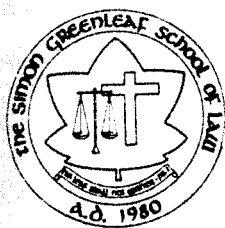


# The Simon Greenleaf



## Law Review

**A Scholarly Forum of Opinion Interrelating  
Law, Theology & Human Rights**

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**The Rights of Unborn Children**

**Lex Talionis & the Human Fetus**

**The Quality of Life Argument for Infanticide**

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## THE SIMON GREENLEAF LAW REVIEW A Scholarly Forum of Opinion Interrelating Law, Theology & Human Rights

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**FEE SETTING FOR THE CHRISTIAN ATTORNEY**

by

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## FEE SETTING FOR THE CHRISTIAN ATTORNEY

*"No one can serve two masters; for either he will hate the one and love the other, or he will hold to one and despise the other. You cannot serve God and mammon."*

Matthew 6:24, NASB

The Christian attorney must consider prayerfully how to witness to clients in every context of his practice. This is especially difficult in fee setting, since many people believe the entire goal of a lawyer's education and practice is to seek financial success.

If the Christian attorney develops a successful practice, he must not have his faith "choked with worries and riches and pleasures of this life" (Luke 8:14, NASB). As Paul warned Timothy, "instruct those who are rich in this present world not to be conceited or to fix their hope on the uncertainty of riches, but on God, who richly supplies us with all things to enjoy." (1 Timothy 6:17).

Christian attorneys have a high calling to plead the cause of the afflicted and needy, to not be intent on dishonest gain, to oppose the shedding of innocent blood, and to avoid extortion or oppression, (Deuteronomy 15:9, Jeremiah 22:16-17). In today's context, this seems to imply an obligation to provide pro bono or low cost legal services to the poor, to deal honestly, to oppose on-demand abortion and to contract fairly. In setting fees the Christian attorney should seek a "perfect and just measure" (Deuteronomy 25:15, KJV).

The American Bar Association has promulgated ethical rules for measuring fees. Rule 1.5 of the 1983 ABA Model Rules requires that a lawyer's fees be reasonable and determined by eight factors:

1) time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by other circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent.

If the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing. Contingent fees may not be charged in divorce settlements or criminal cases. A division of fees between lawyers of different firms is permitted if: 1) it is proportional to services or joint responsibility (hence liability) is assumed; 2) client is advised and does not object; 3) the total fee is reasonable.

These ethical guidelines are essentially a restatement of the guidelines stated in the *Model Code of Professional Responsibility*, DR 2-106, adopted by the ABA in 1969. The *Model Rules* restate the clause tying fees to other lawyers in the community even though this standard is difficult to apply after *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975). The Supreme Court, in their *Goldfarb* decision, declared that minimum fee schedules, published by many bar associations at that time, were violations of the Sherman Antitrust Act.

Though helpful guidelines to the Christian attorney and "a revenger to execute wrath upon him that doeth evil" (Romans 13:4, KJV), the ethical suggestions and mandatory requirements of the ABA standards are not conclusive for the Christian. Within the ethical requirements it is still true that, "in the area of fees almost anything goes."<sup>1</sup>

Traditionally, bar associations have been more concerned with maintaining high prices on legal services and preventing competition. During the period of minimum price schedules, undercutting was always considered unprofessional.<sup>2</sup> For years the ABA neglected to deter lawyers from accepting "commission" on title policies even if the clients were unaware of the kickback arrangements.<sup>3</sup> But the New York State Bar was quick to attack Dacey's *How to Avoid Probate*, and an Arizona Constitutional Amendment was required to defeat the Arizona Bar in their attempt to prevent realtors from preparing purchase agreements, deeds, mortgages, etc., without charge.<sup>4</sup> This is not to imply that Christian attorneys should not abide by the ABA guidelines. "Let every soul be subject unto the higher powers." (Romans 13:1, KJV).

Certainly, the Code and Model Rules have many admirable provisions. The Code, EC 2-16, states that "persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services." EC 2-25 declares that "every lawyer, regard-

<sup>1</sup> J. Lieberman, *Crisis at the Bar* 107 (1978).

<sup>2</sup> *Id.* at 111.

<sup>3</sup> *Id.* at 115-9.

<sup>4</sup> *Id.* at 124-5.

less of professional prominence or professional workload, should find time to participate in serving the disadvantaged." These ethical considerations imitate Biblical principles: "Thou shalt open thine hand wide unto thy brother, to thy poor, and to thy needy, in thy land." (Deuteronomy 15:11, KJV).

The Christian attorney should obey mandatory regulations of his profession. But above and beyond these restrictions, he must obey Scripture.

