Oath

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The oath is an act by which certain words are claimed to be truthful. Explicitly or implicitly, oaths contain the threat of punishment should they turn out to be false. The act of claiming a false statement as a true one is referred to as perjury. The source of the punishment is often a god, which is why anthropologists include these entities in their definitions. The relationship between divine beings and oaths is discussed in this entry. It is suggested that oaths do not depend on the pre-existence of a divine being to function.

Understanding the oath necessitates dissecting the elements that characterise it: (i) the constitutive words; (ii) the performances that accompany these words; (iv) the temporal orientation of the words; (v) the punishment for perjury and the identity of the punishers, as well as the extent of the punishment; (vi) the ambivalence of the words.

The entry begins by describing the conventional anthropological understanding of the oath and then goes on to offer criticisms of this based on ethnographic data and theoretical considerations. These criticisms are introduced through a discussion of each of the five elements of the oath, which form the structure of the entry. It is worth noting that the last of these elements is the most sophisticated characteristic of the oath, because while it supposes truth, it also creates the potential for perjury. This is why, where traditions of oath swearing exist, there also exist critics of the practice. In this entry, the equivocality of the oath is connected to the assertion by anthropologists that the concept of the sacred is ambiguous.

Introduction

While not universal (e.g. Pospisil 1964: 239), the oath is certainly widespread and has been of interest to anthropologists for a considerable time. One of the founders of the modern discipline, E. B. Tylor, wrote the entry for 'oath' in the 1911 edition of the *Encyclopaedia Britannica*. As is often the case, it is helpful to begin with a definition. In his *Dictionary* of 1755, Dr Johnson defines the oath as 'An affirmation, negation, or promise, corroborated by the attestation of the Divine Being'. If we substitute 'the Divine Being' of Johnson's gloss for the more inclusive 'a divine being' we arrive at the way many anthropologists, and other scholars, consider the oath (Tylor 1911; Levy-Bruhl 1959; Mauss 1968: 413; Verdier 1989a; Pospisil 1971: 239; Ciekawy 2021: 526).[1]

Johnnon's definition does not make clear that the divine being guarantees the truth of the statement by punishing perjury. As such, the divine being, that implicitly or explicitly participates in the oath, has two roles: as witnesses and

[1] The sixth edition of *Notes & Queries on Anthropology* (1951: 186) says that the 'oath is an invocation of a divine being or supernatural agency' and is used a method to gain guidance and is compared to other practices such as ordeals and divination.

guarantor of truth and as punisher of perjury.[2] Perjury is the act of swearing a false oath. That all oaths contain within themselves the threat of punishment, usually from a divine source, has led some scholars to consider oaths as conditional curses (Benveniste 2016; Silving 1959a; Sommerstein 2014). Other scholars further specify the oath as a conditional 'self-curse' because the juror[3], in cases of perjury, is the recipient of divine punishment (Westermarck 1924, ii: 118; Silving 1959b: 1572). However, this is not always the case—in some instances, the juror's relations may be punished (Peristiany 1939: 135). The nature of punishments following perjury and the agency that enacts it will be discussed in more detail below.

To understand the oath it is best to dissect the elements that characterise it: (i) the words that constitute it; (ii) the performances that accompany these words; (iv) the temporal orientation of the words; (v) the punishment for perjury and the identity of the punishers, as well as the extent of the punishment; (v) the equivocality of the oath.

(I) Words

Let us begin with the obvious: the oath has to do with words. What distinguishes the words of an oath from other forms of verbal communication? The answer to this question is threefold. First, there is the content of the words. The words of oaths claim truth. Indeed, where swearing is practised, the words stated under oath are usually the truest and most credible that can be uttered. The oath-statement can be distinguished into three parts:

(i) the statement which claims to be true
(ii) the name of a divine being or force that is called to witness the statement and guarantee its truth
(iii) the specification of the punishment for perjury

Only the first part (i) is always and necessarily explicit. (ii) Naming a divine being and (iii) specifying the conditional curse can be implicit. This begs the question: how can one identify an oath when the second and third parts are implicit? The answer to this lies with the fact that the oath is not merely a statement but a performance involving actions, objects and specific locations. These will be considered in the next section.

