Loyalty Oaths and the Transformation of Political Legitimacy in the Medieval West

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Starting from more general considerations on the nature and functioning of promissory oaths, this article seeks to shed light on the Christian contribution to the legitimate use of oaths since the Late Antique period. Taking oaths – contrary to Christ's prohibition of swearing as formulated in the Sermon on the Mount – led to a qualification of oaths and to ecclesiastical punishment of perjury, while early medieval oath formulas show a remarkable legal diversification of the notion of fidelity. General oaths of fidelity enabled post-Roman kings to establish a special kind of legitimacy for their rule that addressed their subjects of Roman and barbarian origin alike. Focusing on individual commitment, enhancing religiously motivated devotion to a ruler, and linking loyalty to essential concepts of the Christian religion, the widespread use of these oaths introduced a change in political discourse that eventually led to the Carolingians addressing their subjects as the *fideles Dei et regis*, the »faithful of God and the king.«

Oaths have been most often used in situations when stakes were high, and where interpersonal trustworthiness and reliability could not be achieved otherwise than by making a solemn personal declaration that focused quite radically on essential religious and social values. Taking individual commitment to the extremes, oaths on a more general level thus can lead us into the heart of the question of how social and political relations were constructed in societies at a given time, and which social tensions and risks, but also which shared values, rendered oaths indispensable.

Naturally, religion is a crucial factor in understanding the power of oaths, as the gods themselves are usually expected to sanction any abuse of an oath spelled out in their name. Still, religions seem to take a different stand on how a human being may use a god or the God's name for earthly purposes. In medieval and early modern Christian societies, the omnipresence of oaths illustrates these societies' need to solve conflicts and create social bonds on a large scale, as well as the delicate question of how to use oaths in societies dominated by a religion whose founder had explicitly forbidden his adherents to swear. This may be illustrated by a seventeenth-century painting kept today at Bad Säckingen in southern Germany

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(located about 20 miles east of Basel on the shore of the Upper Rhine) – the so-called »Eid-tafel« of 1682.[1] It was produced by order of the mayor of Säckingen to remind all oath-takers of the risk they took and of the dangers of perjury. It contains large texts explaining the rite of swearing with three fingers and on the terrible fate of three persons of the region who had perjured themselves. With Christ portrayed as eternal judge, and an angel with sword and scales standing on the coat of arms of the Habsburg monarchy, a horror scenario of the im-agined post-mortem fate of the three perjurers is evoked in the lower register (see Figure 1): Their hands or arms have turned black, while the foul flesh of the corrupted hand even sur-vived the skeletization of the human bones so that the devil's helpers could easily identify the perjurers, drag them even out of their graves and lead them straight to the eternal fire of hell.[2]

Figure 1: Bad Säckingen, Eidtafel of 1682 (detail), photo: Stefan Esders

The »imaginaire« of oath-related consequences certainly would have differed according to culture and religion. And indeed, it may be regarded as typical for societies dominated by the Christian religion that the abuse of the oath is sanctioned not only by God, but also by ecclesiastical and even »secular« institutions on earth.

In what follows, I shall proceed from some more general observations on how oaths func-tioned, before discussing the impact of Christian religion and secular law on the practice of swearing in medieval Western Europe, as becomes evident from oath formulas and texts on sanctions imposed on persons who swore falsely or who did not fulfill their sworn promises. The final part will then focus on the role played by oaths in the transformation of the late Roman world and in the emergence of »post-Roman« or »medieval« kingdoms.

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1   Bad Säckingen, Hochrheinmuseum Schloss Schönau, Inv. Nr. B-82.
2   See Roller, Eidschwurtafel, Säckingen 1682, 661-662 (L 242), with a transcription of the texts. On the general background, see Brückner, Eid, Meineid; Holenstein, Seelenheil und Untertanenpflicht.

Promissory Oaths as a Type of »Contractual« Binding

Oaths are a common phenomenon that we encounter in most, if not all, societies past and present, quite independent of these societies' dominant religions. For this reason, it seems helpful to start with a very general definition that seeks to do justice to the broad array of types and forms of oaths that we encounter in history:

> An oath is a solemn speech act performed according to some established formal procedure. This speech-act contains either a promise for the future to be kept or a statement on events of the past that are explicitly claimed to be true. Typical for many, if not most, oaths is that a deity is invoked as witness, whose punishment is called down if the promise is broken or if the statement given under oath should turn out to have been given falsely.[3]

Of course one could broaden this definition, as a deity is not invoked in all cases, and since an oath-taker also often calls down a conditional curse on himself or herself, his or her family or even his testicles. Moreover, it is not always easy to separate an oath from a vow. It might therefore be helpful to say that, in an oath, the deity and its punishing power is invoked as a witness, whereas a vow is usually made to a deity with the promise to give or sacrifice something in return for some supernatural help one hopes to receive.[4] Also, the dividing line between oaths and ordeals appears fluid, if we consider both as instruments of judicial proof. An ordeal is a carefully prepared ritual with the aim that a deity's will may become manifest and decide a case, whereas in oaths the deity is used as a witness[5] – quite a powerful witness, it seems, which in the worst case could directly turn into a judge.[6]

One should also note at the outset that oaths are usually only one key element among others that constitute a more complex ritual process.[7] Also, the importance of the ritual element within the oath procedure may differ quite radically: in the Egyptian papyri of the Roman imperial period, for instance, we find written oaths that invoke the emperor as deity, while there is hardly any evidence for a ritual;[8] by contrast, oaths that we encounter in medieval coronation ceremonies appear as part of a longer series of important procedural steps.[9] It is thus for practical reasons and due to the mostly poor documentation in our early medieval sources that this study focuses on oaths.

