



LOMA LINDA UNIVERSITY

Center for Christian Bioethics

UPDATE

April 2014

The Center Celebrates 30 Years!

In January 1983, the Loma Linda University Board approved the institution of the Center for Christian Bioethics. Its doors opened a year later under the leadership of Dr. Jack Provonsha, MD, PhD.

On Saturday, April 26, the Center for Christian Bioethics hosts a 30th Year Anniversary Celebration Event. The guest speaker for the day is Dr. Victoria Sweet, MD, PhD, Associate Clinical Professor of Medicine at the University of California San Francisco, Medical Historian, and author of "God's Hotel: A Doctor, A Hospital, and a Pilgrimage to the Heart of Medicine." Dr. Sweet's first lecture, "History of Medicine: On Hildegard of Bingen," draws from her doctorate research. The second lecture, "Reflections on God's Hotel," draws from her experiences practicing medicine at San Francisco's Laguna Honda Hospital—an almshouse dedicated to caring for those who couldn't take care of themselves. The French called these hospitals *Hôtel-Dieu*—God's Hotel.

In addition to the two lectures, which are free and open to the public, a special luncheon and program will take place. Donors and supporters of the Center, Masters of Arts in Bioethics students, Ethics Faculty in the School of Religion, and the Clinical Ethics fellows in the Medical Center will attend the luncheon.

You are invited to watch the video produced to celebrate the Center's 30 Years online at <vimeo.com/60285213>.

My Ancient Faith

Ronald Garet, JD, PhD

Carolyn Craig Franklin Professor of Law and Religion, University of Southern California Law School

The following was the Jack Provonsha Lecture given by Professor Garet at the Loma Linda University School of Medicine Alumni Postgraduate Convention (APC) on March 7, 2014.

Thank you, and my thanks to Roy Branson, and the faculty and staff associated with Loma Linda University School of Medicine and the Center for Christian Bioethics, for inviting me to give this Provonsha Lecture.

I hope that our conversations this morning will honor the memory of Dr. Jack Provonsha.

I speak this morning also in the memory of my friend and colleague at the USC Law School, the late Jerry Wiley, who was so active here at Loma Linda. I'm grateful that my student, friend, and colleague, Donna Carlson, is here this morning and will participate in the panel discussion. Donna, thank you so much for your comments on an earlier draft of this talk.

It is an honor to be in conversation with alumni of the Loma Linda University School of Medicine, with all of you who work in health care fields, who study bioethics, who study religion and the points at which religion, ethics, and the professions intersect. I will try this morning to do no more than hold up the mirror to your own lives of dedication and service.

Those of you who are alumni of the Loma Linda School of Nursing recite a pledge that begins as follows: "I solemnly pledge myself, before God and in the presence of this assembly, to practice faithfully my profession of nursing." This pledge deserves our attention and admiration. The pledge, and the liturgical practice of reciting it together as an exercise in commit-

ment, raises two questions. 1. What does it mean to practice one's profession faithfully? (In other words, what is the relation between faithfulness and being a professional?) 2. How does making the promise (in a shared community act) change one's situation? (In other words, what is the relation between faithfulness and pledging?)

Commitment Devices

We make frequent use of commitment devices in our personal and social lives, and I should make it clear that my focus this morning is limited. At universities the usual practice is to require students who have accepted the offer of admission to put down a non-refundable deposit to secure their seat. That is a commitment device. Entering into an enforceable contract is a commitment device. But I am not talking about these devices, important as they are. It is good that we have opportunities to bind ourselves in the exercise of our freedom. If we didn't have those opportunities, we would be less free, and society would be worse off. But not all of these opportunities feature or highlight the specific good that is my focus this morning, which is the good of undertaking to be a faithful person

Similarly, while all commitment devices are community-forming, I will not be talking this morning about how contracts and other commitment devices form efficiency communities, or even about how pledges to respect fair rules (such as student codes of conduct) help

form what we might call “Golden Rule communities,” in which the participants bindingly pledge themselves to follow certain rules so that they can do unto others as they would be done by. Instead, my focus is on communities that form when we pledge ourselves to service, and do so in such a way as to accept a summons to faithfulness, even an education in faithfulness. There is no widely accepted name for such communities. Some of them are “callings” or “professions.”

Professions such as the law and health care professions are to a degree self-regulating, and to a degree subject to governmental regulation. It is worth noticing at the outset that most of a professional’s legally enforceable duties, and most of the ethical obligations that the profession will police, arise in any event from the nature of the lawyer-client relationship or the provider-patient relationship, even if the professionals did not initiate themselves into their practice by taking a solemn oath or pledge. So we will try to keep our eye on the question: what is added by the oath or pledge?

Those of you who are alumni of the Loma Linda University School of Medicine take a Physician’s Oath. I hope you will not think it presumptuous of me to offer a reading or interpretation of that oath. Because I have never taken that oath, I am in a significant way disqualified from interpreting it. How can I take the internal viewpoint so necessary to the inmost meaning of your commitment?

Conscious of that disability, I nonetheless recognize and respond to a truth in the oath and in the Nurse’s Pledge that is also my truth, a faith that is also my faith, my ancient faith. The great and binding vows we take, at defining moments in our personal and community lives, disclose a truth about the human situation. Across the wide world, across continents and generations, we are called to a great diversity of callings; but these callings all summon us to faithfulness.

There is a commonality to what you know as healers and teachers and to what I know as a lawyer and a teacher. And also to what we know if we have exchanged wed-

From the Director— The Ancient Faith Lives

Ronald Garett, in his 2014 Jack Provonsha Lecture at Loma Linda University, articulated what must be the most careful and creative exegesis ever devoted to the oaths that graduates of Schools of Medicine and Nursing take when they become physicians and nurses. Readers of his address appearing in this issue of Update, will not be surprised that Professor Garett, a theologian trained at Yale Divinity School and also a legal scholar has created such innovative courses as Law, Language, and Values and Topics in Constitutional Law and Religious Ethics. He has also published in law reviews across the country articles with such lyrical theological titles as “With Radiant Countenance: Creation, Redemption, and Revelation,” and “Dancing to Music: An interpretation of Mutuality.”

Professor Garett’s reflection on the LLU Physician’s Oath is an ode to fidelity, faithfulness and faith. He wishes us to grasp that oaths publicly made in marriage services, law courts and medical school graduations are solemn promises. Solemn because they are based on an ancient faith. That faith takes the form of religious affirmation and also on affirmations that Abraham Lincoln referred to as America’s, indeed humanity’s, “ancient faith;” a faith expressed for Lincoln in such iconic words as “all men are created equal.”

I think Jack Provonsha would have

agreed with Ronald Garett. Dr. Provonsha, delivered the first Provonsha Lecture, and wrote the editorial for the first UPDATE published by the Center for Christian Bioethics. In that editorial, reprinted in this issue, Dr. Provonsha wants to stress the continuity between “great general agreement” on ethical matters in society with “our common ‘religious’ heritage.” Indeed, he thinks that continuing concern with bioethical questions depends on “those whose commitment includes faith.” David Larson, who was a founder of the Center and headed it for half of its thirty years, at least implicitly shares Garett and Provonsha’s assumptions. He has confidence that common moral assumptions make it possible to arrive at bioethical decisions through interdisciplinary conversation. Contemporary equivalents of priests and prophets can participate, as long as they, like everyone else, draw on humanity’s ancient faith.

Anniversaries are times to celebrate the wisdom of a faith that is both common and ancient.



Roy Branson, PhD
Director, Center for
Christian Bioethics
Loma Linda University

ding vows, or have undertaken the obligations of public office within our republican form of government. But it is not only a shared knowing, but also a shared being, the being of persons called to faithfulness.

LLU Physician’s Oath

Turn, now, to the opening words of your Physician’s Oath: “Before God these things I do promise.” Like the Nurse’s Pledge, the oath opens with the solemnizing, awesome invocation of God’s presence. We who speak the oath stand before God, who not only holds us to our promise but also makes possible both promise and fulfillment. In this first clause, the word “I” bridges

the standing-before-God and the promising. In saying the word “I,” the speaker embodies the convergent reality of these situations – if I am standing before God, I am enabled to promise and to respond to a promise.

The seven clauses that follow mostly begin with the word “I.” The oath-taker says: “I will dedicate myself to the furtherance of Jesus Christ’s healing and teaching ministry.” “I will hold in confidence all secrets committed to my keeping in the practice of my calling.” There are seven such promises, and in making them, the oath-taker begins five sentences with the word “I.” But the oath itself neither begins nor ends with a sentence

that starts with “I.” Though the speaker necessarily says “I,” the action of the oath is not self-assertive or self-preoccupied. “I” am a bridge; “I” am neither starting point nor destination.

