# Let your yes be yes: Perjury then and now

by John T. Fitzgerald in the July 28, 1999 issue

Now that the President Clinton-Monica Lewinsky affair is off the front pages, it may be possible to comment on the moral and legal issue of perjury without arousing a host of partisan arguments. And it might be of interest to consider how perjury was defined in the ancient world of Greece and Israel and in New Testament times.

In the U.S. today perjury is usually restricted to false statements made under oath in judicial or quasi-judicial proceedings. To be guilty of perjury, one must give false testimony knowingly and willfully on a matter that is material to the judicial proceeding. That is, both intentionality and materiality are essential aspects of the crime. A person who unintentionally makes a false statement under oath, whether through ignorance of the truth or through an honest mistake, is not guilty of perjury. Nor is a person guilty of perjury if he deliberately makes false statements on matters that are unrelated to the judicial proceeding; to constitute perjury, the false testimony must be germane to the case. Finally, perjury today is primarily a matter of criminal law, not civil law. Individuals suspected of committing perjury may be charged and prosecuted by the state and, if convicted, punished by the state.

Ancient Greeks and Israelites had a quite different understanding of perjury. For them, perjury was above all a religious offense, not a legal one. Stated in terms of the Decalogue, perjury was a violation of the commandment not to take the name of the Lord in vain (Exod. 20:7), not a transgression of the injunction against bearing false testimony against one's neighbor (Exod. 20:16). The former commandment was understood to apply to all times and circumstances; the latter dealt above all with judicial proceedings.

In keeping with this distinction, witnesses in ancient Israelite and Greek trials were not usually placed under oath; indeed, there is no Old Testament text in which a witness is said to take an oath. Similarly, in ancient Athens most witnesses were not placed under oath, and prosecution for false testimony did not depend on whether a

witness testified under oath or not. Those suspected of giving false testimony were, moreover, prosecuted by private citizens, for false testimony was viewed fundamentally as a civil offense, not a criminal one.

To swear in the ancient world was to invoke the gods as both the witnesses and guardians of an oath. A person's oaths could be either assertory or promissory—the former involving assertions about the past and the present, the latter containing pledges about the future. One could commit perjury in regard to both kinds of oaths—for failing to keep one's vows about the future as well as for making false assertions about the past and present. In modern America, by contrast, perjury is restricted to assertory oaths.

The perjurer's fundamental offense was not lying or failing to keep a promissory oath; it was the invocation of the god's name in connection with the lie or the unkept promise. Perjury was thus a matter of personal injury, and the gods were believed to punish perjurers in retaliation for the abuse of their name and honor. The precise penalty for perjury was never set but varied from god to god and from perjurer to perjurer. It ranged from woes of various kinds to death and could even involve punishment after death.

Indeed, postmortem punishment is mentioned in the *Iliad* (3.278-79), and the crime that merits it is perjury. For Homer, therefore, the offense was so serious that it could even result in the perjurer's suffering the same fate as Tityus, Tantalus and Sisyphus, the three infamous sinners whom Odysseus saw suffering eternally in Hades (*Odyssey*, 11.576-600).

In Homeric times, moreover, neither intentionality nor materiality was crucial to the definition of perjury. An unfulfilled oath was a perjured oath, even when one originally had every intention of keeping it and was prevented from doing so by circumstances beyond one's control.

In the Greco-Roman world, the practice of taking oaths was ubiquitous. Oaths were not restricted to the law court but permeated the political, social and religious life of all peoples who lived in the Mediterranean world. While perjury continued to be viewed in general as a religious offense that was self-evidently wrong, not all oaths were treated the same by the Greeks. False oaths taken in situations of duress or to save one's life were not usually viewed as blameworthy, being regarded as justified by the unusual circumstances involved. And the gods were typically viewed as

extremely tolerant of perjury in cases involving sex. As early as Plato, one finds the sentiment that "a lover's oath . . . is no oath at all" (*Symposium*, 183b).

The belief that perjurers were punished by the divine did not prove a strong deterrent to perjury; as a Hellenistic orator by the name of Maximus of Tyre once lamented, humans "feared [the gods] as avenging powers, yet committed perjury, as if the gods had no existence" (*Oration*, 36.2n). Because of the widespread abuse of oaths, serious moralists of all stripes, including the Jewish philosopher Philo of Alexandria and the Stoic philosopher Epictetus, criticized the trivial use of oaths and discouraged the practice of using oaths at all. Jesus' criticisms of oath-takers in Matthew 23:16-22 and his prohibition of both perjury and oaths in Matthew 5:33-37 belong to this widespread critique.

In Matthew's view, the problem is not simply the making of false assertory oaths, such as those made by Peter (Matt. 26:69-75), or the human inability to keep promissory oaths (Matt. 5:36). To keep an oath can prove equally problematic and cost a good man like John the Baptist his life, as when Herod Antipas kept his oath to the daughter of Herodias (Matt. 14: 1-14). Because oaths not only come from evil (Matt. 5:37) but also can result in evil, the Matthean Jesus advises his followers not to swear at all (5:34).

Citizens of the U.S, of course, will continue to define and punish perjury in keeping with federal and state law. But Christians would do well to recall the ancient and biblical view that perjury is fundamentally a religious offense that we can commit in our daily life, not a legal offense restricted to the witness stand.

We need to think more theologically about oaths and perjury than we usually do. If we decide to follow the cautionary words of the Jesus in Matthew and refrain from oaths altogether, we should base that decision on a religious understanding of perjury. If we elect to use oaths when either compelled to do so or in exceptional situations, we need to remember that the taking of an oath is as much a religious act as the uttering of a prayer. In both cases, we are invoking God, and for Christians that should be the crucial consideration in deciding whether to swear or not.