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3   See Esders, Schwur, 30.

4   Esders, Schwur, 30-31.

5   Roberts, Oaths, autonomic ordeals, and power; Bartlett, *Trial by Fire and Water.*

6   As is often attested in hagiographical texts; see Esders, Der Reinigungseid mit Helfern.

7   Le Goff, Le rituel symbolique de la vassalité; Débax, Le serment des mains; Depreux, La prestation de serment.

8   Packman, Notes on papyrus texts.

9   Nelson, Symbols in context; *eadem*, Inauguration rituals.

Modern systematization often distinguishes between promissory and assertive oaths, that is, promises made under oath, and formal testimonies in court. This distinction, already introduced by medieval jurists, may sound to some extent artificial. For instance, Giorgio Agamben states that an oath given in court can in a way also be considered a promise – a promise to tell the truth.[10] Still, I think for our purposes this distinction can be helpful, as a focus on promissory oaths will bring us more closely to the manifold political functions and meanings of swearing.[11]

Here, it is essential to recognize the element of self-obligation in order to understand why oaths can create interpersonal trust and commitment, so that they can be considered as having a contractual aspect. To be sure, by no means all oaths were sworn voluntarily. Still, what makes an oath such a powerful instrument is the fact that, by performing a speech and ritual act, an individual personally creates an obligation and calls down heavenly sanctions to be applied in case this obligation is not met. The oath links the promise explicitly to essential religious and social values ideally shared by all members of a society – values that create trust. The trustworthiness of a person is hugely important, while the oath procedure serves to eliminate distrust, which may arise for a number of reasons. To talk about the functioning of oaths thus means to talk about social reputation.[12] If, as is most often the case, an oath is sworn in public, the public gets involved as witness, thereafter exercising some sort of social control over the credibility and standing of the person who has sworn, and also taking some responsibility for the promise to be put in effect.

Another prominent feature of oaths is that they considerably narrow the space for any future negotiation on the issue that was the subject of the oath. Naturally, most oaths are preceded by negotiations on the precise contents of a promise; this might even go so far as to negotiate on individual clauses in the oath formula to be used. But once an oath is sworn, the room for maneuver becomes considerably narrower, and deliberately so, as it will be extremely difficult to find good arguments to justify breaking the oath – particularly arguments that are suitable to convince others on whose opinion the oath-taker depends. If someone has sworn loyalty to a ruler, for instance, it remains possible to question this ruler's qualification and to form a conspiracy together with some other people, but it will not be so easy to transform this into an argument that leads the public or even the religious elite to allow the breaking of a promise personally given in the presence of others. Oaths, once sworn, narrow social discourses and channel them into a specific direction.

However, the most important point, at least as I see it, is the internalization of the promise. Despite creating a lengthy, sometimes lifelong obligation, a promise given to someone under oath is the result of a specific situation. An hour later or so, the person to whom the oath is sworn might not even be present anymore. But the person who has sworn is still there, of course, and he or she has undergone a procedure intended to transform obedience

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10   Agamben, *Das Sakrament der Sprache*, 12.

11   Kolmer, *Promissorische Eide im Mittelalter.*

12   Hirsch, Über die Gesellschaftsbezogenheit des Eides.

to a norm or some kind of expected behavior into an aspect of his or her inner self. One may or may not call this »conscience,«[13] but what matters above all is that the whole thing becomes a personal obligation with which the person who has sworn has personally to come to terms. It is your business now. From a sociological and psychological perspective, an oath thus can serve to transform heteronomy into self-coercion.[14] Looked at from the perspective of a ruling authority, promissory oaths can thus be used to impose obligations and allow for a transfer of norms.[15] The internalization of norms by sworn promises explains why oaths were an indispensable tool and played a particular role in societies that, for whatever reasons, were in desperate need of creating reliability and personal bonds on a large scale. In his sociology of law, Max Weber, adapting here a dichotomy borrowed from Henry Sumner Maine's important monograph *Ancient Law* from 1861,[16] distinguished as ideal types »purposive contracts« and »status contracts,« of which the latter changed a person's whole attitude, mind and status completely, whereas the former were confined to a certain action to be performed in the near future.[17] Weber also observed that both types of contract could be confirmed by an oath, which happened occasionally in the case of »purposive contracts,« but was a defining feature of »status contracts«.[18] Many medieval oaths, such as oaths of fidelity, can indeed be considered as »status contracts«, but as we shall see, this required that they be defined as precisely as possible.

Oaths thus allow the transformation of power and authority into law, so to speak. A ruler or lord may not be powerful enough to control permanently the loyalty of his subjects and to compel personally their military support, but he is often strong enough to urge or even force them to swear. For this reason, the self-binding contained in an oath makes it to some extent work as a functional equivalent of more institutionalized modes of creating trustworthiness and exercising control, and of »statehood.«[19] In particular, where obedience cannot be controlled on a daily basis, self-commitment becomes crucial. Loyalty may entail obedience,[20] but it is a different value. It appeals to notions such as honor and self-esteem, while it also contains an important emotional element, the impact of which can hardly be overestimated.[21]

The importance of oaths as an instrument to create law becomes relevant against the backdrop of normative and indeed legal pluralism.[22] Each individual lives in a world characterized by various rules and norms – religious, social and others – that impact on his or her life. These norms are often in conflict with one another. The function of a promise given under oath is to prioritize certain norms over others. This is achieved by self-obligation.