The last sentence of the oath is framed as a benediction: “May God’s kingdom, His healing power and glory be experienced by those whom I serve, and may they be made known in my life, in proportion as I am faithful to this oath.” Here, at the conclusion of the oath, as at its beginning, the first reference is to God and to the oath-taker’s relation to God. The fruition of the promise, of the covenant, is the kingdom and the glory, made manifest in those whom I serve and even in my own life. Not absolutely or unconditionally, but – in keeping with the awesomeness and solemnity of the promise – “in proportion as I am faithful to this oath.”

Now, in this very moving and humane conclusion, at the moment of invoking God’s blessing upon my response to the call, comes the courage to say: “I am faithful.” Just three little words, but deep as the deepest ocean.

Only take these three words, “I am faithful,” out of context, and hear how presumptuous they sound. Who am I to appraise and describe myself in such terms?

Now put the three little words back into their context, the benediction with which this remarkable oath concludes. Now faithfulness no longer appears as a description – it is not an attribute of me, it is not my

“The great and binding vows we take, at defining moments in our personal and community lives, disclose a truth about the human situation.”

state, my condition; and I have no standing to predicate my own faithfulness.

Instead, faithfulness is at stake in my choices and actions. Each moment in my life is a moment of challenge and opportunity, in which I will be measured by how well I hold

to the promises I have made.

In other words: once you have taken the oath, you have stepped over a threshold. You now say, not boastfully but sincerely, “I am a doctor,” or “I am a nurse.” The vows have remade you, in much the same way that spouses who have taken the wedding vows now say (sincerely, almost marveling), “I am a wife,” “I am a husband.” But one does not similarly say, “I am faithful.” Or you say that at your peril, because your faithfulness is stretched out ahead of you in the horizon of your pledge.

But how does taking a vow of fidelity, as nurses and physicians do here at Loma Linda, actually activate the nurse’s or doctor’s faithfulness? In other words: what difference does it make whether the text explicitly includes an undertaking to be faithful and act faithfully?

Physician as Midwife to Truth

Exploring this question, it will help to begin by thinking of a physician, nurse, or other health care professional as having not only a set of skills and corresponding expert knowledge but also a set of dispositions or aptitudes. Faithfulness or fidelity figures prominently among these dispositions or aptitudes. The salient, almost liturgical act of reciting the oath, side by side with classmates, brings out the physician’s capacity for staying true. By staying true to her word, the physician will be midwife, so to speak, to other truths.

Certainly the oath-taker’s Biblical faith figures in this maturing of truthfulness. The speaker expresses both faith in and faith that.

- Faith in God’s healing and teaching ministry; faith in God’s mercy and compassion.
- Faith that God has called her to share in the work of this ministry; faith that God will strengthen her to express God’s mercy and compassion by caring for the lonely, the poor, the suffering, and those who are dying.
- Faith that the present moment of pledging is neither arbitrary nor absurd, but lived and performed in remembrance of God’s work of creation, law-giving, and heal-

ing.

• Faith in God’s continued unfolding of the work of Redemption, so that, like the Sabbath itself, each act of healing is a sacrament of holiness, saying “yes, it is very good” to the Creation (cf. Gen 1:25) and “surely

“like the Sabbath itself, each act of healing is a sacrament of holiness, saying ‘yes, it is very good’ to the Creation (cf. Gen 1:25) and ‘surely you come quickly’” (cf. Rev 22:20) to the Redemption.”

you come quickly” (cf. Rev 22:20) to the Redemption.

But there are many ways to express these faith convictions. It is important to notice that while both faith in and faith that can be expressed in the form of a creed, the Physician’s Oath is not written as a creed. Unlike the Nicene Creed or the other great creeds of the church, the Physician’s Oath’s affirmation is neither “I believe” nor “we believe” in certain Biblical and traditional teachings.

In taking the oath, the physician is doing something that extends beyond any set of affirmations, including the affirmation, “God has called me to share in Christ’s healing and teaching ministry.” So if we are to understand what the oath means by faithfulness, if we are to understand how the oath activates the physician’s personal and professional capacity to be faithful, we need to go beyond “faith” or “religious faith” understood as a body of beliefs.

The oath activates the physician’s faithfulness in somewhat the same way that troth-plighting, or the exchange of wedding vows, activates these for the spouses.

The ancient form of a husband’s troth-plighting is as follows:

I [Name] take thee [Name] to my wedded wife, to have and to holde from this day forward, for better, for worse, for richer, for

poorer, in sickenes, and in health, to love and to cherishe, til death us departe: according to Goddes holy ordeinaunce: And therto I plight thee my trouth.

It is worth remembering the ancient meanings of these ancient words. The “wed,” as in “wedded wife” or “wedded husband,” is the pledge, the thing of value put at risk. “Plight” means to put at risk, to pledge, to hazard; it also means to weave or pleat. The “troth” in troth-plighting, which we hear again in the more familiar word “betrothal,” means both vow and truth. So in the betrothal, the spouses pledge their truth to one another, they weave their truths together. In this way, the spousal undertaking activates faithfulness.

Notice that the form of troth-plighting is absolutely irreducible to any set of beliefs of the credo kind. The spouse does not state what he or she believes – she does not say, “I believe that I love you,” or “I believe that you love me,” or even that “I believe that God created the institution of marriage.” My point is not that these beliefs are irrelevant, only that they don’t rise to the occasion, they don’t draw us completely into the action of troth-plighting.

The “truth” or “troth” in troth-plighting is, in its essentials, faith or faithfulness. We hear this equivalence in the traditional Episcopal service of marriage, in the exchange of the Declarations of Consent.

“Here are double paralells between the declarations in the Service of Marriage and in the physician’s oath. In both cases, the one pledging says:...’I will do these things, I will be these things.’”

The celebrant of the marriage says: [Name], will you have this woman to be your wife; to live together in the covenant of marriage? Will you love her, comfort her, honor and keep her, in sickness and in health; and, forsaking all others, be faithful

to her as long as you both shall live?

The spouse answers: “I will.”

Here are double parallels between the declarations in the Service of Marriage and in the physician’s oath. In both cases, the one pledging says: “I will.” Not “I am,” or “I believe,” but “I will do these things, I will be these things.” And in both cases, the pledging activates faith or faithfulness.

There is nonetheless this difference. Where in troth-plighting and the marriage covenant one pledges faith to the spousal partner, in the physician’s oath one pledges faith to the oath itself. “May God’s Kingdom be made known... in proportion as I am faithful to this oath.” And in the nurse’s pledge one promises “to practice faithfully one’s profession of nursing.”

Taking Oaths as Faithfulness to Law

Perhaps we will explore these differences during discussion later this morning. But I will take a moment to develop the problem. On the one hand, the whole point of a promise is to change the moral or spiritual situation of the promisor. The promise does not leave everything just as it was. It changes things in part by externalizing: something is hazarded, pledged, put beyond one’s power to withdraw. On the other hand, the promise binds together two truths, the truths of the spouses. There is an irreducible I/Thou when each spouse says to the other, “I plight [or give] thee mine troth.”

You can imagine, in a marriage, during a marital argument, one spouse saying, “I have always been faithful to my oath,” and the other spouse saying, “Yes, always so faithful to your oath, but never really faithful to me.” And I think we might agree that the other spouse has a point there, potentially a very good point.

So we should take note of the fact that the Physician’s Oath does not say, “May God’s Kingdom be made known... in proportion as I am faithful to God.” Nor does it say, “May God’s Kingdom be made known... in proportion as I am faithful to my patient.” Instead, in taking the oath, the physician puts herself under a law (so to speak) and undertakes to be faithful to that law.

Faithfulness to the oath includes, but is not limited to, faithfulness to the patient. The oath-taker says:

- “The wholeness of the patient will be my first consideration,” but it is not my only consideration.
- “I will give to my teachers the respect and gratitude which is their due. I will impart to those who follow me, the knowledge and experience I have gained.”
- “I will lead my life and practice my art with purity, and honor; abstaining from immorality myself, I will not lead others into moral wrong doing.”

To fit this very wide horizon of promises, it would not be enough for the physician to end her oath by invoking blessings “in

“It is very striking that the Physician’s Oath here at Loma Linda puts faithfulness on the line, puts it in play: engages faithfulness expressly.”

proportion as I am faithful to my patient.” Faithfulness attaches more completely, more thoroughly, to the oath itself, which in all things (not just one dimension of things) becomes a law binding upon the physician, and in all things constantly implicates and therefore exercises and strengthens her faithfulness, her fidelity.

So it is very striking that the Physician’s Oath here at Loma Linda puts faithfulness on the line, puts it in play: engages faithfulness expressly. Now, there is a sense in which it is simply in the nature of the oath to do this one way or another. In an oath one submits oneself, as it were, to blessings or to curses, depending on whether one keeps one’s promises. The classical version of the Hippocratic Oath does this very nicely in its conclusion: “If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.” Enjoyment, honor, undy-

ing fame are the blessings that come with keeping to the oath; the opposites, namely unhappiness, perhaps an early grave, and a bad reputation are the curses that come with transgressing the oath. All of this is intuitive, but there is no explicit undertaking here to faithfulness/fidelity.