Second, there is the context of the words. Oaths are sworn in particular circumstances: they are sworn to resolve disputes or to ensure that resolutions are upheld; they are sworn at the conclusion of wars, to guarantee peace or subjection (Billey 1997: 656); they are sworn to ensure allegiance or loyalty, as in

[2] Perjury is more than merely lying: as Rapport (1999: 415) argues, it is a "meta-lie" because one has stated a falsehood and lied about telling the truth.

[3] In this entry "juror" is used to refer to a person swearing an oath. The term is more regularly used to refer to a person chosen to sit on a jury in a court. As will be discussed, the institution of the jury developed from the oath swearing practices. It is also worthwhile stating that while terms like "juror" and "perjury" are indicative of concepts like law and obligation, oath swearing pertains to other concepts, notably religion and ritual.

the feudal oath of homage (Débax 2023: 173); they are sworn on joining a society or as part of initiatory rites (Verdier 1989b: 266); and they are sworn as part of marriage ceremonies (Pratten 2007: 47). From this partial list it is evident that oaths are a feature of rituals. Indeed, oaths may be considered a kind of ritual in and of themselves. Because of this, the definitional problems of rituals discussed by anthropologists (e.g. Lewis 1988) apply to the oath.

Third, there is the manner or style of the words. Oaths are solemn performances which typically follow formulas and employ unusual or archaic vocabulary that set them apart from ordinary communication. The Latin expression for oath, *ius iurandum*, may be rendered as 'a formula to be formulated' (Benveniste 2016: 395). Not all oaths, however, follow predetermined formulas. It is entirely possible to improvise the formula of an oath. The essential feature of the words of oaths is rather their solemnity. The contrast between the gravity of swearing and ordinary communication was recorded by Renato Rosaldo (1985: 98) who witnessed two rival Ilongot groups swearing an oath of peace during fieldwork. In swearing, the Ilongot jurors uttered 'ritual phrases, some standard and some coined for the occasion' and sacrificed a pig. With the conclusion of the oath, Rosaldo noted how formal exchanges gave way to casual chatter between the two parties.

Solemnity alone does not characterise the oath. Oaths also involve the invocation of divine being and a punishment that will afflict perjurers. The solemn affirmation of a Quaker, for instance, is not an oath because no divine being is invoked and because there is no conditional curse (cf. Hill 1964).[4] For instance, when swearing, the Ilongot state that those who perjure will 'dissolve like salt in water' or 'vanish from sight like a tiny bead dropping between the slats in the floor' (Rosaldo 1985: 98, 101). In some oaths, the divine beings that enact the punishments are named. The Romans, for instance, swore oaths by Jupiter who was believed to strike perjurers with lightning, just as the contemporary Igbo people of south-eastern Nigeria swear oaths on the name of Amadioha, a thunder-god who likewise smites perjurers with lightning. In other cases, the divine being or beings that punish perjurers goes unsaid. The Kond people of India swear oaths upon the earth of anthills and state that those who foreswear will be reduced to a fine powder like the earth of the anthills (Westermarck 1924, ii: 119); the specific divine beings or forces that enact this conditional curse are left implicit.

When a divine being is stated it is often the case that the conditional curse is not. Take, for instance, the oath that new members of the House of Commons swear during their 'swearing in' ceremony:

> I swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King Charles, his heirs and successors, according to law. So help me God.

Here the divine being that witnesses the statement and guarantees its truth is stated twice ('I swear by Almighty God' and 'So help me God'), but the punishment

[4] Quakers do not swear oaths because they 'believe that their word should be accepted at any time among all persons and thus [uphold] the right to stand simply on their own word rather than swearing on the Bible or before God' (Society of Friends 2013: § 20.40).

that will befall those who are not faithful goes unsaid; the implicit punishment is damnation. The punishment for perjury may therefore be imminent—injury, disease or death—or it may await death; in the latter case the conditional curse of the oath ought to be labelled eschatological.

