clear-cut — nor will they be so, for others who must face these decisions.

150. 1 John 1:7.

CONCLUSION

This study began by raising the question: “Should Jonathan die?”¹⁵¹

The analysis presented above leads to the conclusion that Saul’s soldiers were in the right when they refused to comply with the terms of oaths placed upon them by their sovereign and instead protected the life of Jonathan.¹⁵² Saul could not, by virtue of the temporal authority he held, impose an oath obligation on those subject to his authority, to the extent such an obligation was contrary to the will of God.

No claim is made that any new theological ground has been broken in this study; nor was that ever the intent. My prayer is that by collecting many relevant passages of Scripture and many of the most significant analyses of confessional Lutheran theologians in one place, that this

151. 1 Sam 14:45.

152. Andrew Steinmann, in his commentary on First Samuel, analyzes the situation according to principles drawn from Scripture and reaches the same conclusion:

God alone can make a curse effective, and gratuitous curses like Saul’s that call for God’s punishment are a misuse of God’s name and a transgression of the Second Commandment (Exod 20:7; Deut 5:11)... There was no need for Saul to place a curse on any of the Israelite troops who ate that day (1 Sam 14:24), ... He further increased his sin by swearing that Jonathan would have to die (14:44), which was only averted when the troops put their own lives in danger (14:45). Authorities certainly have the right to require oaths of those under them when it is for the sake of justice, the good of society, and the benefit of others (Heb 6:16)... However, when authorities misuse their power and require oaths to be taken simply for their own purposes or aggrandizement, they are guilty of misusing their authority and commit to further sin of compelling others to misuse God’s name. For this reason the Augsburg Confession observes that “an ungodly vow, made contrary to God’s command, is null and void.”

Andrew Steinmann, *1 Samuel*, Concordia Commentary (St. Louis: Concordia, 2016), 270 (quoting AC XXVII 40). For commentary on the entire incident described in 1 Samuel 14:24–26, with exegetical analysis, *see* Steinmann, *1 Samuel*, 258–71.

will be of service to laypeople and pastors, as they ponder their own obligations, and the limits of those obligations, in relation to oaths and vows. As seen above, many of the most directly relevant commentaries date from the period of the Reformation and the several decades which followed — from a time when monastic vows and oaths of fealty were deeply woven into the fabric of society and were sworn, at least in many cases, with profound awareness of their Second Commandment implications. Although much of society has trended in a more secular direction in the ensuing centuries, the truths of God’s Word stand forever¹⁵³ — and with them, the principles which govern the understanding of the meaning of oaths and vows and the limits of the obligations they impose, for each individual Christian.

Further study of this subject area may benefit from analysis and evaluation of various historical parallels in view of the scriptural principles set forth above, to gain a sense of the long history of the purposes for which oaths and vows have employed in the past (particularly by those wielding governmental authority) and the contexts in which this was done, together with the varied responses, concerns, and objections of those from whom such promises were required.¹⁵⁴ These moral issues may come as new to each person who must face them, but they

153. Isa 40:6–8; 1 Pet 1:23–25.

154. Space limitations preclude a further investigation of these historical parallels here, but a few potential directions may be suggested for further study. Here I wish to express thanks to my mother, Dr. Virginia Easley DeMarce, for helpful discussion and suggestions of potentially relevant historical parallel situations, provided early in the process of this research.

Concerning early the development and functions of oaths in Europe, *see, e.g.*, Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), 61, 65 (in early medieval Germanic and Anglo-Saxon lawsuits); 250, 253 (at canon law); 299 (oaths of fealty between feudal lords and vassals under medieval Frankish custom); 431 (oaths required of Sicilian justiciars, chamberlains, bailiffs, and lawyers in the early thirteenth century); 490, 497 (Holy Roman Empire, twelfth century); Brundage, *Medieval Canon Law and the Crusader*, 17–18, 30–138 (extensive study of vows and their associated obligations in relation to crusades and pilgrimages, at canon law); Kenneth Pennington, “Feudal Oath of Fidelity and Homage,” in *Law as Profession and Practice in Medieval Europe: Essays in Honor of James A. Brundage*, ed. Kenneth Pennington and Melodie Harris Eichbauer (Farnham, Surrey, UK: Ashgate, 2011): 93–115 (drawing distinctions between secular and ecclesiastical oaths and between fidelity and homage; exploring understandings implicit in

are not new in and of themselves. As powerful modern state entities continue to require oaths of office as a means of both demanding and creating loyalty to the governing power and compliance with its current agenda, the usages in former times of oaths of homage, fealty, allegiance, loyalty, and the like may indeed take on increasing importance toward informing our

feudal oaths); Helmholz, "Pope Innocent III and the Annulment of Magna Carta," 6–7 (contrasting the heightened significance of the oath in the thirteenth century with its general lack of "special status" today); 9–11 (reviewing examples of oaths and vows that were considered voidable or unenforceable at canon law); Saccenti, "Beyond the Positive Law: The Oath and Vow as a Theological Matter Between the 12th and Early 13th Centuries," 251–73; Longley, "Oaths and Affirmations in Anglo-American History," 61–77 (reviewing the development and uses of oaths and affirmations in English and American legal history, including roots in pre-Christian Anglo-Saxon and Germanic history; noting various objections to the oath procedure; emphasizing the frequent failure of the oath procedure to accomplish its intended purpose).