Modern versions of the Hippocratic Oath conclude similarly to the classical version, though as is typical of the move to modernity, they are more explicit about the blessings than about the curses. The 1964 Tufts University version of the modern oath concludes:

“If I do not violate this oath, may I enjoy life and art, respected while I live and remembered with affection thereafter. May I always act so as to preserve the finest traditions of my calling and may I long experience the joy of healing those who seek my help.”

Here we have the prospect of enjoyment, respect, affectionate remembrance, even the “joy of healing.” But here again, there is no mention of faithfulness/faith.

To be as clear as I can about what is similar and what different: All promissory oaths feature not only the making of substantive promises, but also the solemn undertaking to put something of great value at risk for the sake of these promises. That thing of great value, put at risk, is the “pledge.” It is the “wed” in “wedding.” All promissory oaths feature a special guarantee of the solemnity or sincerity of the pledge: “So help me God” or the equivalent. But not all promissory oaths include an undertaking to faithfulness.

“All promissory oaths feature...the solemn undertaking to put something of great value at risk for the sake of these promises.”

Now you might object, and say, “Well, there is nothing surprising about the fact that the Loma Linda Physician’s Oath includes an undertaking to faithfulness, because Loma Linda is a religiously affiliated

university.”

But consider, now the oath that every lawyer takes when admitted to the California Bar:

“I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability.”

Evidently this is not a subscription to religious faith generally, or to any specific religious faith, but it is nonetheless a pledge of fidelity, of faithfulness. Some state oaths actually use the word “fidelity.” The state of Tennessee, for example, require its state prosecutors and other public officials to “solemnly swear they [they] will perform with fidelity” the duties of their office.

Medical Oaths, Legal Oaths

I could give you many more examples across the 50 states. The pledge of faithfulness or fidelity is not universal across these oaths, any more than it is universal across the domain of physician’s oaths. It is present in some of the state bar oaths, just as it is present in some (not all, by any means) federal bar oaths.

But context matters to meaning, and similarity of wording can be superficial. When we compare the Loma Linda Nurse’s Pledge and the Loma Linda Physician’s Oath to the state and federal bar oaths, and to the prosecutor’s oath, we see differences in the speech situations of the speakers. State and federal law mandates that lawyers and prosecutors take their oaths; it is a condition of their offices. State and federal law mandates even the wording of the required oaths. But the law has not similarly mandated your Nurse’s Pledge and Physician’s Oath. You have a more fluid freedom to receive the oath traditions of your professions according to your best lights. Because the context is less coercive and the form of words less rigidly enforced, your solemn promises might draw you further into the life of fidelity.

But the distinction should not be overdrawn. Both the legal and health care

professions defend their boundaries and to a certain extent enforce their own professional duties and standards. In that sense, your oath like the lawyer’s oath is bundled into a package of professional undertakings. A student has some choice to pursue the bundle of undertakings that comes with

“The worry about state-enforced loyalty oaths, reflects concern, running deep in our civic traditions, that oath requirements are subject to abuse.”

being a California lawyer or the bundle of undertakings that comes with being a Texas lawyer. But even if those bundles are somewhat different from one another, freedom to choose your most preferred bundle of professional powers and duties would not justify some requirements that states have tried to enforce. During the McCarthy Era, for example, some states required bar applicants to pledge loyalty to the government of the United States. Ultimately such loyalty oaths were rejected as inconsistent with the basic relationship between state and citizen in our civic tradition. In both wording and content they are quite different from the undertaking to faithfulness that is our focus this morning.

Though this undertaking to faithfulness can be prominent in the promises that professionals make, it is not limited to professionals (at least in familiar senses of that word). There can be an undertaking to faithfulness in office; and the Constitution creates a ground for such an undertaking.

The Constitution provides that all legislative, executive, and judicial officers “shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.” The prohibition against religious tests, like the worry about state-enforced loyalty oaths, reflects concern, running deep in our civic traditions, that oath requirements are

subject to abuse. If oaths of faithfulness are to foster both a valuable moral personality and a valuable form of community, state power must be restrained so that state-required oaths do not become an occasion for crushing both of these values.

Congress has specified the wording of the constitutionally-mandated oath. Members of Congress (both Senators and members of the House of Representatives), and federal judges, and officers of the executive branch other than the President, all take this oath:

I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Let's assume that all public officers have an option, either statutory or constitutional in origin, to "affirm" rather than "swear," and that those who choose to "affirm" can avoid the "so help me God" formula for reasons of conscience. (Federal law explicitly creates that option for naturalizing citizens, whose prescribed oath of allegiance is similar.)

But that assumption leaves intact the statutory requirement that the officeholder promise that she will "bear true faith" to the Constitution, and to "will well and faithfully discharge the duties of the office."

Oaths and Horizons of Fidelity

The oath text traditions that we are studying this morning invite us into this horizon of fidelity. But sometimes we don't notice this. Those of us who work in the field of constitutional law, our eyes caught by the "so help me God" language in the federal oath text, tend to overlook the striking language about "bearing true faith" and faithfulness. But it may be that this language has a power to draw us forward in our lives, especially if we imagine ourselves standing in the shoes of the official who takes the oath – who says "I will bear true

Roundtable Discussion & Bioethics Symposium at the Alumni Postgraduate Convention

David Larson, PhD

Roy Branson, PhD, Director of the Center for Christian Bioethics, led a panel discussion in response to Professor Gareth's presentation. Brian Bull, a pathologist who has served as Dean of the School of Medicine, reviewed the development of the current LLU Physician's Oath.

David Larson, a professor in the School of Religion and one of this report's authors, incrementally moved backward in time from what "fidelity" often means in popular culture today to the theme of "loyalty" as God's faithfulness or steadfast love in the Bible. Among other things, Michael Orlich, a physician and researcher at the School of Public Health, reflected on the moral ambiguity of taking oaths and why those in Biblical times viewed them in different ways, some positive and some negative.

Donna Carlson-Reeves, the physician and lawyer who helped arrange Gareth's lecture, commented on the experiential significance in her life of taking the oaths of both professions. She also addressed what seemed to be a major concern of many in

the audience. This is the tension physicians increasingly feel between their responsibilities to their patients, on the one hand, and their obligations to employers, insurers, government policies and so forth, on the other.

In the second session, Gina Mohr, led a panel of physicians who work under her leadership in the LLU Clinical Ethics Consulting Service. These were Tae Kim, Marquelle Klooster, Grace Oie and Karja Ruh.

"C.P.R: Right or Rite?" was this panel's theme. Its members discussed several cases that differed in their clinical details but posed the same ethical question. This was: "What should doctors do when patients, or more frequently their loved ones, demand interventions like Cardio-Pulmonary-Resuscitation when it is virtually certain that these efforts will not succeed?"

In addition to tracing the history of resuscitation efforts and their relatively recent success, the panelists reviewed the statements of professional societies which indicate that such interventions should be used only in acute cases when it is likely that they will succeed in returning the patient to his or her former life, or at least something acceptably proximate to it. They should not be

faith" to the Constitution.

Now, among federal public offices, the office of the President is constitutionally distinct in a respect relevant to us this morning, because the Constitution itself specifies faithfulness as a presidential obligation. Article II §3 of the Constitution, in setting out the powers and responsibilities of the President, says: "he shall take care that the laws be faithfully executed...." This is the "Take Care Clause."

Accordingly, Article II includes faithfulness in the Presidential oath of office. Article II §1 paragraph 8 provides: "Before he enter on the execution of his office, he shall take the following oath or affirmation: 'I do solemnly swear (or affirm) that I will

faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

This is a very striking passage. It is the only place in the whole constitutional text where we encounter the word "I," the first person singular pronoun. As you would expect, the Constitution is not a terribly personal document – it is worlds apart, or so it would appear, from troth-plighting, from the exchange of wedding vows, from the mutual commitment of personal freedoms and personal truths. But against the grain of this seeming impersonality, the Constitution here not only says the word "I" but in fact requires someone to say the word "I." The

used in chronic cases, especially when terminally ill patients cannot benefit from them.

The panelists emphasized that doctors should recover the power that they have been losing to patients and their loved ones. They called for a partial return from the principle of respect for each person's autonomy toward a modified or chastened form of medical paternalism. One panelist bemoaned the fact that now "we sometimes allow patients to dictate what will be done."

The panelists observed that many issues that are thought to be ethical are actually clinical. A Do Not Attempt Resuscitation order is a "package deal" they pointed out. This means that patients cannot choose some components of them but not others as though they were making selections from a food menu.

They held that doctors should not wholly place the burden of making difficult decisions on the moral backs of patients and their loved ones; rather, because they are more knowledgeable and experienced, doctors should make clear and strong recommendations, calling upon the Ethics Consultation Service, if necessary, when patients object.

In at least one of the cases that the panelists approvingly discussed, a doctor unilaterally wrote a Do Not Attempt Resuscitation Order contrary to a relative's wishes and

the patient died. This probably clarified who had the most power. Or did it?