A brief coda to this section is necessary to dispel the persistent notion that oaths are exclusively oral acts. Many scholars describe oaths as something spoken or uttered (Benveniste 2016; Verdier 1989a, 1989b; Agamben 2017). This view ignores the existence of written oaths: in medieval Japan, for instance, written oaths, called *kishōmon*, were regularly used to resolve disputes. One form of Japanese written oath involved writing an oath and then immediately plunging one's hand into a pot of boiling water; the hands of perjurers were expected to improperly heal (Gilbert 2023; Shinji 2023). To take account for the fact oaths may be written, they need to be treated as *verbal* acts (in that they relate to words in general) not simply *oral* acts. Here we might note that whether are oaths are spoken or written, they are all 'speech acts' in the technical sense discussed by Austin (1962) and Searle (1969). The notion of 'speech acts' refers to the use of words in a particular social contexts and they can be divided into three sub-acts: the locutionary act (the actual words being uttered), illocutionary act (the intended meaning or purpose of the words) and the perlocutionary act (the effect the words have on listeners/readers). In the case of oaths, the illocutionary aspect is especially significant. As will be discussed, it is the performance of oaths that give meaning to certain words and concepts.

(II) Artefacts and gestures

Words alone do not constitute oaths—they are acts involving gestures, artefacts and specific locations. For instance, the Nuer of Sudan may swear oaths by licking spears or metal bracelets (Evans-Pritchard 1956: 297), while the Yoruba of Nigeria swear oaths on knives and other metal artefacts (Forde 1962: 30; Oyeniyi 2017: 72; cf. Ibrahim 2023).[5] In contemporary France oaths are sworn by raising one's bare right hand while speaking (Pageard 1989: 182; Verdier 1989b: 264). The feudal oath of Medieval Europe involved a vassal placing their hands between those of their lord (Le Goff 1980). Sometimes the expression for 'oath' captures the gesture involved in the act of swearing. In Ogba, a Nigerian language, the expression for oath, *dù*, is derived from the verb 'to bow'. The Old Slavonic expressions for swearing, *prisegati* and *prisegnoti*, derive from the verb 'to touch', as does the Irish *tong* (Benveniste 2016: 399). These last two examples refer to the fact that oaths involve objects which are typically held, touched or embraced.

The objects used in oath swearing may relate to the divine being that guarantees the truth of the oath statement, as is the case with oaths sworn on the Bible or the bones of saints. When the Yoruba swear on metal things they represent Ogun, their god of metal. For the Jukun of Nigeria, the most potent oaths are sworn upon the couch, mat or slippers of the king, who is considered a divine being (Meek

[5] The Yoruba associate metal with their god, Ogun; cf. Chassel (1989), who describes how swearing oaths on weapons and other dangerous artefacts is widespread.

1931: 178; cf. Gluckman 1967: 100-1). Oath-objects may homoeopathically or sympathetically symbolise the divine being which guarantees truth (Frazer2009). In other cases, oath-objects symbolise the specific punishment that befalls perjurers: one Chinese oath used in Western courtrooms involves dashing a ceramic plate on the floor, symbolising the soul's fate if one foreswears (McLean 2011: 22; Lampman 1904); the Okiek of Kenya swear on trees struck by lightning (Kratz 1989: 644; Chuvash people of Siberia swear on bread and salt, substances essential to life, and say that perjury results in their lack (Westermarck 1924, ii: 119) and for the Bedouin oaths are likewise sworn on common foodstuffs—bread, salt and camel meat—which one cannot not live without (Verdier 1986b: 264-65).

Foodstuffs are a common type of oath-object (cf. Billey 1997: 665-6, 674). The conditional curses of alimentary oaths sometimes specify that food or drink will transform from nourishment to poison if one perjures (Goldschmidt 1967: 108; cf. Pietz 1988: 114).[6] This was the case with the Anglo-Saxon practice known as *corsnæd*, first referenced in the laws of Ethelred II: a piece of bread and cheese were swallowed as part of the swearing rite and perjurers were expected to choke or be poisoned (Lea 2016: 124-128). *Abosomnom*, the Ashanti expression for oath swearing, literally means 'drinking the gods' and involves a small bottle, *abosom toa* ('the god's phial'), from which a mixture consisting of rum and water is drunk, the latter having touched or been passed over a sacred article. The juror, while drinking, says 'may the gods I am drinking slay me [if I speak falsely]' (Rattray 1923: 109-10). In these two examples the substances consumed are not inherently harmful.

Some oaths, however, involve ingesting substances that are poisonous. The word for oath in some languages may also mean poison in certain contexts as is the case with *mbiam*, the expression used by the Annang people of south-eastern Nigeria for cursing and oath swearing, and for poisonous and medicinal substances (Pratten 2007: 253, 290). The Persian expression for oath swearing, *sōgand xurdan*, literally means 'to eat sulphur': swearing was once an ordeal which necessitated consuming a sulphurous potion—the throats of the innocent were unharmed (Benveniste 2016: 399). Oath swearing is an essential part of so-called sasswood ordeals, a widespread West African practice that involves drinking a concoction made with poisonous bark of the sasswood (*Erythrophleum suaveolens*) or 'ordeal tree' (Meek 1931: 349; Tonkin 2000).