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13 Holenstein, Eid, Gewissheit, Gewissen und Seelenheil; Schlesinger, *Promises, Oaths, and Vows.*

14 Holenstein, *Die Huldigung der Untertanen*, 52.

15 Esders, Treueidleistung und Rechtsveränderung.

16 Maine, *Ancient Law*, 170 (»from status to contract«).

17 Weber, *Wirtschaft und Gesellschaft*, 402.

18 Weber, *Wirtschaft und Gesellschaft*, 402.

19 Esders and Schuppert, *Mittelalterliches Regieren*, 195-206.

20 Becher, *Eid und Herrschaft*, 157 and 163.

21 Esders, *Fideles Dei et regis.*

22 Esders and Reimitz, Diversity and convergence.

The person who swears uses the deity as a witness and, in doing so, pledges his spiritual well-being on earth and possibly even after death, making it dependent on his willingness and ability to fulfill the promise in the future.[23] It is thus this pledge of one's most highly valued future life that allows one to liberate oneself from other expectations, norms and rules of conduct that are also regarded as vital.[24] For instance, if, as in ancient Rome, a person swears to be more loyal to the emperor than to his own family, we see this potential conflict of norms made explicit by the oath and prioritized in favor of the emperor.[25] For this reason, one may venture to say that oaths of promise often contain a vital element of individualization and of »dissolidarization,« while they allow entry into new groups that are constituted as sworn communities.[26] Oaths thus played an important role in societies characterized by a plurality of norms and laws. In the medieval West, all sorts of oaths were sworn in many different contexts – fidelity,[27] guilds,[28] peace agreements,[29] cities,[30] universities,[31] etc.

Early Medieval Oath Management. Formulas and Contexts of Promissory Oaths

It is well known that, as a good Christian, you are not allowed to swear an oath. It was specifically prohibited by Christ himself in one of the few passages of the New Testament that explicitly address legal issues, the Sermon on the Mount (Mt. 5.33-38), and also in the Epistle of James (James 5.12). I cannot go into more detail here about why Christ was so rigorous about oaths.[32] What matters for medieval Europe, with its societies dominated by Christian ideas and world-views, is that the prohibition of swearing did not, of course, lead to the abolition of oaths. They were simply considered too important to be discarded in obedience to the letter of the Biblical law. But it did impact on how oaths needed to be formulated in order to justify their being sworn or accepted even in the face of Christ's explicit prohibition. Evidently, there were several simple strategies to mitigate the problem, for instance by historicizing the Bible and saying that Christ's prohibition was directed against the Jews, whom the Christians at that time suspected of being more easily inclined to commit perjury, or by saying that the Apostle Paul often swore in his letters, and so on. Or there has been a suggestion that Christ, in the Sermon on the Mount, was not actually referring to

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23   Oexle, *Conjuratio* und Gilde im frühen Mittelalter.

24   Esders, »Faithful believers.«

25   Herrmann, *Der römische Kaisereid.*

26   Oexle, *Conjuratio* und Gilde im frühen Mittelalter; Wuk, Constructing clandestine communities.

27   Magnou-Nortier, Fidélité et féodalité; *eadem*, *Foi et fidélité*; *eadem*, Nouveaux propos; Débax, *La féodalité langue-docienne*, 99-233; Esders, Rechtliche Grundlagen.

28   Oexle, *Conjuratio* und Gilde; *idem*, Gilden als soziale Gruppen.

29   Koerner, *Iuramentum und frühe Friedensbewegung.*

30   Ebel, *Der Bürgereid*; *idem*, Zum Ende der bürgerlichen *coniuratio reiterata.*

31   See in general Michaud-Quantin, *Universitas*, 233-245; more specifically Miethke, Der Eid an der mittelalterlichen Universität.

32   Kollmann, Das Schwurverbot Mt 5,33-37 / Jak 5,12; idem, Erwägungen zur Reichweite des Schwurverbots; Vahrenhorst, »*Ihr sollt überhaupt nicht schwören.*«

swearing in general, but only to perjury – an argument that obviously posed an exegetical challenge.[33] In fact, several Church fathers, particularly in the Eastern Roman Empire, including Basil of Caesarea[34] and John Chrysostom,[35] took Christ's prohibition much more seriously and completely declined to swear, and of course every good heretic declined to swear for obvious reasons, too.[36] However, in the long term, it became more important in the West that Jerome[37] and Augustine[38] developed theories that allowed a Christian to swear in special circumstances. Jerome in particular, in an influential passage, claimed that any statement given under oath should be given deliberately and be true and just.[39] Accordingly, in the early medieval West, *iudicium, iustitia*, and *veritas* served as criteria for an oath to be lawful and in accordance with Scripture.[40] In their medieval reception, Jerome and Augustine thus came to be read as the two Church Fathers who allowed and justified the practice of oath-taking.[41]

In medieval societies contradictory oaths posed a danger to an individual's soul as well as to the pervading world-view, since an individual could swear or be forced to do so on a number of occasions. For this reason, many oaths required qualification. Accordingly, oath formulas could not only become increasingly complex, but might also incorporate religious and other ideas in a characteristic way. Another important factor contributing to this development was the influence of »secular,« particularly Roman, law, which contained many clauses that we also find inserted into medieval oath clauses. To give but one example: in the Carolingian Empire, each free-born adult male was obliged to swear fidelity to Charlemagne (r. 768-814) and his successors using this formula:

