Oaths of Office As Tradition or Transformation

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CPCU Society members are required to take an oath (a creed we call it), though no such oath is required for insurance agent licensure, or employment underwriters or other industry capacity.

The Dutch Banking Association created a stir in January 2009 when it required all officers and directors to take an oath that requires the bankers to “duly weigh all the interests involved in the enterprise, i.e. those of the clients, the shareholders, the employees and the society in which the enterprise is active,” and “to focus on the client’s interest.” Dutch law has extended this oath to all bank employees effective January 2013.

Does an oath matter? Is it public relations or public interest? CPCU Society experience might be informative to bankers, and the Dutch bankers experience might inform the CPCU Society. This article explains why oaths are made, and why they matter.

The CPCU Society Creed is:

As a member of the CPCU Society,
I will use my full knowledge and ability to perform my duties to my client or principal and place their interests above my own.
I will use due diligence to ascertain and understand the needs of my clients or principal and will only undertake assignments that I can perform in a proper and professional manner.
I will obey and uphold any law or regulation duly enacted by any government body whose authority has been established by law.
I will abide by the ethical practices set forth in the Bylaws of the CPCU Society and only engage in practices which reflect well on the Society and the business of insurance and risk management.
I will write, speak, and act as an official representative of the Society or as a chapter of the Society only if I have been duly authorized to do so.
I will accurately represent the nature and significance of the CPCU designation.

The Dutch Banking Association Oath is:

I swear/promise that I will exercise my function properly and carefully.
I swear/promise that I will duly weigh all the interests involved in the enterprise, i.e. those of the clients, the shareholders, the employees and the society in which the enterprise is active.
I swear/promise that in this weighing I will focus on the client’s interest and that I will inform the client to the best of my ability.

I swear/promise that I will act in accordance with the laws, regulations and codes of conduct which apply to me.

I swear/promise that I will observe secrecy about anything to which I have been entrusted.

I swear/promise that I will not abuse my knowledge.

I swear/promise that I will maintain an open and verifiable attitude and I know my responsibility towards society.

I swear/promise that I will perform to the best of my abilities to maintain and promote confidence in the financial services sector.

So help me God!/This I declare and promise!

The oath may be deity-based or secular affirmation, as suits a country that promotes its “Calvinist work ethic” in a mostly agnostic populace, according to the New York Times. Breach of the oath will result in fines, suspensions and blacklisting.

Oaths are required for the so-called learned professions, such as law, medicine, theology, plus accounting, engineering, and a few others. Make the oath and one becomes a member of that profession, if otherwise qualified; skip the oath and one is not admitted. Insurance and banking are not professions, because no particular skills, credentials or qualifications are required, apart from a simple license exam for insurance agents; an oath is unnecessary to enter into these careers; a clean record and some relevant skills are all it takes to get the job. (Considering the national record of bank failures in Georgia during the financial meltdown and numerous bank failures elsewhere, and the reported qualifications of many of those bank directors, it’s evident no particular skills were needed to be a bank director.)

Originally oaths were required for many types of what we think of as ordinary jobs: “millers, brewers, butchers, gatekeepers, apothecaries, and even brothel keepers. … Anyone performing a function that was regarded as having public significance was simply demanded to take an oath,” wrote Mark Rutgers, professor of political science at the University of Amsterdam. (Rutgers, 2013: 250). Oaths diminished as bonds of dedicated skill during the time law as an institution strengthened and provided remedies in a commercial world. Yet as laws themselves multiplied in all dimensions (commercial, contractual, tortious, regulatory and other governmental), and in recent times compliance costs soar, conduct has continued to fall short, particularly for financial institutions and business-to-consumer transactions. Codes of conduct proliferate from the consultants’ presses, are posted on the websites and referenced in the employee manuals, but have only limited impact in directing behavior, according to Vincent Block at Wageningen University in The Netherlands (Blok, 2013: 189). Such

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codes seem less about ethics than public relations, and double as internal regulatory code to terminate the employee for violating it.

Thus the renewed interests in oath. We’ve tried everything else, let’s try this old thing again. Chris Buijink of the Dutch banking association said, “ethics must come from within. ‘It’s only meaningful if there is real cultural renewal,’” according to the Times. John Dobson, a professor of finance at California Polytechnic State University, likewise says it’s about culture, not codes: “Acculturation comes from observing the actual behavior of other individuals. The school, firm, professional bodies in the industry — all may publish codes of ethics, but if the codes are not internalized in the values of individuals and manifested in individual behavior, the codes will have little impact on the acculturation of individuals in the industry.” (Dobson, 2003).

It is implicit that employees should not steal from the company or the client. It is also true employers should not steal wages from their employees (“wage theft”), though this seems as rampant as employee theft.) What is the point of an oath not to embezzle when it is already illegal and immoral to do so, asks Thaddeus Metz, a professor of philosophy, in “The Ethics of Swearing” (Metz, 2013: 228). Such theft on either side is illegal and immoral, acts to be condemned and rectified, Yet most people feel that the breaking of an oath heightens the transgression. Why?