Some objects exist purely for swearing. Several northern Nigerian peoples, including the Marghi, Kamwe, Babur, Nzanyi, Gude and Kilba, possess artefacts known as *shafa* upon which oaths are sworn. *Shafa* are bundles of special ingredients, such as arrows that have missed their targets, the left shoes of lepers, pieces of grave-digging sticks, dead lice, the horns of hartebeests and the bristles of warthogs, all of which are wrapped in sacred leaves (*Combretum verticillatum*). Oaths are sworn by placing a piece of steel, usually a knife or spear, upon the *shafa* and declaring before one's accuser 'if I have wronged you, may *shafa* seize me' (Kirk-Greene 1955: 45).

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[6] The word for oath in some languages may also mean poison in certain contexts as is the case with *mbiam* in Annang (Pratten 2007: 253).

The expression for oath in some languages derives from the entities sworn upon. For instance, one Igbo expression for oath, *íyì*, is the same as the word for stream or spring because swearing involves using a draught of blessed water (Awde and Wambu 1999: 79; cf. Melizan 1937: 87). The importance of objects in swearing practices sometimes reifies the oath itself. This is the case with the ancient Greek concept of *hórkos* which was perceived as a substance rather than an act (Benveniste 2016: 443). Similarly, the ancient Assyrians believed that the oath was a thing that could be placed into other entities like trees and fire (Silving 1959a: 1330) and in contemporary Nigeria the Annang people put oaths, *mbiam*, into vessels and plots of land (Pratten 2007: 253, 290). Berbers sometimes strip naked before swearing to stop oaths adhering to their clothes (Westermarck 1924: i,59.

In cases where the oath is linguistically connected to an action rather than a substance, the term may be suggestive of a location. For example, the German, *Eid*, which is cognate with the English 'oath', ultimately derives from a verb meaning 'to go'; the import being that to swear an oath is to go to a sacred place. Shrines or specially demarcated areas are common features of oath swearing. Tylor (1911) gives the example of the Nagas of Assam who swear oaths while standing in a circle of rope. Ancient Germanic oaths could be sworn on the threshold of a house or in an 'oath-circle' drawn specially around the swearer (Klinger 1987: 304). Note also that in many languages the verb and noun form of the oath may be completely different, as is the case with English 'to swear' and 'oath' (Benveniste 2016: 399, 440).[7]

As performances using gestures, objects and certain locations, oaths necessarily involve performers. Oaths may be sworn by one party, as is often the case when an accused person is required to swear to their innocence—such cases may be labelled unilateral. Otherwise, both parties swear, as with a promissory oath sworn by the different parties of a peace treaty—such instances may be labelled bilateral. Oaths can also be individual or collective insofar as they are sworn by individuals or collectives, such as kinship groups or corporations (Bec 2023: 5). It is worth noting that not all persons have the capacity to swear oaths. In most civil law systems and some common law systems children are forbidden from swearing oaths (Silving 1959a: 1373-4).[8]

It is only the expression for oath that occasionally derives it name from a gesture or thing. A generic Ikwerre expression for god, *okaramini*, is suggestive of the act that accompanies swearing, namely the pouring of a libation, and it seems plausible that this word emerged from practice of oath swearing. In Ikwerre, to swear, *ọ́wụ̀*, is literally 'to pour', referring to the fact that libations to deities are poured while taking oaths. That gods may take their names from acts aligns with Usener's thesis that the proper names of gods derive from verbs (Usener 1896; cf. Agamben 2017: 334-335). We may note that some etymologists trace the English

[7] To swear derives from the Anglo-Saxon *swerian* which originally meant to recite or chant magic spells and is cognate with an Old Frisian verb meaning 'to sing' (Klinger 1987: 302).
[8] As well as children (cf. Bekombo 1989), women are often forbidden from swearing oaths (Verdier 1989b: 266).

word ‘god’ to the Proto-Germanic verb meaning ‘to pour’ in the sense of pouring a libation (Watkins 1974).