Answers to this question depend on our answers to a prior one: Coercion or persuasion: Which is the most powerful? If the ability to force people is the measure, orchestrating the time and manner of patient's death by unilaterally writing a Do Not Attempt Resuscitation Order is impressive. But if it takes more power to persuade people than to compel them, it isn't.

Perhaps like everyone else, doctors are strongest when they patiently work with others until they achieve consensus about what should be done instead of abbreviating this process by unilaterally doing what they think best. Although coercive power is sometimes necessary, it might also be a sign of weakness.

The panelists would probably agree with this suggestion because their overall point was that dying patients or their loved ones now have too much power and doctors don't have enough. Having said that, we have to brace ourselves for the possibility that not everyone feels sorry for doctors. Not even all doctors.

Tae Kim, an emergency room doctor on the panel, took a somewhat different approach. Although he, too, regretted how much power he had sometimes "accidentally given" to the families of patients, he lingered

with the idea that for many people drastic interventions like C.P.R. are more like "rites" than "rights." In my words, they are "rituals" which are akin to the ancient Christian sacrament of "extreme unction," and similar formalities in other cultures, in that they "liturgically" mark a person's passage from "here" to "the hereafter."

Kim's way of thinking about these things, informed as he said it is from his study of literature and cultural anthropology, has several advantages. One of them is that provides an alternative to distilling these difficult cases to power struggles between doctors and patients. Another is that it encourages doctors to probe more deeply into why patients or their loved ones are making their demands. Kim made this point himself when he said that doctors would do well to spend more time listening to patients and their loved ones in hopes of becoming better acquainted with the "narratives" of their lives. This, in turn, would seem to provide yet another opportunity. This is the option of developing different "rites" that are culturally satisfying but medically more appropriate.



David Larson, PhD
Former Director, Center
for Christian Bioethics
Loma Linda University

President is required to say "I" twice in the course of pledging to "faithfully execute the office...."

Drawing together the threads of these many texts, we find: they bring out the "I," the human person as moral agent, human person as able to place herself bindingly under a law, as they engage the capacity or the disposition to be faithful. This we learn by reading the texts closely and by ranging the various oaths alongside one another. This we learn by moving back and forth between an external perspective (our viewpoint as mere readers of the text, who cannot imagine ourselves as President, or as Physician) and an internal perspective (for we too have pledged our faithfulness). When we read

these texts and speak them out loud (publicly, liturgically) they disclose to us the truth of our human capacity for personal fidelity. To be a person, in these larger-than-life moments of ceremonial pledging, is to say "I," the subject of the action: I engage my faithfulness, I plight my faith.

The Inner Meaning of Faithfulness

Not always and not necessarily – let us be clear about this – not always and not necessarily my religious faith. Remember the Constitution's prohibition of any religious test for public office. No Senator, no Judge, no President could ever be required to frame his or her fidelity within the frame of Creation and Redemption, within faith in the coming of God's kingdom, in furtherance

of the ministry of Christ – all of which are frames for your Physician's Oath. And yet all of the public officers can be required, and by law some actually are required, to say: "I will be faithful." In that sense, in that limited but so important sense, the lawyers and the public officials not only say what you say but they mean what you mean. And in the measure of their character and their gifts, they grow as you grow in the way of faithfulness, not because that is an easy way or a clearway, but because the way ahead is oh so hard, and yet they like you have pledged to follow it forward.

They, like you, have engaged the inner life, the inner meaning, of faithfulness – not as meditation or self-reflection, but by put-

ting themselves on the line in their choices and actions. But without some degree of meditation, without some self-awareness, one will surely lose the way of faithfulness. Knowing this, we as authors of oath-texts are capable of writing perceptively: capable of writing the lines that we ourselves will speak when it is our turn to speak. So that when it is our turn to speak, we not only make a commitment – put our freedom under a law – but pledge to act faithfully under that law.

So you, and the Tennessee prosecutor, and the President of the United States, and the California lawyer, and the United States Senator from New York, express a human truth. You have in common with one another not only the generic feature (all of you make solemn promises) but also a specific undertaking to be faithful. That undertaking to faithfulness brings out the “profession” and “professionalism.” It is not necessarily a profession of belief, or a confession of belief, but it can be faithful, a profession of faithfulness.

In saying that you, and the Tennessee prosecutor, and the President of the United States, and the California lawyer, and the Senator from New York, have engaged the inner life and the inner meaning, I do not mean that you act subjectively. It is surely possible to say “I” subjectively, and often it is desirable and very human to do so, but that is not what you are saying in your Physician’s Oath when you say “in proportion as I am faithful to this oath.” And that is not what the President is saying when she takes the constitutionally prescribed oath and says, “I will faithfully execute the office of President of the United States.” To see this, imagine that it is the mid-twentieth century, and we are in the Soviet Union, and having been chosen by the Politburo, you are about to become Premier of the USSR. Suppose there is a prescribed form of words, and you are required to say: “I will faithfully execute the office of Premier of the Soviet Union, and will to the best of my ability, preserve, protect, and defend the Constitution of the Soviet Union.” Suppose you do say these

words, and suppose that you subjectively mean them. Nonetheless it is a failed undertaking. You cannot faithfully execute that office because there is nothing in the substance and limits of that office to which you can truly be faithful; and you cannot faithfully execute the laws and Constitution of the Soviet Union because there is nothing in the substance and limits of these edicts, those exercises of power, to which you can truly be faithful.

Of course there will be intermediate cases, gray areas. When our republic was, in many ways, a slave republic; when in awful symbolism the Capitol Building was built by the exploited labor of chattel slaves; could you swear to faithfully execute the office of President of the United States? Or is this a case in which, despite one’s generous thoughts and wishes, one cannot pledge to faithfully execute the office and the laws, because there is a failure in the object: no object to which one can be faithful?

Lincoln’s Presidential Oath-Taking

On March 4, 1861 – this very week, 153 years ago – Abraham Lincoln took the oath of office as our sixteenth President. His First Inaugural Address is, in some ways, a sustained argument built on the text of the oath, an argument drawing inferences from the fact that he takes that oath without (as he puts it) any “mental reservations.” Lincoln explains that he could do so because he had no intent to disturb slavery where it existed lawfully under the Constitution. But he also explains that the political branches of government may legitimately press in a political way for the resolution of questions left undecided in the text of the Constitution. May the federal government regulate slavery, even forbid slavery, in the Territories? The Constitution does not say explicitly, but in a larger view the Constitution should be understood in such a way as to fit within the history of which it forms a part.

Confronting the question not of slavery but of secession, Lincoln says in the first inaugural:

The Union is much older than the Constitution. It was formed, in fact, by the

Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And, finally, in 1787 one of the declared objects for ordaining and establishing the Constitution was “to form a more perfect Union.”

But if the destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.

It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances. way, but because the way ahead is oh so hard, and yet they like you have pledged to follow it forward.

They like you have engaged the inner life, the inner meaning, of faithfulness – not as meditation or self-reflection, but by putting themselves on the line in their choices and actions. But without some degree of meditation, without some self-awareness, one will surely lose the way of faithfulness. Knowing this, we as authors of oath-texts are capable of writing perceptively: capable of writing the lines that we ourselves will speak when it is our turn to speak. So that when it is our turn to speak, we not only make a commitment – put our freedom under a law – but pledge to act faithfully under that law.

So you, and the Tennessee prosecutor, and the President of the United States, and the California lawyer, and the United States Senator from New York, express a human truth. You have in common with one another not only the generic feature (all of you make solemn promises) but also a specific undertaking to be faithful. That undertaking to faithfulness brings out the “profession” and “professionalism.” It is not

necessarily a profession of belief, or a confession of belief, but it can be faithful, a profession of faithfulness.

In saying that you, and the Tennessee prosecutor, and the President of the United States, and the California lawyer, and the Senator from New York, have engaged the inner life and the inner meaning, I do not mean that you act subjectively. It is surely possible to say “I” subjectively, and often it is desirable and very human to do so, but that is not what you are saying in your Physician’s Oath when you say “in proportion as I am faithful to this oath.” And that is not what the President is saying when she takes the constitutionally prescribed oath and says, “I will faithfully execute the office of President of the United States.” To see this, imagine that it is the mid-twentieth century, and we are in the Soviet Union, and having been chosen by the Politburo, you are about to become Premier of the USSR. Suppose there is a prescribed form of words, and you are required to say: “I will faithfully execute the office of Premier of the Soviet Union, and will to the best of my ability, preserve, protect, and defend the Constitution of the Soviet Union.” Suppose you do say these words, and suppose that you subjectively mean them. Nonetheless it is a failed undertaking. You cannot faithfully execute that office because there is nothing in the substance and limits of that office to which you can truly be faithful; and you cannot faithfully execute the laws and Constitution of the Soviet Union because there is nothing in the substance and limits of these edicts, those exercises of power, to which you can truly be faithful.