> I swear that from today on I will be faithful (*quod fidelis sum*) to the most pious emperor Lord Charles, son of Pippin and Queen Berta, with a pure mind (*pura mente*), without fraud and malice (*absque fraude et malo ingenio*), from my side to his side (*de mea parte ad suam partem*), as (*sicut*) according to law (*per drictum*) a man (*homo*) has to be loyal towards his lord (*domino suo*) – so help me God (*si me adiuvet Deus*) and these saints' relics (*et ista sanctorum patrocinia*), who are in this place, that, as God may give me intelligence (*quantum mihi Deum intellectum dederit*), I will all my life (*diebus vitae meae*) of my own free will (*per meam voluntatem*) strive (to achieve that aim) and give my assent (*sic attendam et consentiam*).[42]

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33   Kreusch, *Der Eid zwischen Schwurverbot Jesu*.

34   Basil of Caesarea, *Letters*, trans. Deferrari, 22, 33 and 188.

35   John Chrysostom, *Homilies on the Gospel of Matthew*, trans. Prevost, 17, 5-7; *idem. De Anna*, trans. Hill, 1,1.

36   Vauchez, Les refus du serment.

37   Jerome, *Commentary on Matthew*, trans. Scheck, 1, 5, 34.

38   Augustine, *De serm. Domini*, ed. Mutzembecher, 1, 51; *Serm*. 180. See Boodts, Augustine's *sermo* 180.

39   Jerome, *Commentary on Jeremiah*, ed. Reiter, 1, 69.

40   Landau, Eid, Historisch.

41   Kreusch, *Der Eid zwischen Schwurverbot Jesu*, 81-112.

42   Capitularia missorum specialia a. 802: *Capitularia regum Francorum* 1, ed. Boretius, no. 34, 101.

Some aspects of the Carolingian formula look more traditional – for instance, the reference in the promise to the dynasty (here to Charlemagne's parents, but in other cases also to the ruler's sons); its connection to the imperial or royal title, which created a special type of legitimacy;[43] the use of relics, which in some cases had only been brought to the place where the oath-taking took place, and specifically for that purpose.[44] Not all relics were brought in a transportable reliquary. In some cases at least, they remained at the place where the oath was taken and served as a constant reminder of the promise and of the saint whose task it was to surveil the promise to be kept.

What I find remarkable about these oath formulas is the amount of work spent on making these detailed distinctions as precise as possible through careful wording. This oath's wording is arguably a masterly juridical formulation, as the formula is full of clauses that ultimately and purposefully defined the nature and content of fidelity as precisely as possible, and prevented an individual from falling into perjury too easily. For instance, »without fraud and malice« is a clause we find in Roman private law, and also in Roman oaths of office.[45] It clearly makes the point that the promise is given »in good faith« (*bona fide*). Also, the clause »according to my knowledge und capability« (*secundum meum savirum et posse*), which we encounter in many formulas,[46] refers to Roman legal ideas, as it was an old Roman axiom that no one should be held to something he was clearly not able to perform (*nemo obligetur ultra posse*)[47] – in fact, in an oath formula these words could be used to express some kind of mental reservation.

Other clauses emphasized the »voluntary« nature of the promise (which was often voluntary in name only, as there was an obligation to swear that many subjects sought to evade by flight), the intent to act out of one's own motivation, and the understanding that fulfilling the promise also depended upon God's will – God not only served as a witness here, but was also expected to give strength. In yet other texts we find »friend-foe-clauses« (that is, to have the same friends and enemies as the person who accepted the oath) that were already part of many Antique oath formulas,[48] while more typical for medieval oaths are »reservation clauses,« which prioritize certain obligations over others, as an individual would most likely enter several oath-bound relationships in his life. This was a way of anticipating potential collisions of norms and obligation at an early stage – while it also served to keep intact the validity of the oath as an instrument to create trust.

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43 Capitularia missorum generalia a. 802, c. 2: *Capitularia regum Francorum* 1, ed. Boretius, no. 33, 92.

44 Becher, *Eid und Herrschaft*, 180-190.

45 Becher, *Eid und Herrschaft*, 128-138.

46 Ewald, Formelhafte Wendungen.

47 Liebs, *Lateinische Rechtsregeln*, 98, 146.

48 On the Roman background, see de Libero, Die Freund-Feind-Klausel; see also Wallach, Amicus amicis.

This shows that there must have been an enormous awareness of the dangers and perils inherent in this undertaking of making hundreds of thousands of people swear fidelity. One might call this self-reflexive. Asking the people to make a promise they could not keep and that would cause them to commit involuntarily perjury would have devalued the oath as a political and legal instrument. There might be a thin line between fidelity and perjury, between commitment and treason. In fact, one of the arguments put forward by some Frankish bishops when they deposed Louis the Pious in 833 was that he had made too many contradictory resolutions on which he let the people swear. Thus, through his many policy changes, he caused his people, entrusted to him by God, to involuntarily break their oaths and put their souls' salvation in danger[49] – a breach of one of the most prominent tasks for a ruler according to the medieval idea of kingship.