(III) Temporality

The oath statement, those words which claim to be true, can be oriented to the future or the past. If oriented to the future, the swearer promises to do, or not to do, something in the future. Such an oath is labelled promissory. If the words of an oath are oriented to the past, the swearer claims that something occurred, in which case the oath is labelled assertive; or the swearer claims that something did not occur, in which case the oath is labelled exculpatory or probative.

Both orientations, future and past, are central components of systems of administering justice. For instance, those accused of a crime may be required to swear an exculpatory oath. In some instances, an exculpatory oath alone is sufficient to administer justice. This was the case in many medieval European legal codes where the accused was required to undergo an ordeal known as the ‘trial by oath’ or ‘wager of law’: innocence depended on reciting the oath formula correctly without stumbling, mumbling or hesitating. Oath formulas had become so complex by the twelfth century that many chose instead to take their chances with an ordeal by hot iron (Pollock and Maitland 1898: 601). The wager of law was a valid means of trial in England as recently as 1833.[9] Medieval Germanic law allowed oaths to be sworn by kin in addition to, or in lieu of, the person accused of a particular crime. Over time these groups of compurgators or ‘oath-helpers’ transformed into witnesses who were put under oath to guarantee the truth of their statements (Silving 1959a: 1340-1342; cf. Bartlett 1986: 30-31).[10]

As well as witnesses, the origin of the common law jury is connected to the oath. The Normans introduced to England the practice of the inquisition which involved summoning several persons who were examined under oath to determine the truth of some matter. This eventually evolved into the contemporary jury (Silving 1959a: 1364-5). It is worth noting that the word jury derives from the Latin *iurare,* ‘to swear’. *Iuarare* is also the basis of the word *ius*, the Latin term for law which is the root of the English term ‘justice’. The oath is at the heart of both the Roman judicial system and contemporary modern concept of justice (Verdier 1989b: 267-8; Benveniste 2016: 395).

The different temporal orientations of oaths can be combined. For example, a witness in a common law court swears a promissory oath, affirming that statements about past facts made before the court in the immediate future are true. Here an oath oriented to the future is used to ascertain facts about the past. The reason for this is practical as it avoids a witness having to swear numerous assertive oaths concerning past events during cross-examination.

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[9] Being abolished by Act of Parliament in that year (Silving 1959a: 1363).

[10] Igbo swearing practices also make use of ‘oath helpers’ (Uchendu 1965: 43).

In thinking about the temporality of oaths, it is also worth considering how swearing relates to divination, which is also something concerned with access truth in relation to the future and the past (cf. Zeitlyn 2020). Oaths are often a feature of divinatory practices. Igbo diviners, known as *dibia*, swear promissory oaths that their prognostications are true and that they have not received bribes from interested parties. Divination practices differ from oaths in that, like the famous Azande oracles (Evans-Pritchard 1937) lack a conditional curse and the illocutionary force of oaths (Zeitlyn 2020; cf. Austin 1962).

Like divination, the vow can be sometimes hard to distinguish from the oath. A vow is a solemn promise which can occasionally involve the invocation of a divine being. And like the oath, it can be directed to the future or the past (as in 'to avow'). Michelle Rosaldo (1980: 140) describes how young Ilongot men swear oaths, which they call *binatan* to heighten a complex emotional state associated with head-hunting. Why Rosaldo renders *binatan* as an 'oath' rather than a 'vow' is unclear. Klinger (1987: 301) proposes that the oath differs from the vow in that the former is backed up by institutional authority. This is an unsatisfactory distinction given that we can readily note instances where oaths challenge institutional authority, as in the case of the Mau Mau oaths in Kenya (Durand 1970; Blunt 2013; Koster 2016) or exist the absence of institutional authority (cf. Débax 2023: 167). More significantly, other scholars have suggested that the oath is potentially self-validating (Agamben 2017) and precedes and gives rise to institutional authority rather than depending on it.

(IV) Punishment

Although to catalogue the variety of punishments for perjury is beyond the scope of this entry, several general distinctions can be made. Punishments can be verbally explicit (i.e. when the punishment for perjury is stated) or symbolically explicit (i.e. when the performance of the oath represents the punishment). As an example of the latter: the Tungus people of Siberia swear oaths by drinking the blood of a dog which has been killed by having its throat cut, being impaled or burnt and the perjurer is believed to perish in the same manner (Tylor 1911: 940). Otherwise, the nature of the punishment can be implicit; such is the case with oaths sworn in most modern Western states (Lévy-Bruhl 1959). The divine being that effects the punishment can also be implicit (Verdier 1989b: 265), although where one finds this to be the case the nature of the punishment is usually made explicit, just as the divine being is usually named in cases where the punishment is implicit.