Of course there will be intermediate cases, gray areas. When our republic was, in many ways, a slave republic; when in awful symbolism the Capitol Building was built by the exploited labor of chattel slaves; could you swear to faithfully execute the office of President of the United States? Or is this a case in which, despite one’s generous thoughts and wishes, one cannot pledge to faithfully execute the office and the laws, because there is a failure in the object: no ob-

ject to which one can be faithful?

On March 4, 1861 – this very week, 153 years ago – Abraham Lincoln took the oath of office as our sixteenth President. His First Inaugural Address is, in some ways, a sustained argument built on the text of the oath, an argument drawing inferences from the fact that he takes that oath without (as he puts it) any “mental reservations.” Lincoln explains that he could do so because he had no intent to disturb slavery where it existed lawfully under the Constitution. But he also explains that the political branches of

“Without some degree of meditation, without some self-awareness, one will surely lose the way of faithfulness.”

government may legitimately press in a political way for the resolution of questions left undecided in the text of the Constitution. May the federal government regulate slavery, even forbid slavery, in the Territories? The Constitution does not say explicitly, but in a larger view the Constitution should be understood in such a way as to fit within the history of which it forms a part.

Confronting the question not of slavery but of secession, Lincoln says in the first inaugural:

The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And, finally, in 1787 one of the declared objects for ordaining and establishing the Constitution was “to form a more perfect Union.”

But if the destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.

It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances. This is a complicated text, and the argument too is complicated. It is not obviously correct, and in fact it is not free from serious difficulties.

At the heart of the argument is the assertion that no state has a legal right or authority to withdraw from the union. Secession, and associated acts of violence, are violations of law, which the President’s oath of office requires him to suppress. Thus Lincoln can faithfully execute the office of President, even under the tragedy then unfolding, because in suppressing secession he is, as the Constitution requires of him, “taking care that the laws be faithfully executed.”

But why is secession contrary to law? That is the crux; and it is one of those matters to which the Constitution does not speak squarely. So if there is constitutional law on the subject, it must be law in a larger view, one that fits the text but relies also on extrinsic sources. That is why Lincoln argues that the Union is older than the Constitution. At the heart of that argument Lincoln analogizes the union of the states to a marital union without a right or power of divorce. Just as Lincoln himself takes a vow of fidelity, so the states, like lovers, have plighted their troth to one another. The states were promised to one another in 1774; they were betrothed in 1776; they were already engaged in union in the Articles of Confederation, whose thirteenth article provides: “And we do further solemnly plight and engage the faith of our respective constituents,... that the Union shall be perpetual. In Witness whereof we have hereunto set our hands in Congress.”

Only because the union already existed before the Constitution could the Constitution, in the words of its Preamble, undertake to “form a more perfect union.” Thus, in Lincoln’s argument, the Constitution deepens rather than negates the previous pledge

of perpetual union. Only in that way do we follow the path of the founders and “solemnly plight and engage the faith.”

Though Lincoln does not say so in the First Inaugural Address, he was already on record many times, in many speeches, on the content of this faith. It was the faith that the fathers had plighted back before the Constitution, back before the Articles of Confederation, back in 1776. It was to

**“We hold these truths...
Yes, but what is more,
we hold them out to one
another; in my hand
clasping your hand we
hold them and hold onto
them. We pledge them;
we mutually plight our
truth, our troth, our faith.
My ancient faith.”**

this faith that the fathers “mutually pledged their lives, their fortunes, and their sacred honour.” Those famous closing words of the Declaration of Independence are words of hazarding, of putting at risk, of putting up a pledge. “Appealing to the Supreme Judge of the world for the rectitude of [their] intentions,” the representatives make a vow with and to one another, the vow that in other instances says “So help me God” or “As God is my witness.” If they are untrue in their faith, so they say, may God curse them rather than bless them.

What do they hazard for their faith, what do they pledge? Only their fate; only their lives, their fortunes, and their sacred honour.

To what faith, then, do they bind themselves in faithfulness? “That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness...”

“We hold these truths...” Yes, but what is more, we hold them out to one another; in my hand clasping your hand we

hold them and hold onto them. We pledge them; we mutually plight our truth, our troth, our faith. Our ancient faith. My ancient faith.

So Lincoln spoke again and again, not against slavery per se, but against the extension of slavery into the Territories, and in support of federal power to regulate and suppress slavery in those Territories. You will recall that Lincoln says clearly and truthfully, in the first inaugural, that he has no design to use federal power to abolish slavery. Thus he can, as he says, take his Presidential oath without mental reservation. The Constitution probably did not give the federal government the power to abolish slavery in the states where it then existed. Nonetheless Lincoln could swear to be faithful to his office and to such a constitution. And he could do so in good conscience because the scope of federal power over slavery in the Territories was one of those gray areas that the text did not specifically address, and because the faith on which our institutions were founded spoke to that gray area and resolved it with more than adequate clarity.

Lincoln’s “Ancient Faith”

Speaking against the Kansas-Nebraska Act in 1854, an Act that superseded the old Missouri Compromise of 1820, Abraham Lincoln explained to his Illinois audience: “If the Negro is a man, why then my ancient faith teaches me that ‘all men are created equal;’ and that there can be no moral right in connection with one man’s making a slave of another.”

His idea, which made him unattractive to defenders of slavery but also to abolitionists, was that slavery could only exist temporarily, where created and sustained by positive law. Where not affirmatively shielded in that way, slavery is rightfully exposed to attack by the political process, oriented to an ever greater approximation of the maxim that “all men are created equal.” Where possible, where consistent with text and history, the Constitution should be read in such a way as to harmonize it with that maxim. Because, as President, Lincoln never intended to emancipate anyone who was enslaved

by law; because he intended only to interpret the Constitution, so far as possible, to harmonize it with the ancient faith, on matters such as the regulation of slavery in the Territories; he could take the required oath.

And, to bring it home, so can we, even though we too practice our professions within severe institutional constraints. A lawyer must be faithful even in the gray areas – precisely in those areas. A prosecutor must be faithful even in the gray areas – precisely in those areas. A prosecutor must be faithful when she looks at a case that she predicts she can win, but has to decide whether justice truly is served by bringing it. A physician must be faithful even when the path of fidelity is uncertain, as when the patient lies in a persistent vegetative state and a court of proper jurisdiction has determined, with the assistance of the patient’s guardian ad litem, that no medical treatment and no life-sustaining care can advance the patient’s best interests. I suspect that these or similar topics

**“So I say in your company:
If it be your will, God,
may your Kingdom be experienced
by those whom I teach;
and may my students be my teachers;
and may your power and glory
be made known in my life,
in proportion as I am faithful
to this oath.”**

will occupy us in the panel discussion that follows. Perhaps then we can exercise and interrogate some of the claims I have made this morning about faithfulness as a human possibility.

We began, this morning, with texts that repay close reading. Among those texts are special ones that merit not only close reading but thoughtful, sincere reciting out loud. There is a great tradition of promissory oaths, and your Physician’s Oath stands securely within that great tradition.

Have you ever attended a wedding;

and, when the spouses exchanged their wedding vows, you were deeply moved, instructed, supported in your own life commitments? Then you knew that you were not only an outsider but an insider. Someone else's vows had worked their magic on you, and in a way, through you. Now they were not only someone else's vows, but also your own.

So in the presence of your Physician's Oath, I am deeply moved, instructed, and supported in my own life commitments.

Though I am a lawyer, I have never sought admission to the bar, so I have never taken a bar admission oath. Though I am a teacher, there is, in my profession, no recitation of a teacher's oath. But I am a husband, and with my wife Susan, who is here with us this morning and in any case is always with me wherever I go, I have troth-plighted. So I recognize and honor what you are doing; what we are doing.

Let us speak the words of promise and be confident in their infinite depths of meaning. Let us be supported in our freedom as we place our freedom together under a law.

Let us grow in faithfulness as we learn with and from one another.

So I say in your company: If it be your will, God, may your Kingdom be experienced by those whom I teach; and may my students be my teachers; and may your power and glory be made known in my life, in proportion as I am faithful to this oath.

Thank you.

REFERENCES

1. The Loma Linda International Pledge of Nursing, <http://www.llu.edu/central/bioethics/llu-oaths.page?#anchor9511262>.
2. The Loma Linda University Physician's Oath, <http://www.llu.edu/medicine/lluposm.page> and <http://www.llu.edu/central/bioethics/llu-oaths.page?#anchor9511262>.
3. Id.
4. Id.
5. Id.
6. Order of Matrimony as given in the 1549 Book of Common Prayer, http://justus.anglican.org/resources/bcp/1549/Marriage_1549.htm. See also John C. Ford, "Merry Married Brothers: Wedded Friendship, Lover's Language and Male Matrimonials in Two Middle English Romances," quoted in Zsuzsanna Simonkay, "In Wele and Wo' – Trothplights of Friends in Medieval English Literature," Kinga Földváry et al., eds., *HUSSE10-LitCult*.