A final notable point in Charlemagne's formula is that the oath-taker promised fidelity »as a man should show to his lord according to law«: *sicut per drictum homo domino suo esse debet*. This »*sicut*-clause«[50] characterizes the relationship as a legal matter[51] between ruler and subject in military terms, as the whole notion of fidelity is basically military, and one of the most important duties of a subject was to carry out military service in Charlemagne's numerous campaigns. The military thus served as the frame of reference to define the nature and scope of fidelity, which was clearly based in customary law, while the whole sentence is constructed with a *sicut*-clause, which the Carolingians introduced and which became widespread and legally differentiated, in the Carolingian era and later, continuing in some regions into the eighteenth or nineteenth centuries.

Further *sicut*-clauses may illustrate the enormously broad stratum of specific meanings that could be expanded into a more general notion of fidelity, and how being bound by an oath was linked to a variety of normative expectations and legal customs: in 854, Charles the Bald (r. 823-877) ordered the general oath of fidelity to be sworn according to a special formula. It stated that any adult free man had to swear to be loyal (*fidelis*), »as a free man should according to law be towards his king« (*sicut Francus homo per rectum esse debet suo regi*).[52] A more specific notion was to use vassalage as reference system. Thus Tassilo III, duke of Bavaria, is alleged to have promised loyalty (*fidelitas*) to Charlemagne's father, King Pippin, in 757, »as a vassal has to be according to law towards his lords« (*sicut vassus recta mente et firma devotione per iustitiam, sicut vassus dominos suos esse deberet*).[53] By contrast,

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49 Relatio episcoporum Compendiensis a. 833, c. 2: Booker, Public penance of Louis the Pious. See de Jong, *Penitential State*, 45, 212-213, 239.

50 Esders, Fidelität und Rechtsvielfalt.

51 On *d(i)rectum, rectum, rehto* in oath formulas, see Althoff, Ungeschriebene Gesetze, 286; Becher, *Eid und Herrschaft*, 163-165; Esders and Mierau, *Der althochdeutsche Klerikereid,* 58-59.

52 Capitulare missorum Attiniacense a. 854: *Capitularia regum Francorum* 2, ed. Boretius and Krause, no. 261, 278.

53 Annales regni Francorum a. 757, ed. Kurze, 6, 14 and 16.

in 877, the bishops promised fidelity towards Louis II, »as a bishop is obliged rightfully to his senior« (*sicut episcopus recte seniori suo debitor est*),[54] clearly echoing the limits of episcopal subjection caused by their office. Around 800, local priests in Bavaria had to swear a vernacular oath to their bishop, promising fidelity and that they would be obedient to him and stay devoutly in his diocese »as I am obliged according to canon law« (*so ih mit rehto aphter canone scal*).[55] Here, interestingly, fidelity is combined with ecclesiastical law.

There are numerous further examples of oath formulas using this clause. For instance, in eleventh-century Saxony, a freedman who had been manumitted by his bishop from slavery and received the status of a *litus* (a category of people who were not fully free), swore fidelity to his bishop, »as a dependent litus is deservedly obliged to« (*sicut proprius liddo merito debuit, eidem ecclesiae et episcopo fidelitatem fecit*).[56] Similarly, in the thirteenth century, we find a castellan swearing to be loyal to King Rudolf of Habsburg, »as a castellan should be towards his lord« (*in omnibus fidelis et utilis, prout burgravius suo domino esse debet*).[57]

We encounter the *sicut*-clause also in mutual oaths, most famously in the Strasbourg oaths of 842, when the two half-brothers Charles the Bald and Louis the German (r. 817-876) swore love and support, »as a brother should exercise towards his brother according to law« (Old French: *si cum om per dreit son fradra saluar dist*, Old High German: *soso man mit rehtu sinan bruodher scal*), which was, ironically, aimed against their half-brother Lothar I (r. 817-855).[58] Three years later, Pippin II swore to his uncle, Charles the Bald, that he would be henceforth loyal »as a nephew should be towards his uncle« (*ei fidelis sicut nepos patruo existeret*).[59] The interesting thing about all these examples is that the two parties were in fact relatives, but the oath was taken to reaffirm their relationship as relatives, as the category »kinship« was not considered sufficient to create the kind of trust needed in this situation. Thus, in the treaty of Bonn of 921, the West Frankish King Charles III (r. 898-929), of Carolingian stock, and the East Frankish King Henry I (r. 918-936), of Saxon stock, promised to be friends, »as a friend according to law should be towards his friend« (*sicut amicus per rectum debet esse suo amico*).[60] The two kings did not belong to the same ruling family, since only one of them was a Carolingian, and this is why they could and should only be friends now.

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54 Capitula electionis Hludowici Balbi compendii facta a. 877: *Capitularia regum Francorum* 2, ed. Boretius and Krause, no. 283, 365.

55 Esders and Mierau, *Der althochdeutsche Klerikereid*, 58-59.

56 *Osnabrücker Urkundenbuch 1*, no. 139, ed. Philippi, 120.

57 *Urkundenbuch für die Geschichte des Niederrheins* 2, no. 687, ed. Lacomblet, 401.

58 Nithard, Historiarum liber III, 5, ed. Müller, 44, 36.

59 Annales Bertiniani ad ann. 845, ed. Waitz, 32.

60 Treaty of Bonn (921): *Constitutiones* 1, no. 1, ed. Weiland, 1-2.

It is important to see the potential of such oaths as relatable to ideas such as kinship, office-holding, etc. For instance, when Emperor Henry IV (r. 1065-1105) deposed margrave Ekbert of Meissen in 1089 following a trial, he had this justified in a royal charter stating that Ekbert, when making plans to kill the king, »had not remembered that he was our warrior, our margrave and our kinsman, and what is even worse, that he was bound to us by an oath« (*non recordatus, quod noster miles, marchio et consanguineus et, quod maius est, noster iuratus fuit*).[61] It was only the oath that made it possible to conduct a political trial in order to depose this person on a charge of infidelity. Being bound by an oath thus appeared as a more »objective« criterion than kinship and inherited office-holding when it came to deposing a high-ranking functionary.