The timeframe in which punishment is carried out is variable and often unpredictable. Where oaths form a part of ordeals, the punishment can be immediate. For instance, *Guti* is a swimming ordeal practiced by the Marghi of Nigeria in which the perjurer is drowned (Kirk-Greene 1955: 47) or in the many poison ordeals practised throughout Africa the perjurer may die as result of drinking the oath-draught (Tonkin 2000: 367-370). The pain, illness or death suffered as part of an ordeal that accompanies oath swearing may be considered punishment, but in other cases the ordeal may merely be an indicator of the truth

or falsity of the oath statement and the punishment for perjury is separate from the pain or death suffered in performing the ordeal.[11] For example, swearing oaths was a part of that renowned medieval judicial ordeal, trial by combat. Before battle, the parties to the ordeal were required to swear probatory oaths enumerating their claims and promissory oaths that witchcraft would not be used to influence the outcome. The death or defeat of a combatant was not the punishment for perjury but a sign of their perjury: their actual punishment would take place after death when they were judged by God (Bartlett 1986: ch. 6).

In instances where the oath is not sworn as part of an ordeal or where the punishment for perjury is not eschatological, the perjurer may be struck with illness or death a long time after committing perjury. Particularly misfortunate modes of death are frequently believed to indicate perjury: in ancient Greece and Rome those killed by lighting were deemed to be oath-breakers (Silving 1959a: 1331). Sometimes the perjurer is punished indirectly: their kin may fall ill or die in their stead (Kelley 2022: 333). The punishment can even afflict the descendants of a perjurer years after their death, as happens among the Kipsigis of Kenya (Peristiany 1939: 135).

In contrast to instances where the punishment is indeterminate, some oaths stipulate a period in which the punishment can occur. This is the case with oath swearing practices among many of the peoples of south-eastern Nigeria. When they swear exculpatory oaths at the shrines of local deities, a period is specified in which the oath is said to be active. Should the taker become ill or perish within the specified period (usually a year) it is taken as evidence of perjury (Pratten 2007: 253; Oba 2008: 141). During this period, those who swore are very circumspect—they avoid cutting their hair, parring their nails or eating meals prepared by strangers lest they should be made ill by witchcraft leading to an accusation of perjury. When the oath-period elapses without incident, public celebrations are held to proclaim the innocent. Given the desire for swift justice, some deities, which are known to have oath-periods as short as six-months, are particularly favoured.

One curious feature is that perjury is not usually punished by human agency.[12] This, as critics of the oath point out, means that those guilty of perjury may go

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[11] Given that swearing is an essential feature of many judicial ordeals scholars frequently discuss them together (Lea 2016: 156-159; May 2019: 43-58; Mercier and Boyer 2021) and some argue that the oath is kind of 'anticipated ordeal' (Bartlett 1986: 30; Benveniste 2016: 440; Silving 1959b: 1572) or 'abbreviated ordeal' (Steiner 1954: 365). Those that insist on distinguishing the ordeal from the oath differs from other means of extracting truthful testimony, such as torture or ordeals, observe that swearing usually involves no pain. This was not the view taken by medieval scholars for whom the oath was a kind of *tortura spiritualis* (Silving 1959a: 1342). We must also be careful to distinguish testimony from the oath in certain contexts: in many European legal codes, perjury and false testimony are different phenomena (cf. Silving 1959a: 1381-2).

[12] Because punishment is left to divine agency it is often said to be 'automatic' or 'autonomous' (cf. Pratten 2007: 293). In many legal systems, perjury is not a crime, per se. In England it only became illegal in following the introduction of the Perjury Statute of 1563. Prior to this date, 'our ancestors perjured themselves with impunity' (Pollock and Maitland 1898: 543)

unpunished (at least if punishment is expected to be delivered during the lifetime of the perjurer). Commentators, since the ancient Greeks, have noted that this fact makes oaths an ineffectual tool for establishing the truth. Wherever oath swearing practices exist, critics observe this failure and doubt the ability, or even existence, of the divine punishers (cf. Benveniste 2016: 445-6).