Proceedings of the HUSSE 10 Conference (Debrecen: Hungarian Society for the Study of English, 2011), 17–24, <http://mek.oszk.hu/10100/10171/10171.pdf>.

7. Theodore F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (Boston, 1956), pp. 628–629.
8. Compact Oxford English Dictionary, (Oxford Univ. Press 1979), p. 2209; entries plight(1) and plight(2). In the Order of Matrimony as given in the 1549 Book of Common Prayer, the groom completes his vows by saying, "And thereto I plight thee my troth," while the bride says, "And thereto I give thee my troth." http://justus.anglican.org/resources/bcp/1549/Marriage_1549.htm.
9. "True" is from OE *trēowe*, firm, true; and "truth," "troth," and "betroth" are from OE *trēowth*, faith, loyalty, truth. The American Heritage Dictionary Of Indo-European Roots pp. 16–17, entry *deru-* (Calvert Watkins ed., Houghton Mifflin Harcourt 2000).
10. The Book of Common Prayer (Church Hymnal Corporation and Seabury Press, 1977), p. 424. The pledges of faith and faithfulness in traditional English services of marriage were similar to those in oaths of fealty. J. H. Baker, *An Introduction to English Legal History*, 4th ed. (U.K., 2002) p. 226 note 14. The vassal pledged to the lord that "I will be faithful and true;" see Joseph Fisher, "The History of Landholding in England," *Transactions of the Royal Historical Society*, Vol. 4 (1876), pp. 97–187, at pp. 112, 125, and 127.
11. Loma Linda University Physician's Oath, note 2, *supra*.
12. Loma Linda International Pledge of Nursing, note 1, *supra*.
13. Loma Linda University Physician's Oath, note 2, *supra*.
14. Ludwig Edelstein, *The Hippocratic Oath* (1943), p. 3. See also <http://www.pbs.org/wgbh/nova/body/hippocratic-oath-today.html>.
15. http://ethics.ucsd.edu/journal/2006/readings/Hippocratic_Oath_Modern_Version.pdf. On versions of medical oaths, see R. D. Orr, N. Pang, E. D. Pellegrino, and M. Siegler, "Use of the Hippocratic Oath: A Review of Twentieth-Century Practice and a Content Analysis of Oaths Administered in Medical Schools in the U.S. and Canada in 1993," *The Journal of Clinical Ethics* vol. 8, no. 4 (Winter, 1997), pp. 377–388.
16. See note 7, *supra*.
17. http://admissions.calbar.ca.gov/LinkClick.aspx?fileticket=_bnxE8Qu9Kc%3D&tabid=268. See also the California State Bar Act (Cal Bus & Prof Code, div 3, ch. 4) § 6067, which provides: "Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability. A certificate of the oath shall be indorsed upon his license." http://rules.calbar.ca.gov/Portals/10/documents/2014_StateBarAct.pdf.
18. <http://tnsos.net/publications/oaths/oaths.php?table=Judges&sort=lastname%20ASC#data>. Tennessee requires its governors to make a pledge of both fidelity and faithfulness. "I, [Name], do solemnly swear that as Governor of the State of Tennessee, I will support the Constitution of the State of Tennessee and the Constitution of the United States, and that I will perform with fidelity and faithfully execute the duties of the office of Governor to which I have been elected and which I am about to assume, to the best of my skill and ability. So help me God." (Emphasis added.) I love that one; is it like pledging to be both repetitive and redundant? Cf. the doubled language of fidelity and faithfulness in the law requiring English freemen to swear fealty to King William; Fisher, *supra* note 10, at p. 127.
19. Cf. the admission oath in the U.S. District Court for the Western District of Texas: "I do solemnly [swear or affirm] that I will discharge the duties of attorney and counselor of this court faithfully, that I will demean myself uprightly under the law and the highest ethics of our profession,

and that I will support and defend the Constitution of the United States." (Emphasis added.) <http://www.txwd.uscourts.gov/Rules/Online/Attorney/at-1.pdf>.

20. U.S. Constitution, Article VI paragraph 3 (emphasis added).
21. 5 U.S.C. §3331 (emphasis added). <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5-partIII-subpartB-chap33-subchapII-sec3331.pdf>
22. See Code of Federal Regulations § 337.1 and discussion, <http://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.
23. 5 U.S.C. §3331, *supra* note 21.
24. U.S. Constitution Article II §3 (emphasis added).
25. U.S. Constitution Article II §1 paragraph 8 (emphasis added).
26. See Gare, "With Radiant Countenance: Creation, Redemption, and Revelation," 2009 Michigan State Law Review pp. 289–306 (2009), at pp. 305–306.
27. Loma Linda University Physician's Oath, note 2, *supra*.
28. Constitutionally prescribed presidential oath of office, note 25, *supra*.
29. Cf. Lon Fuller, "Positivism and Fidelity to Law: A Response to Professor Hart," 71 Harvard Law Review 630 (1958); Fuller, "Eight Ways to Fail to Make Law," in *The Morality of Law* pp. 33–41 (revised ed., 1969).
30. See generally Symposium: Fidelity in Constitutional Theory, 65 Fordham Law Review pp. 1247–1854 (1997).
31. Abraham Lincoln, First Inaugural Address, March 4, 1861. <http://www.loc.gov/teachers/newsevents/events/lincoln/pdf/avalonFirst.pdf>
32. Id. (Emphasis added).
33. Constitutionally prescribed presidential oath of office, note 25, *supra* (emphasis added).
34. Articles of Confederation, Article XIII (emphasis added). <http://www.gpo.gov/fdsys/pkg/SMAN-107/pdf/SMAN-107-pg935.pdf>.
35. U.S. Constitution, Preamble (emphasis added); cf. Lincoln, First Inaugural Address, text at note 32, *supra*.
36. Articles of Confederation, *supra* note 34; Lincoln, First Inaugural Address, text at note 32, *supra*.
37. Declaration of Independence, http://www.archives.gov/exhibits/charters/declaration_transcript.html.
38. Id.
39. Id.
40. Id.
41. "When the white man governs himself that is self-government; but when he governs himself, and also governs another man, that is more than self-government – that is despotism. If the negro is a man, why then my ancient faith teaches me that 'all men are created equal;' and that there can be no moral right in connection with one man's making a slave of another." Speech by Abraham Lincoln (Peoria, Illinois, Oct. 16, 1854), in *The Collected Works Of Abraham Lincoln*, vol. 2, 266 (Roy Basler ed., Rutgers Univ. Press 1953) (emphasis added)
42. See Margaret A. Farley, *Personal Commitments: Beginning, Keeping, Changing* (San Francisco: Harper and Row, 1986).

Ronald Gare, PhD, JD
Carolyn Craig Franklin Professor of Law and Religion
University of Southern California Law School

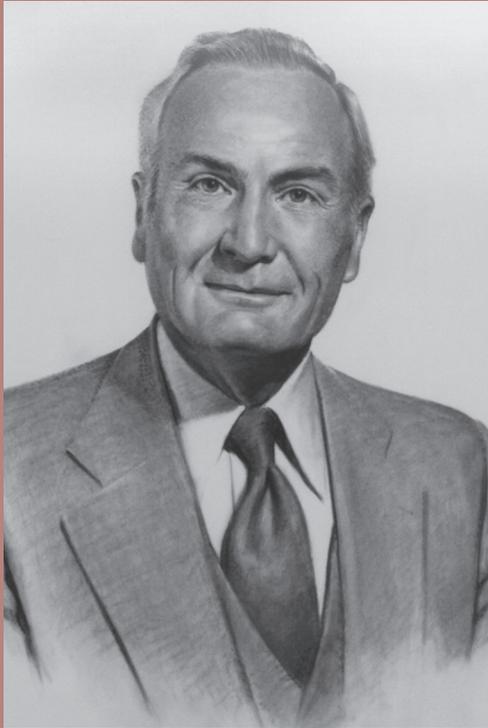
Professor Gare received a PhD in Religion from Yale University and his JD from the University of Southern California.



The Center for Christian Bioethics

Editorial by Jack Provonsha

“Religion and the Bioethical Enterprise,” is a reprint of the first editorial written by Jack Provonsha, MD, PhD in UPDATE. Dr. Provonsha was the founding Director of the Center for Christian Bioethics and served as Director for two years.



Given the fact that so many of our bioethical questions were spawned by the technology of the late 20th century, one should probably not expect very many helpful answers from religious traditions formalized long before anyone dreamed about genetic engineering, xenografts, in vitro fertilization, embryo transfer and fetal surgery. The Old Testament knows of surrogate parenting, but what of total life support, TPN, hemodialysis, pacemakers, ventilators, and when to start or stop them? What of health-care equity and cost-benefit effectiveness?

Institutionalized religion also has lost much of its traditional effectiveness as the repository and vehicle of moral values transmission. In disturbing ways each generation has tended to become now-oriented, isolated from both the past and future. On these

terms religion and bioethics might seem to have very little to do with each other.