Returning to the *sicut*-clauses mentioned above, it should be added that we also find them, as adapted from oaths of fidelity, in the legal re-establishment of marriages. Thus, in 865, King Lothar II had to affirm on oath that he would accept his wife Theutberga once more and treat her »as a king has to treat the queen as his legitimate wife« (*sicut decet regem habere reginam uxorem … legitimam*), which he did on condition that Theutberga would behave towards him »in every respect as a wife has to preserve honor against her senior« (*sicut decet uxorem suo seniori in omnibus observare honorem*).[62] And according to a reconciliation formula contained in the canon law collection of Regino of Prüm, compiled shortly after 900 and perhaps inspired by Lothar's case, a husband had to treat his wife »as a husband according to law has to hold his wife in love and discipline« (*sicut per rectum maritus suam debet habere coniugem in dilectione et debita disciplina*), while his wife swore to behave »as a wife should be subject according to law to her husband« (*sicut per rectum uxor suo debet subiecta esse marito*).[63] These cases no longer contain the word *fidelis*, but refer to a more general notion, which was of course not altogether different from *fidelitas*. There are many more examples, including those of kings such as Charles the Bald, who swore to treat and protect his faithful subjects according to each subject's status as a loyal king should do (*sicut fidelis rex suos fideles per rectum honorare et salvare et unicuique competentem legem et iustitiam in unoquoque ordine conservare et indigentibus et rationabiliter petentibus rationabilem misericordiam debet impendere*).[64]

These oath texts, which have been gathered from legal as well as historiographical sources, show how a nuanced formulary developed a general notion of fidelity and adjusted it to what was needed in a given situation according to a more specific custom or legal tradition. Other formulas are more allusive in wording, but we may assume that the parties involved knew what they were talking about. In particular when sworn in public, for instance in the presence of hundreds of other *fideles*, the »objective« nature and emotional power of the oath becomes manifest.

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61 *Die Urkunden Heinrichs IV.*, 2, no. 402, ed. Gladiss and Gawlik, 531.

62 Annales Bertiniani ad anno. 865, ed. Waitz, 76-77.

63 Regino of Prüm, De synodalibus causis II, 241-2: *Reginonis abbatis Prumiensis Libri duo*, ed. Wasserschleben, 308.

64 Sacramenta Carisiaci praestita a. 858: *Capitularia regum Francorum* 2, no. 269, ed. Boretius and Krause, 294.

Protecting the Oath and Sanctioning Its Abuse

A society making so ample use of the oath – as most West European societies did during the medieval period – did not only need to reflect on the proper uses of oaths. Since Christian doctrine on swearing rendered the use of oaths in some way conditional (if not altogether forbidden),[65] sanctions that followed breaking an oath were also a matter of debate, while, in addition, a certain caution needed to be exercised that oaths were not broken too often and too easily. This is reflected in many narrative sources, which are full of references to perjury, and whose authors lamented that the religious ties that bound their societies together had become atomized in situations of civil strife and were in a crisis of trust.[66] Nevertheless, the oath as an instrument to create trust remained indispensable; if it was questioned, it was mostly for religious reasons, given the words of Christ. It may in fact be that, paradoxically, one could venture to say that the Gospel prohibition of oath-taking and the consequent need to justify Christian oaths within Christian societies caused their use to become much more formalized.

Usually it was the gods or the deity who were expected to punish if a promise was not kept or a testimony given falsely. The Romans left it to the gods alone to punish the religious violation entailed in breaking an oath (*iurisiurandi contempta religio satis deum ultorem habet*).[67] Perjury could impinge upon a person's reputation and legal standing, as the concept of *infamia* had a deleterious effect on an individual's future legal capacity. Even so, most sanctions imposed on offenders in oath-related matters were aimed at the misdeed, not at the perjury per se: lèse-majesté (*maiestas*), forgery (*falsum*), rebellion (*conspiratio*), etc. were committed by people who had often sworn some kind of oath beforehand, but the oath was regarded more as indicating the fault than the perjury was seen as a grave misdeed in itself. The punishments for such misdeeds were considered to be hard enough anyway, and no state authority cared about what might happen to a perjurer's soul.

This changed only in the course of time when Christianity became the dominant religion. It took Christian thinkers a while to adapt their attitude regarding the oath to the social, political, and legal necessities. Around 380, John Chrysostom complained that, in Antioch, even Christians were attending synagogues to swear their oaths there, because they regarded such oaths as more valid and the spectacular Old Testament curses probably as more powerful.[68] In the fifth century, the Christian practice of swearing began to integrate the use of relics (and also the Bible, following the Jewish model of using the Torah for this purpose), while, in the sixth century, we find the first Christian saints specializing in the punishment of perjurers.[69] Furthermore, we see specific Christian churches regarded as particularly suited and famous for protecting oaths sworn there through the powerful intervention of the saints who punished perjury if their name was invoked – such as Saint Polyeuctus in Constantinople, as is reported at some length even by Gregory of Tours (d. 594) in distant Gaul.[70]

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65   Hofmeister, *Die christlichen Eidesformen.*

66   Barthélemy, Serments et parjures; Behrmann, *Instrument des Vertrauens.*

67   *Codex Iustinianus* IV, 1, 2.

