Honor, Oath, and Office

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By Paul Horwitz

In his famous article “On the Obsolescence of the Concept of Honor,” sociologist Peter Berger wrote in 1970 that the idea of honor had long since passed into obscurity in our culture, replaced by the concept of equal dignity. Berger was describing, not prescribing, and his article thoughtfully examined the costs and benefits of this shift. But he made clear that it was mostly a lost concept. Few, especially in the academy, mourned its loss.

Much has changed since then. There is no doubt that dignity has become more important in our legal, political, and social culture. It has played a key role in decisions like Obergefell v. Hodges, which constitutionalized same-sex marriage. Nevertheless, scholars and others, moved by a variety of factors—and impelled most recently by concerns about the behavior of our current president and his apparent indifference to the traditional norms of his office—are increasingly reconsidering honor: its meaning, its value, and the costs of treating it as “obsolete.” Across a wide range of scholarly fields, we have seen an explosion of what we might call “honor studies.” In books like Sharon Krause’s 2002 classic Liberalism With Honor and Tamlyn Sommers’s Why Honor Matters, published just this year, scholars are exploring the possibility of a “liberal honor” that does not just coexist with, but could actually enhance, contemporary politics and culture. It’s no surprise that a growing number of legal scholars, too, have made the “turn to honor.”

Not all these scholars invoke honor explicitly, although their work is still closely connected to that concept. Some legal scholars, drawing on virtue ethics, have argued that we should focus more on the character of judges and other office holders. Others have argued that various offices, including that of the judge, are best understood as fiduciary obligations, and have applied “fiduciary theories of law” to various subjects, including constitutional law.

Whatever one thinks of the virtues and vices of President Donald Trump, there is no doubt that his election has given added impetus to such developments. Scholars who long took other approaches to law have rather suddenly “discovered” an interest in questions of character and virtue, and argued for the importance of “norms” of conduct by presidents and other office-holders. Honor is a growth stock in legal scholarship.

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The question is, of course, how can we do the job of judges, the exercise of power, and maintain those virtues without powerful motivations. Ambition and a desire for glory over time, an office has come to be seen merely as a passageway to fame. The character of the men and women who occupy our offices, the promises they make, their ability to keep them, and the limitations it imposes on the duties they perform as judges, encourages us to think differently about the judicial role and the relationships of individual judges to that role and its obligations. Crucially, honor is the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, recognized by society, his right to pride.

As Anthony Cunningham has written, “We can ignore or disbelieve the claims of honor as opposed to substance and doctrine, but we cannot banish honor only at our peril.” As anthropologist Julian Pitt-Rivers defined it, “Honor is the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, recognized by society, his right to pride.” As law professor Steve Sheppard writes, “The building of public confidence depends on the office, and the performance of the people who occupy our offices.” Honor, properly understood, is not a virtue in itself, and is as abstract as any ethical duty.

Moreover, in thinking about particular offices, the promises they make, their ability to keep them, and the limitations it imposes on the duties they perform as judges, encourages us to think differently about the judicial role and the relationships of individual judges to that role and its obligations. Paul Horwitz —

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A focus on judicial character, oath, and honor—

These three elements—

Office, oath, and honor—

encourage the sound democratic constitutional exercise of power.

What are the highest places, but obligations of the greatest worth? What Cicero called “the agreed approval of good men.” How does this relate to the Constitution? Three interrelated elements, each fitting into the other like the pieces of a puzzle, help us answer this question. Oath, duty, honor, and oath.

The person who values honor seeks regard in the eyes of individuals who are worthy to confer it: what Cicero called “the agreed approval of good men.” Crucially, the exercise of power.

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Constitutional Commentary at the University of Western Ontario Faculty of Law in 2016, and on a piece published in 2018 in and is at work on a book on oaths and the Constitution. This article draws on the Coxford Lecture delivered by Professor Horwitz.

Institutions First Amendment and The Agnostic Age religion, legislation and regulation, legal ethics, and law and public policy. He is the author of Paul Horwitz is Gordon Rosen Professor at the Hugh F. Culverhouse Jr. School of Law. He has taught courses in constitutional law, law and

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