Taking an oath seems to commit the oath-taker in a way that the code of conduct fails to do so, where the oath is done publicly and especially if significant others are witnesses. (Rutgers, 2013: 266-267; Blok, 2013: 196). It is an internalization of commitment, different from an external rule.

The Dutch banker’s oath is both a promissory oath and a political oath (assertatory) because it commits the banker to consider the public’s interest, “a political oath whereby one swears to the citizens or the nation that the public interest will be safeguarded, somehow.” (Rutgers, 2013: 250, 255). There may or may not be a specific client whose interest should be foremost, as is the case with physicians and lawyers; there is a public interest and public values (Rutgers, 2013: 256), and because Dutch law requires this oath of all bankers at all levels, the oath is made to “society at large or the citizens.” (Rutgers, 2013: 257).

Metz contends the oath is a breach of the relationship between the individual and the particular client or the community. Breaching an oath breaches the relationship, so the “acts are wrong insofar as they fail to honour community, where community is understood not descriptively as some existing society or other, but rather normatively as an ideal for people to appreciate and to seek to realise. Community, as a desirable form of interaction,” embraces both identity with the group (I am part of it) and solidarity with the group (we do things to benefit each other). (Metz, 2013: 240-21). A breach of the oath is disrespect to the community, exhibiting a failure to cooperate, an essential lie made to the public’s face (thus the importance of public oaths), and a forsaking of the expressed solidarity to the group. (Metz, 2013: 243-245).

Metz describes his ethical principle as communitarian, yet in also describing it as relational we see a link to behavioral economics and legal discourse, which classifies contracts as “relational” and “transactional.” In a transactional contract, the contract is

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made, the good or service is delivered, and the transaction is over, such as buying a car or appliance. In a relational contract, the contract initiates a long-term connection for goods or services, such as employment and many professional services (even where the work might be discrete); because much can happen over that time, the contract cannot fully describe every detail or contingency due to the evolving nature of the transaction. Employment contracts cannot fully describe the exact duties to be done, especially for professionals and senior management, many of whom have no contract at all, and even medical provider contracts cannot address all the contingencies that disease may inflict. “Organizational relationships are not merely transactional and fleeting. Over time, they become imbued with affect, content, norms, values, culture, and meaning,” wrote business professors Jay Lorsch and Rakesh Khurana (2010: 35).

Insurance contracts begin a promise that might be called upon years later to be honored. Banking agreements typically embrace a long-term relationship either to hold deposits or provide repayment of a loan or extended services of various types. Even serving on the board of director of a company does not involve a contract, though law requires directors to act as fiduciaries. (Whether that duty runs to the shareholders only, to the corporation only, or embraces society and community to some extent is the major question of governance.) Thus relational contracts, which provide a skeleton of the relationship, rely implicitly on the “prosocial” behaviors and conscience of the parties. (Stout, 2013, 548-542).

An oath can work because unlike a promise or rule, the oath-taker commits to a duty to others to act in certain ways, one of which is to act responsibly beyond the immediate transaction or situation. The oath is a commitment to act reasonably, meaning regard for context of the situation and for others, perhaps even with wisdom, rather than to act merely rationally (as in immediate self-interest) with calculation.

The idea of oaths is promoted for other so-called professions, such as economists, MBA holders, and bioethicists. In insurance, only the CPCU Society requires insurance professionals holding the designation to make an oath of putting the client’s interest foremost – an oath made yearly in public display to one’s peers. Does the oath matter? Consider the many press releases by states’ departments of insurance on unlawful behavior by insurance personnel that result in fines and jail time for embezzlement, defalcation of premiums, fraudulent issuance of insurance policies, etc: none of the miscreants have involved a CPCU holder.

People in insurance know something important about the self in community: despite $500,000,000 in yearly U.S. premiums, the insurance business is a community of individuals where trust and conscience matter. People know people, and that knowledge matters. Multi-million dollar transactions are based on relationships (even with complex contracts), relationships that comprise trust and conscience. Reinsurance contracts persist for decades. That is the business-to-business context. In the business-to-consumer context, that same commitment matters too, thus the breach of the insurance contract is more than a contractual affront, it is a breach of trust, called bad faith. As Lorsch and Khurana said, “Every corporation is embedded in a social matrix.”

A banker’s oath might be hard to get right because bankers provide diverse and competing services under different contracts (Boatright, 2013: 154), such as acting as fiduciary (don’t steal the deposits, pay the checks when presented), sometimes a deal
maker, sometimes the counter party (lending money). Yet the classical idea of self-interest has proven to be insufficient self-restraint, and laws and regulations can proscribe conduct not prescribe conscience. Maybe oaths do affirm a commitment to others and integrity, and can put “enlightened” back in “enlightened self-interest.”

REFERENCES