68   John Chrysostom, Homilia 1,3 adversus Iudaeos, *PG* 48, 847-848, trans. Harkins.

69   Devos, Saints garants de la foi jurée; Esders, »Avenger of all perjury.«

70   Gregory of Tours, Liber in gloriam martyrum, c. 102, ed. Krusch, 555-557; Esders, »Avenger of all perjury.«

With the emergence of canon law as a distinct legal category, the oath and its abuse also became a legal concern for ecclesiastics. Around 600, in the *Collectio canonum Vetus Gallica*, we find a short title consisting of four canons on perjury (*De periuriis*)[71] and, 400 years later, in the 22-book *Decretum* of Bishop Burchard of Worms, we find one full book devoted to this matter (*De periuriis*), which assembled all the conciliar decisions made on this topic during the previous 600 years or so.[72] The Church thus began to claim control over the lawful handling of oaths, punishment for perjury, and also, from the seventh century at the latest, the loosening of oaths that were considered to have been sworn unlawfully.[73] Of course, infidelity and the like were crimes that were also punishable under »secular,« that is, royal or imperial law, but the separate oath regime imposed by ecclesiastical law became a typical West European feature. Among the ecclesiastical sanctions used to punish perjury, we find excommunication, or a particular penance – both sanctions that explicitly served the purpose of repairing the damaged relationship between the Christian God and an individual soul that had gone astray by abusing or not keeping the oath.[74]

This may sound very theological and theoretical, but it can also be seen as very pragmatic. For instance, in Roman law an oath had never been regarded as causing a legal obligation, and it was only in classical canon law from the thirteenth century onwards that oaths became legally enforceable.[75] Here, oaths were seen as an expression of an individual's religiously motivated intention; if a Christian, accepted by his God through baptism, decides to take an oath, that oath, even if not held to be a formal contract by the *ius commune*, was considered a »naked contract« (*nudum pactum*) and thus legally enforceable under church law.[76] Here, the idea emerges of a religiously motivated will that can create law. For instance, if two parties conclude a contract for buying and selling a piece of property before a secular court of law and confirm this contract by their oaths, these oaths allowed each party to transfer legal action over this matter to an ecclesiastical law-court, whose decision would have to be enforced by secular authorities. Oaths thus could in the long term even open up the possibility for »forum shopping,« so to speak.

Loyalty Oaths and the Transformation of Political Legitimacy in the Early Medieval West

My final point goes back to the question of why oaths of fidelity mattered so much in the early medieval West. Although Roman civil law did not accept oaths as creating an enforceable obligation, there were sectors of society where the oath in itself was considered to be the legal basis of a claim, and this holds particularly true of the military oath. The military oath required a soldier to be obedient to his officers and to risk his life when fighting for the Roman Empire and its rulers. It also made a soldier subject to military law, that is, a set of regulations (for instance for making a will) and sanctions to be imposed by military officials on soldiers alone, thus constituting some sort of separate legal system. And the military oath in the Roman imperial period was an oath of fidelity sworn to the emperor as commander of the army.

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71   Collectio canonum vetus Gallica c. 50: Mordek, *Kirchenrecht und Reform im Frankenreich*, 566-570.

72   Burchard of Worms, *Decretum*, Book XII: *Burchardi Wormaciensis ecclesiae episcopi Decretorum libri XX*, 154-157.

73   Struve, Das Problem der Eideslösung.

74   Helmholtz, Religious principles.

75   Hallebeek, *Actio ex iuramento.*

76   Behrends, Treu und Glauben.

The late Roman military oath was particularly important, because it was not only Roman citizens who swore it. The late Roman army of the fifth and sixth centuries was to a large extent composed of 'barbarians' who, upon their entry into the Roman army, swore the military oath. In the later Empire, these non-Romans did not acquire Roman citizenship as a result of their service, which means that the oath became the most important means by which to tie them legally to the Roman polity, while they also maintained their own legal customs. A famous fourth-century verse inscription found near Budapest stating »I am a Frankish citizen, but a Roman soldier in arms« (*Francus ego cives, Romanus miles in armis*) points to the fact that two hearts were beating in a 'barbarian's' chest.[77] This also held true for their barbarian military commanders who, as kings, dukes, or masters of offices, were part of the Roman military hierarchy, while at the same time acting as kings with their retinue.