An abundant English-language literature considers the various oaths imposed by the crown in sixteenth and seventeenth century England over the course of several efforts to guarantee loyalty and/or religious conformity, and the strenuous objections of conscience that were raised against these oaths. *See, e.g.*, Jonathan Michael Gray, "Conscience and the Word of God: Religious Arguments against the Ex Officio Oath," *JEH* 64, no. 3 (July 2013): 494–512 (at 502–03, examining objections to the lack of authority in Scripture for taking a "general oath," by which the conscience could subsequently become bound to do something unlawful; at 505, arguments of the Puritans grounded upon the prohibition against taking the Lord's name in vain); Butler, "The Oath of Allegiance, Hannah Arendt, and the Trials of Jacobean Political Theology," 60–82 (reviewing historical circumstances of the Oath of Allegiance required by James I of England after the Gunpowder Plot, Roman Catholic objections to that oath, and the results for some objectors); Andrew Hadfield, *Lying in Early Modern English Culture: From the Oath of Supremacy to the Oath of Allegiance* (Oxford: Oxford University Press, 2017) (major study of truth and falsehood in early modern England; substantial attention given to government-required oaths and various responses to them in historical accounts and in the literature of the time; with extensive bibliography); Aroney, "The Rule of Law, Religious Authority, and Oaths of Office," 204–07. The moral conflicts involving oaths and other matters of conscience were a major theme in the literature of the time. *See generally* Abraham Stoll, *Conscience in Early Modern English Literature* (Cambridge, New York: Cambridge University Press, 2017). These issues continue to draw attention in American popular culture and literature, as through Robert Bolt's popular play dramatizing the case of Sir Thomas More. Robert Bolt, *A Man for All Seasons* (New York: Vintage International, 1990).

See also Nauman, "Peripheral Promises," 477–97 (considering changes in the form of oaths required by the Swedish crown in the early modern period; analyzing what the author regards as a decline in the "performative force" of such oaths over time); T. Noel Stern, "William Penn on the Swearing of Oaths: His Ideas in Theory and Practice," *Quaker History* 70, no. 2 (Fall 1981): 84–98 (American colonial period; considering Penn's stated principles and certain apparent inconsistencies in his practice); John D. Sinks, "Oaths of Allegiance During the American Revolution" (paper presented at District of Columbia Society, Sons of the American Revolution, Washington, DC, 8 May 2021). Additional avenues of investigation into historical parallels may be readily suggested, including: loyalty oaths required during and after the American Civil War; naturalization oaths requiring the forswearing of allegiance to a foreign monarch, noble, or other government; and oaths required of judges, public servants, clergy, and others under fascist, Nazi, and communist regimes in modern Europe. Concerning certain oaths required by the Nazi regime, *see, e.g.*, Aroney, "The Rule of Law, Religious Authority, and Oaths of Office," 207–08; Ernst Christian Helmreich, *The German Churches Under Hitler: Struggle, Background, and Epilogue* (Detroit: Wayne State University Press, 1979), 170, 178, 227–29, 246, 287. Concerning conflicts between Christian youth confirmation vows and vows required in communist "youth dedication" ceremonies in the former East Germany (DDR), *see, e.g.*, Richard W. Solberg, *God and Caesar in East Germany* (New York: Macmillan, 1961), 182–201.

understanding of the ethical and psychological dimensions of these promissory obligations, both in the minds of those who require them and of those who assume them.

The solemn obligations of oaths and vows made in God's name demand reverent and serious consideration on the part of those who have taken them and of those who contemplate taking them. External circumstances matter, as do the private intentions of human hearts. Glory can be given to God through the proper taking and keeping of oaths and vows; yet these can also become occasions for sin, when the taking or keeping of oaths and vows is done in ways contrary to God's revealed will. Luther's admonition from five centuries ago remains timely for us:

[God] wants nothing to be offered but the gift which was received; nothing is to be taught except the word of God; nothing is to be done except what God works in us. He wants this so that nothing human but everything divine be spoken and worked in us, because we are stewards not of our own riches, but of the manifold grace of God. This must be done for God to be glorified through Jesus Christ, whose is the glory and the dominion forever and ever. For since we are his kingdom and it is his right to reign and rule in us, no word or work is to be permitted which he does not utter or effect in us.... If, therefore, a man teaches and works something in us which God does not teach and work, then in that case God is not glorified in us through Jesus Christ. It is the man whose word and work it is who is glorified.¹⁵⁵

Yet should a Christian conclude that he or she has sinned with regard to the taking or the keeping of an oath or vow, let that person cling — as Luther himself did — to the sure comfort and consolation of forgiveness in Christ, the Lamb of God who takes away the sins of the world.¹⁵⁶

To God alone be the glory!

155. Luther, "The Judgment of Martin Luther on Monastic Vows," AE 44:379.

156. John 1:29.

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