The view taken by most scholars is that the efficacy of the oath depends on a belief in the divine being or beings which act as punishers; and where oaths are found in societies that have secularised the institution of the oath, if it survives, it exists as a vestigial religious rite (Verdier 1989b; Silving 1959a: 1329). Other scholars, most notably Agamben (2017: 321), dispute this view and highlight that wherever the oath is found there are critics and proponents, believers and non-believers.

The received view, which supposes the oath is predicated on the existence of a divine being is, for Agamben (2017), the wrong way round. He suggests the notion of, and belief in, a divine being emerges from the practice of oath swearing. In other words, concepts like 'god' or 'spirit' develop out of the oath.[13] In several Igboid languages, which are spoken in south-eastern Nigeria, the generic term for a deity, *agbara*, is so closely linked to the oath that some dictionaries provide 'oath' as an additional gloss (Awde and Wambu 1999: 31). It is interesting to consider whether the former meaning may have preceded the latter.

Here we might note Rappaport's thesis (1999: 31) that ritual is the 'social act basic to humanity' and ritual underpins language. Rappaport argues that ritual palliates the intrinsic malady of language—that the connection between words and their referents is conventional—and thereby mitigates the possibilities for lying that this malady creates. Oath swearing can be considered such a palliative ritual: it renews the connection between word and thing (Rapport 1999: 321). However, Rapport (1999: 270, 279, 372) does not go as far as Agamben—he suggests oaths swearing in particular requires the pre-existence of a concept of a 'god' or an 'Ultimate Sacred Postulate', as he puts it, to function.

In considering whether oaths depend on the existence of gods to function, it is worth mentioning *ntam* which are the most serious form of oath among the Akan peoples of Ghana. They are only sworn in grave circumstances and, curiously, the force that punishes perjury and guarantees truth is not a divine being, per se, but an historical event. These oaths are sworn by naming a weekday which serves to euphemistically refer to a calamity that befell a particular village or family on that day. To perjure is to risk the calamity recurring. Examples of specific *ntam* include that of the Akuapem state called *ntam Wukuada ne Sokodei* which refers to the day of the week (*Wukuada*) when the Akuapem people were defeated at a village named Sokodei. Some euphemisms refer not to a single calamity but several: *Kokofu Fiada ne Dwoada* is the *ntam* of the Asante state of Kokofu. It alludes to the days (*Fiada* and *Dwoada*) when Kokofu would traditionally pay tribute to their overlords, to the day (*Dwoada*) when a member of the royal family was killed in a war, to the death of two of their kings (Gyaami who died on *Fiada* and Agyeman

[13] Nietzsche mentions a similar idea in his ruminations on the 'origins of religious worship' (1908: 142-47).

Ampuromfi who fell ill on *Fiada* and died on *Dwoada*; Agyekum 2004: 335-6; cf. Rattray 1916: 129-131).

In the case of *ntam*, one may ask what agency is responsible for causing the calamity to recur: is this not a divine being?[14] Several anthropologists argue that these oaths do not require pre-existing and implicit divine beings to function (cf. Verdier 1989b: 265). In this regard, we might note the existence of the atheist Soviet oaths which were sworn by physicians and members of the Red Army (Tichtchenko 1994; Von Geldern and Stites 1995: 14; cf. Mercier and Boyer 2021: 260).[15]

(V) Ambivalence

As we have mentioned, the oath is in part characterised by solemnity. Its language and its accompanying gestures serve to set the oath apart from ordinary life. In short, the oath is sacred—it is something separate from ordinary communication. Since Robertson Smith (1894: 140-142) and Durkheim ([1912] 1994: 412-417), scholars have noted the ambivalence of the sacred (cf. Heinämäki 2015). The ambivalence of the sacred is readily apparent in the oath. In some languages the word for sacred or holy is identical to the word for accursed or defiled (Valeri 1985: 93-94; Benveniste 2016: 453ff.); the expression for oath is the same as that for curse in many languages, too (Martin 2017: 480; Pratten 2007: 253; Silving 1959a: 1333; Goldschmidt 1967: 108; Klinger 1987: 301).