It remains, however, that recognized or not, at least in the Western world, Judeo-Christian presuppositions do mightily inform such questions. The very existence of the biomedical science that poses the questions derives from Judeo-Christian premises. It is no accident that science flourished in that portion of the world most influenced by biblical monotheism. The “oneness” of reality and the sense of order that radical (in the sense of “roots”) monotheism implies gave to science its philosophic foundations, including an optimistic affirmation of the world. The Creator had said, “It is very good.”

That affirmation also conditioned man’s attitude toward his fellow creatures. Humane treatment of animals, for example, even while granting priority to man (created in God’s image and given dominion over the garden) is the logical development of the positive view of nature. Animal experimentation will always be a matter of serious ethical concern in such a conceptual setting.

Judeo-Christian ideas also permeate our efforts to understand what it means to be human and what it takes to nurture and protect personhood, and that, or course, is what the bioethical enterprise is all about. A conception of person as possessing the self-conscious capacity to control one’s own behavior, to make choices, to determine one’s destiny, to love, to interact socially, to be responsible, to be competent—qualities that distinguish human existence as more than merely being alive—qualities that are so pertinent to decision-making in matters of life at its beginnings and at its termina-

tion—derive from a biblical, Judeo-Christian way of looking at man. It is true that infusions of Platonic-Greek notions about the soul have muddied the waters of the abortion issues at the moment, but the fact that there is so great general agreement on other ethical matters in our society much greater than our disagreements is due to our common “religious” heritage.

Finally, for those who acknowledge that heritage, there is the motivation that faith brings to the bioethical task. Those who will care enough to be involved with such issues over the long haul will do so because they are motivated by higher concerns than mere professional role-playing.

Bioethics as an infant progeny of ethics has already largely taken over the house as infants are prone to do. Bioethicists are multiplying and new bioethics centers are appearing almost monthly. There is no question that these issues are fascinating. But the capacity for maintaining that interest through the perplexing years ahead is more likely to characterize those whose commitment includes faith. So much about the answers to these questions is related to one’s ultimate purposes as over against this-worldly professional goals.

We would do well to admit it. If not our own religious beliefs, at least those of our fathers before us have created a context in the world where novel social and ethical burdens have been weighted upon us all. But they also give us the values and norms required to carry the load. It only makes sense that at least some of us should self-consciously consider these issues within the circle of the past that illumines our common past.

Bioethics Celebrates 30 Years

Editorial by David Larson

“Ethics Center: Priest, Prophet, or Participant?” is a reprint of the first editorial written by David Larson, PhD in UPDATE. Dr. Larson, Professor of Religion, served as Director of the Center for Christian Bioethics for 15 years.

James Gustafson, a distinguished theologian who has taught ethics at Yale University and the University of Chicago, once published an essay on how ethicists understand themselves. Some, he wrote, see themselves as preservers of the status quo, as high priests ordained to guarantee that nothing new or different ever happens. Other ethicists see themselves as prophets commissioned to denounce existing institutions and relationships in the name of the utopia they herald. Despite their other differences, priests and prophets are similar, Gustafson suggested, in their almost arrogant assumption that they should have the last word, whether it be commendation or condemnation.

Gustafson contended that ethicists who understand themselves as participants have no inner need to pronounce final mor-

al verdicts. Although they believe they can make important contributions to continuing conversations about morality in private and public life, they believe many others also deserve to be heard.

The Ethics Center of Loma Linda University was designed to be more participatory than priestly or prophetic, in the meanings Gustafson gave those terms. The work of the Center is different from that of a typical university department in that it calls upon specialists in many disciplines to prove current ethical issues. The Medicine and Society Conferences held monthly in the Loma Linda University Medical Center, the annual spring workshop on medical ethics, the articles in UPDATE, and the seminars held for administrators developing important policies all include Loma Linda’s ethicists, but they also involve many others:

historians, clinicians, researchers, Biblical exegetes, lawyers, and so on. Development of the endowment is imperative so that such conversations and investigations can thrive without become a financial liability to the university. And the establishment of a strong library is vital so that we can all study what others, past and present, have said about the alternatives we face.

We are gratified by the unique contribution the Ethics Center is beginning to make to the professions, church, and society. We are delighted by the strong vote of confidence the project has received in response to its appeals for financial support. And we look forward to many years of what the late Karl Barth called “mutual speech and hearing, mutual meeting of the eyes, mutual rendering of assistance, and mutual joy and gladness.”

Projects in Honor of the 30th Year Anniversary

Expanding the Center’s impact worldwide by making its resources available online.

Provonsha Book

A book, in honor of Dr. Jack Provonsha, is scheduled to print by the end of 2014. The book is a collection of 12 of Dr. Provonsha’s best essays. Dr. David Larson is the editor.

Center Website

Thanks to the encouragement of Dr. Rodney Willard, after a few years of inactivity, the Center for Christian Bioethics website is now up to date and running. New features include: the oaths/code of ethics for the different health professions, a calendar of Center events, videos of events, etc. Visit us online at <llu.edu/central/bioethics>

UPDATE Online

All issues of UPDATE, published since 1985, are now available online at the Center for Christian Bioethics website, as well as the LLU Library Digital Archive.

Social Media

The Center now has its own Facebook page. This allows for greater visibility and interaction with not only individuals affiliated with Loma Linda University, but also other bioethics centers and individuals interested in bioethics all over the country and world! Visit us online at <facebook.com/CenterforChristianBioethics>.

Digitizing Videos of Past Events

Over the past 30 years, the Center has video recorded over 300 lectures, roundtables, conferences, etc. featuring renowned scholars in the field of bioethics.

A majority of those are only on VHS and thus inaccessible to most of the world. As good stewards, we believe it is important to digitize our VHS library and make the resources available online so that they are not lost to the next generation of leaders.

Please join us in this endeavor. Your gift breathes new life into these legacy presentations and helps further establish our online presence and relevance. Thank you.

Guest Speaker from the Mayo Clinic and Other Bioethics Grand Rounds

LLU Medical Center

On February 26, Joan Henriksen Hellyer, RN, PhD, Director of the Clinical Ethics Consultation Service at the Mayo Clinic in Rochester Minnesota, presented “Decision Making for the Unbefriended Patient” at the Loma Linda University Medical Center. Hellyer made her presentation at a Bioethics Grand Rounds, sponsored by the Center for Christian Bioethics and by its Clinical Ethics Consultation Service.

Her presentation could be understood as either highlighting the most helpful features of “best interest” considerations in the care of terminally ill patients or as offering an alternative to them. Either way, she criticized the way she has apparently sometimes seen friendless dying patients treated.

Hellyer agrees that patients with “decisional capacity” and “strong support” are the easiest. With respect to the issues at hand, and not merely in a general way, these patients possess enough mental clarity, information and freedom reliably to decide among the available alternatives, one of which might be receiving nothing but comfort care until death comes. They also benefit from loved ones who are present.

When a patient lacks these, medical teams ask someone who knows him or her well enough to make a “substituted judgment.” This is to be what the patient most likely would say, not what the close friend or relative might prefer. When thoroughgoing attempts to locate such a person fail, the team itself makes a determination as to what would be in the patient’s “best interests.”

Common sense and the relevant literature make it clear that when utilizing “best interests” considerations clinicians must take into account the patient’s probable preferences. This is difficult because they know so little about him or her; however, in every case an honest attempt must be made to learn as much as possible. In no instance is it

acceptable for clinicians wholly to disregard these subjective factors exclusively in favor of those that are thought to be completely objective.

It is difficult to imagine clinicians not doing their best to act in harmony with all they can learn about their terminally ill friendless patients. Yet Hellyer has seen this happen enough times to become ethically concerned. Out of this concern, she and some her colleague have developed a protocol by which an appointed group of different specialists immerse themselves in everything that they can learn about the patient, including the narrative of his or life and as many of its subjective elements as possible, before rendering an educated guess about what he or she would probably want. This group’s responsibility is to “befriend” the “unbefriended” patient.

“Best Interests” considerations are more than capable of handling cases like this one when they are employed as intended. Hellyer’s call for “befriending” the “unbefriended” patient is therefore best understood as highlighting their most helpful features and introducing a protocol by which they can be more successfully utilized.

You are invited to watch the video of this Bioethics Grand Rounds program with Dr. Henriksen Hellyer online at <vimeo.com/88028492>

School of Dentistry

The Bioethics Grand Rounds with Dr. Henriksen Hellyer was the third of three Bioethics Grand Rounds in a row in February. On February 19, Gerald Winslow, PhD, Vice President for Mission and Culture at the Loma Linda University Medical Center, Director of the Loma Linda University Institute for Health Policy and Leadership, and former President of the American Society for Dental Ethics presented “Top 10 Ethical Issues For Dentists” in the Loma Linda University School of Dentist-

ry. Winslow’s presentation was drawn from a survey of dentists and dental educators in California and Indiana that he and Charles Goodacre, a recent Dean of the LLU School of Dentistry, conducted.