When seen from this perspective, the emergence of 'barbarian' kingdoms in the West can be delineated as a process of emancipation of 'barbarian' armies and their leaders. These leaders came to govern a number of Roman provinces, which they did as part of the Roman military, while the oath of their soldiers, who would now swear fidelity to their king instead of to the Roman emperor, was the vehicle for creating a legal basis for a kingship that was more or less independent of the Roman Empire.[78] Within the Frankish and Visigothic kingdoms, the exaction of general oaths of fidelity by the whole male population thus enabled post-Roman kings to establish a special kind of legitimacy for their rule, which applied to their subjects of both Roman and 'barbarian' origin.[79] Originating in the late Roman military, these oaths could be used to emancipate early medieval kingship from the framework of imperial legitimation.[80] The emperors of Eastern Rome could bestow titles and legitimation upon the Western kings, but the Roman people living in the former provinces of Gaul, Germany and Spain became loyal to their kings as they swore a personal oath of fidelity. By extending the oath of fidelity to their 'non-barbarian' subjects, that is, to the majority of Romans, the kings had their people's status transformed from being Roman citizens to become their royal *fideles*. From the seventh-century, we have a formulary for a mandate by which a Frankish king orders a local count to assemble the people in his district to swear fidelity to the king and his son. Obviously, the two recipients were not there to accept the oath personally, which is why the king dispatched a royal envoy (*missus*) to accept the oath on his behalf. This formulary tells us a lot about the administration of general oaths of loyalty. The count had to assemble all the adult men of his *pagus* in the cities, villages, and castles, which means that the whole procedure rested to a large extent on the spatial organization inherited from the later Roman Empire.[81] Deliberately setting aside the ethnic background of the people obliged to swear, the oath-taking was used to create a personal bond of fidelity between king and »subject«. The envoy took the oath, and in later sources we find the king's order to have the names of all those who swore written down in lists that the counts and envoys were expected to keep.

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77 *Corpus inscriptionum latinarum* III, 1, no. 3576, ed. Mommsen. For a different translation (»I, a Frank, a Roman citizen, a soldier in arms«) see Pohl, Introduction: Early medieval Romanness, 16.

78 Esders, Implications militaires.

79 Depreux, Les Carolingiens et le serment; Nelson, Carolingian Oaths; Esders, *Regem iura faciunt.*

80 Esders, Implications militaires.

81 Form. Marc. I, 40: *Formulae Merovingici et Karolini aevi*, ed. Zeumer, 68.

One could speak here of an »administered fidelity.«[82] It is not by chance that this procedure reminds us of military *matricula*, as the most prominent obligation that followed the oath of fidelity was military service. However, the whole political system of the Frankish kingdom can be regarded as an extended military administration, while we can also observe a profound militarization of society in the same period.[83] The oath of fidelity thus made the people subject to an administration placed in the hands of dukes, counts, hundredmen, and the like, as it made them subject to mandates issued in the name of the royal ban (the authority to command and coerce).[84] These oaths thus made possible the creation of norms based on a notion of »military law« that centered upon royal authority. In the Carolingian period, we therefore repeatedly observe a coincidence of oath-taking and intensified royal legislation.

A final remark is on discourse. All those who swore an oath of fidelity to a ruler became that ruler's *fideles* – a term that was equally applied to the inner circle of royal followers and vassals and to the whole population of the Frankish kingdom or Empire. It transformed the political language that was used for centuries to come. The inhabitants of the Frankish kingdom and its successor states were not collectively termed citizens, subjects, or the like, but people who were »faithful«. Focusing on individual commitment, on honor and self-esteem, on self-motivation rather than obedience, and thus creating manifold emotional implications, the new language enhanced personal, religiously motivated devotion to a ruler and linked this to essential concepts of the Christian religion – also in the long term.[85] Carolingian political discourse centered on ideas such as *fidelitas*, *consensus fidelium*, and the like.[86] However, the most emblematic and rhetorically polished catch-word was in Charlemagne addressing his subjects as *fideles Dei et regis*, people who are »faithful to both God and the king.« In fact, this was a pun created by a rhetorical device, a so-called zeugma, where a single word, here *fideles*, because of its extended meaning, is stated only once while it relates to two parallel constructed objects – God and the king. This was possible, because the term *fideles* could since Antiquity apply equally to Christian »believers« who had been baptized, and to loyal soldiers who had sworn an oath of fidelity. In Carolingian discourse, the single use of the word *fideles* led to baptism and taking an oath as complementary legal acts, symbolizing that being a Christian and being a loyal supporter of the king were closely related concepts, the one being unthinkable without the other.[87] This points to a certain hubris not untypical of Carolingian religious-political discourse, with a huge and long-lasting effect in the medieval West to come.

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82   Esders, Bassetti, and Haubrichs, *Verwaltete Treue.*

83   Bennett *et al.* (eds.), *Early Medieval Militarization.*

84   Esders, Amt und Bann, 264-275.

85   Herman, Language of fidelity.

86   Hannig, *Consensus fidelium*.

87   Helbig, *Fideles Dei et regis*; Esders, *Fideles Dei et regis*.

In conclusion, one can say that the power of oaths to create interpersonal social bonds of trust rendered promissory oaths indispensable instruments to establish new polities in post-Roman kingdoms given their ethically mixed populations, and to regulate numerous political relations. They therefore contributed to a profound transformation of methods to establish legitimacy. The Christian character of the societies and the Christian prohibition against oaths called for a precise definition of these bonds in order to reduce the danger of perjury and to preserve the importance and value of the oaths. However, the omnipresence of swearing also transformed the whole political discourse, as oaths implied – at least in theory – a voluntary and contractual element. For this reason, in the long term, when in the course of the medieval period the post-Roman kingdoms developed into Western monarchies, promissory oaths were also able to act as a nucleus for the idea of a political contract.

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Abbreviations

CC SL   Corpus Christianorum Series Latina

MGH   Monumenta Germaniae Historica

   DD   Diplomata

   SS   Scriptores

PG   Patrologiae Cursus Completus, Series Graeca, ed. Jacques-Paul Migne (Paris, 1857-1866).

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Figures
Figure 1: Bad Säckingen, Eidtafel of 1682 (detail), Bad Säckingen, Hochrheinmuseum Schloss Schönau, Inv. Nr. B-82, photo: Stefan Esders, 2023.