This ambivalence extends beyond the expressions used to refer to the oath: it is integral to the very workings of the institution. One of the earliest anthropologists to consider the ambivalence of the oath was Crawley (1934), who examined blessing (benediction) and cursing (malediction) and the way the oath oscillates between these two 'perfect opposites'. Swearing is, in its essence, equivocal (cf. Austin 1962: 105; Rappaport 1999: 415-16): it can be a benediction, the stating of something true, or it can be a malediction, the stating of something false and the causing of harm. The oath purports to be true—indeed, the oath is perhaps the truest type of statement. And yet the oath never eliminates the possibility for falsehood—the words of the juror may turn out to be wrong; veracity can slip into mendacity.

Language depends on a correspondence between words and reality, which is to say there must be agreement between signs and their referents. The signified does not, however, always correspond exactly, or at all, with the signified. The paradox of the oath is that it tries to establish a strong connection between signifier and signified and yet it simultaneously creates the possibility for disconnection. For Agamben (2017: 333), this equivocality is at the heart the oath and he sees malediction and benediction as the symmetrical epiphenomena of language (cf. Klinger 1987: 301).

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[14] Agyekum (2004) and Rattray (1916) who describe *ntam* are silent on this question.

[15] For Lévy-Bruhl (1959), the oath that does not invoke a divine being is no oath at all, but merely a promise.

The ambivalence of the oath is apparent in another kind of swearing which has not yet been discussed. Namely, swearing in the common sense: uttering vulgar oaths or cursing. It is no coincidence that this kind of speech, which seems antithetical to solemn swearing, goes by the same name. Whereas a solemn oath aims at maximal correspondence between words and reality, profanity, where the name of divine being, or a corrupted form of it, expresses the breakdown of the connection between words and reality (Agamben 2017: 331).

In Agamben's thesis, the concept of a divine being does not pre-exist the oath but emerges from the oath and expresses the connection between words and the world, which is to say, truth. At the same time that connection between words and the world can be broken and the name of a divine being become a curse, a way to express something terrifying, namely the collapse of the relationship between signifier and signified and the disintegration of names themselves (Agamben 2017: 332-333), without which, as Wittgenstein (1969) suggests, there can be no thinking, no speaking and no certainty. The ramifications of Agamben's thesis and it correspondence with the corpus of ethnological data on oath practices across the world and throughout history is yet to be fully explored. It has, however, already attracted some critics. Blunt (2013), for instance, notes that Agamben's thesis is rooted in Western, particularly Judeo-Christian, concepts and that it does not necessarily apply to non-Western societies. Taking the case of the Kikuyu of Kenya, Blunt (2013: 171) argues that pre-colonial Kikuyu oath swearing did relate to Judeo-Christian ideas of 'mastery' or sovereignty and was instead founded on 'an elaborate logic of gambling'.[16]

Conclusion

History testifies to the significance of solemn oaths. We need only name a few examples from modern history: the Tennis Court Oath of 1789, the Oath of Allegiance and its part in the 1922 Irish civil war and Mau Mau oaths in the eponymous rebellion in Kenya between 1952-1960. Many of us may never have recourse to swear a solemn oath, yet very few of us indeed will go through life without ever uttering a few blasphemous or profane oaths, even if we do so in a euphemistic form. Some examples in English include 'gosh', 'crikey', 'geez', 'blimey'. Even interjections that are not euphemistic, like 'holy shit' or 'Jesus Christ', point to the relationship between the sacred and the profane and are used situations in which the relationship between signifier and signified may have collapsed (cf. Lévi-Strauss 1968: xliv-xlv). What is important is that vulgar oaths as connected rather than separate from solemn oaths (Echols 1980; Mohr 2013).

Anthropologists have observed how most, if not all, peoples across the world have a notion of divine beings, or 'metapersons' as Sahlins (2022) calls them. It is doubtful that the practice of swearing gave rise to concepts of such in all cases, yet it is, nevertheless, a curious thought to pursue that such might be the case in

[16] Blunt draws of Hansen and Stepputat's (2006) anthropological critique of Agamben's interpretation of sovereignty.

some instances.[17] Whether we accept or reject the notion that the concept metapersons emerged from swearing practices, the oath is certain to remain significant given that it is a common feature of those perennial anthropological topics: ritual, conflict, marriage, sacrifice, law and religion.

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[17] Agamben is not the first scholar to propose this thesis. Silving (1959a) notes that the German scholar Pedersen made a very similar argument.

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