The survey indicated that, in order of importance, the top 10 ethical issues were:

1. Dentists who over-diagnose and over-treat patients for financial gain;
2. Insurance companies that frustrate good patient care;
3. Misleading advertising;
4. Pressures on dentists who work for corporations other than their own;
5. Dealing with unprofessional or incompetent colleagues;
6. Academic integrity in dental education;
7. Failures to refer patients when appropriate;
8. Dental students “practicing” on patients;
9. Patients making unwise dental decisions;
10. Unethical or illegal use of dental auxiliaries.

VA Medical Center

One week earlier, on February 12, David McAvoy Chooljian, MD, JD, presented “When There’s ‘Nothing More to Do’: Futility and Its Role in Ethics Consultations at the Jerry Pettis Veterans Administration Medical Center in Loma Linda. Dr. Chooljian recently joined the staff at the VA after completing his fellowship in pulmonary and critical care medicine at Stanford University. Dr. Chooljian received his MD and JD from Vanderbilt University.

Dr. Chooljian’s two-fold thesis was that the term “medical futility” has no universally accepted meaning and that, therefore, in the absence of such a consensus, establishing fair procedures for dealing with cases in which there appears to be “nothing left to do” is essential.

Our next issue of UPDATE will feature both Dr. Winslow’s presentation as well as Dr. Chooljian’s. Until then, you are invited to watch the video of this Bioethics Grand Rounds program with Dr. Winslow online at <vimeo.com/88028492>.

Visiting Professors and Scholars



In the fall quarter, from September to December 2013, the Center for Christian Bioethics hosted as a visiting academic scholar, Ann Gibson, PhD, former Dean of the School of Business at Andrews University.

The initial beginning of the book's story was a dream in the minds of Daniel A. Augsberger, PhD (deceased), Emeritus Professor of Historical Theology, and Dr. Ann Gibson, formulated as they team taught the Christian business ethics class at Andrews University.

The book began to take shape during Dr. Gibson's sabbatical in 2000-2001, during which time Dr. Augsberger compiled his teaching notes based on Scripture in a more readable format, while Dr. Gibson worked on the business examples. But with Dr. Augsberger's untimely passing in 2004, the book returned to its "dream-like state" until Dr. Gerald Winslow, PhD, Vice President for Mission and Culture at the Loma Linda University Medical Center, suggested that she consider contacting the Center for Christian Bioethics.

During her sabbatical quarter, Dr. Gibson met with eight faculty members in the School of Religion who read drafts of her writing and

met with her to talk about the book project. In December, Dr. Gibson presented to the rest of the School of Religion faculty the introduction and outline of the book, as well as the progression of the project throughout the quarter.

1. Dr. Gibson's book changed shape during her time at the Center.
2. What has emerged is a book intended for undergraduate business students in Christian colleges and universities who are entering the field of business.
3. Each chapter now begins with a case study in business ethics and moves towards theology.
4. The book will assume that the Christian worldview is a viable way to look at the world and on which to base business ethics. The manuscript is currently under review by publishers.

Below is an excerpt from the introduction for her book:

"While we may be interested in the beginning of a story, we are equally interested in the end of a story. In fact, at times we are so interested in how the story will end that we cheat just a little, and read the last chapter first! From the Christian perspective, insight about the end of the story is available to us from the Babylonian Talmud, Shabbat 31a, which suggests that the first question asked in the world to come is: "Have you been honorable in business?"

REFERENCES

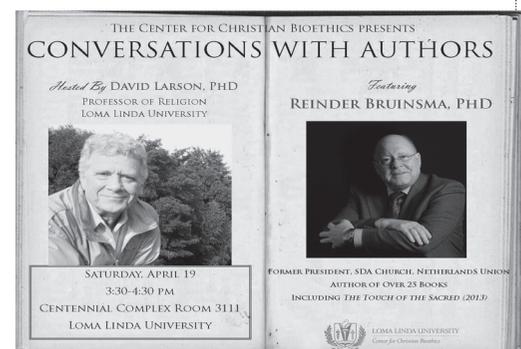
(Pava, Moses. "Developing a Religiously Grounded Business Ethic: A Jewish Perspective." *Business Ethics Quarterly*, Jan, 1998, vol 8 (a), page 65.)

Conversations with Authors

In March, another visiting professor arrived at Loma Linda University. Dr. Reinder Bruinsma, PhD, former President of the Seventh-day Adventist Church in the Netherlands Union and author of over twenty five books, is teaching an undergraduate course for the School of Religion titled "Contemporary Issues in Adventism" that addresses various moral and ethical issues. These lectures have been open to the public.

While Dr. Bruinsma was in Loma Linda, he also participated in "Conversation with Authors," a quarterly program hosted by the Center for Christian Bioethics. Under the leadership of David Larson, PhD, this program started in 2010 and recently reached its 10th episode mark. The most recent, previous Conversation with Authors took place on December 7, 2013 and featured Gary Chartier, PhD, JD, Professor of Law and Business Ethics and Associate Dean of the School of Business at La Sierra University.

You are invited to watch the video of this Conversation with Authors program with Dr. Gary Chartier online at <vimeo.com/82726508>.



2014 M.A. in Bioethics Graduates

The Center for Christian Bioethics continues to support and benefit from Loma Linda University's growing number of graduate students in Bioethics. The 26 M.A. candidates include four who are pursuing the single-degree and 22 enrolled in programs that will provide them with both the Bioethics M.A. and doctorates in Den-

tistry, Medicine, or Pharmacy. Currently there are three MD/MA students, nine PharmD/MA students, and ten DDS/MA students.

Five students are graduating from the program in June 2014: Mark Ard (MD/MA), Barry Howe (MD/MA), Brittany Limon (PharmD/MA), Angeline Lo (PharmD/MA),

and Brian Nyamwange (PharmD/MA). Mark Ard is the recipient of the Outstanding Bioethics Student Award, in recognition of outstanding academic accomplishments in the Loma Linda University School of Religion Bioethics Masters degree program for 2013-2014.



LOMA LINDA UNIVERSITY

Center for Christian Bioethics

UPDATE

APRIL 2014

DIRECTOR

Roy Branson

ASSOCIATE DIRECTOR

Steven B. Hardin

ADMINISTRATIVE COMMITTEE

Jon Paulien— Chair
Brian Bull—Vice Chair
Becky Bossert
Beverly Buckles
Roy Branson
Ron Carter
Garry FitzGerald
Steven B. Hardin
Richard Hart
Billy Hughes
Craig Jackson
Odette Johnson
Leroy Leggitt
Tricia Pennicock
Carolyn Thompson
Gerald Winslow
Anthony Zuccarelli

SCHOLARS

Roy Branson—Director
Mark Carr
Debra Craig
Andy Lampkin
David R. Larson
Robert Orr
Richard Rice
James W. Walters
Gerald R. Winslow

For more information, contact:

Email: bioethics@llu.edu
Website: bioethics.llu.edu
Phone: (909)558-4956
Fax: (909)558-0336

Letters to the editor
and comments may be sent to:
24760 Stewart Street, Loma Linda, California 92350

NONPROFIT ORG
U.S. POSTAGE
PAID
COLLEGE PLACE WA
PERMIT NO 10

Ethics in Great Films

For the first time this year, the films shown as part of the Center's Ethics in Great Films series, qualify as one of the approved activities for the Loma Linda University School of Allied Health Wholeness Portfolio Program. Students who complete the portfolio program receive special recognition at graduation.

In addition, the Center has started to invite special guests to lead off the discussions immediately following the screenings. Last winter, a Skype call was arranged with Geoffrey Smith, the director and producer of "The English Surgeon," so that immediately after the film screening, he interacted with the attendees.

"The English Surgeon," is a documentary about London's foremost brain surgeon, Henry Marsh, who has dedicated the past 15 years of his life traveling to Kiev, Ukraine to improve the medieval brain surgery techniques that he has witnessed there. Dr. Marsh encounters the challenges of misdiagnosed patients, scarce equipment,

untrained medical staff, as well as the agony and turmoil over those he can and those he cannot save.

Director Smith shared that his own personal Christian convictions played a significant role in driving him to create the film. In contrast, he noted, Henry Marsh identifies his more general sense of moral responsibility and a desire to help others, not God, as what drives his work.

The last film screening of the 2013-2014 school year is "The Singing Revolution" on April 30 or May 1, from 6:00-8:00pm in the Centennial Complex Building Room 3113 at Loma Linda University. "The Singing Revolution" recounts the power of non-violence and song as the Estonian sought to free themselves from Soviet occupation. Special guest Lily Wagner, PhD, Director of the Philanthropic Service for Institutions in the North American Division of the Seventh-day Adventist Church and born and raised in Estonia, will lead the discussion after the film.

UPDATE ONLINE

If you would like to receive UPDATE via e-mail rather than snail mail, e-mail your first and last name to <bioethics@llu.edu>.