Christian workers, including lawyers, are entitled to reasonable fees. "You shall not oppress your neighbor, nor rob him. The wages of a hired man are not to remain with you all night until morning." (Leviticus 19:13, NASB). Christian attorneys are not required to provide free legal ministry to their brothers and sisters in Christ who are capable of paying.

Scripture declares the rights of Gospel workers to their wages: "the laborer is worthy of his wages . . ." (Luke 10:7, 1 Timothy 5:18). But these verses compare the Gospel workers' rights to that of any worker's right to be compensated: "who plants a vineyard, and does not eat the fruit of it?" (1 Corinthians 9:7).

Clearly, Scripture declares the right of a worker to be paid and the obligation to pay those who work for you. "Woe to him who builds his house without righteousness . . . who uses his neighbor's services without pay and does not give him his wages." (Jeremiah 22:13).

What is a reasonable legal fee? The many factors involved in the ABA formulas make calculations difficult. However, when a serious review of fees is

required, courts usually reduce the problem to two factors: "time, in accordance with prevailing hourly rates, and the degree of contingency."<sup>5</sup>

Lewis Smedes, Professor of Theology and Ethics, Fuller Theological Seminary, divides the right to own, and therefore sell, according to the moral right of acquisition.<sup>6</sup> He divides acquisition into conquest, contract and creation. According to his system conquest gives an absolute moral right of possession only where the object or property was not in the rightful possession of another. Contract gives a moral right only if the contract was made by agreement of free responsible persons. Creation, according to Smedes, creates the strongest moral claim so long as that right is not contracted away.

A fair and clear attorney client contract is perhaps the best start to a reasonable fee arrangement. An agreement is required under Model Rule 1.5 when the client hasn't been regularly represented. A fair contract which is clearly explained to the client should also create a moral obligation with any responsible client. A reasonable contract between attorney (fiduciary) and his protected dependent also gives your client protection under general principles of law which may extend beyond ABA ethical canons.<sup>7</sup>

Prompt billing is also a simple courtesy that should be extended to all clients.<sup>8</sup> The contract, billing and

<sup>5</sup> G. Hazard, *Ethics in the Practice of Law* 98 (1978).

<sup>6</sup> L. Smedes, *Mere Morality* 192-5 (1983).

<sup>7</sup> G. Hazard, *supra*, at 99.

<sup>8</sup> G. Singer, *How To Go Directly into Solo Law Practice (without Missing a Meal)* 225 (1976).

client-attorney communications should be organized to keep the client aware of what he/she is being charged and why.

Attorneys may be blamed for deriving their income from work that exists only because the law requires it.<sup>9</sup> Regulations and taxation impose unsolicited costs. Lawyers are hired to devise systems that comply with the law at lowest cost.<sup>10</sup>

In cases dealing with administrative or regulatory law, clients may attribute costs to the lawyer who bills them, but more often to government regulations that made legal services necessary. Clients may be possessed by an unrecognized source of indignation: "If the lawyer gets a bad result for his client, the fee adds injury to injury; if he gets a good result, the fact that his high-priced services were necessary to the vindication of justice adds injury to insult."<sup>11</sup>

Legal fees may seem high to the client. However, lawyers are highly trained professionals providing personal services. Lawyers believe they are worth a good wage and their skills are easily transferable to other vocations (business, corporate management, marketing, finance, public administration, etc.) with high levels of compensation.<sup>12</sup> Some routine legal services can now be offered at low cost by combining mass production with advertising,<sup>13</sup> but hand-

tailored legal services will continue to be expensive.<sup>14</sup> "Legal services cost a lot because good legal services are in high demand and limited supply."<sup>15</sup>

The Christian attorney is obligated to "learn to do good; seek justice, reprove the ruthless; defend the orphan, plead for the widow." (Isaiah 1:17, NASB). But in the ordinary context, a Christian attorney is not obligated to give paying clients a bargain rate.

What then is the difference for a believer? Is he free to be the devout miser that Kant described: "They want comfort and support in their anxiety and look to God for it, by means of a fanatical devoutness, which, after all, costs nothing."<sup>16</sup>

It is in his priorities and resolution of conflicts that the Christian attorney must distinguish himself. It is not money, but "the love of money" which "is the root of all evils" (1 Timothy 6:10). "A little that a righteous man hath is better than the riches of many wicked" (Psalm 37:16, KJV).

Martin Luther's 1524 treatise on "Trade and Usury" addresses many of the limitations that may apply to Christians dealing in commercial transactions. Luther describes four Christian ways of exchanging external goods with others.<sup>17</sup>

The first is to allow property to be stolen as indicated in Luke 6:29-30 and Matthew 5:40. Christians

<sup>9</sup> J. Lieberman, *supra*, at 121.

<sup>10</sup> G. Hazard, *supra*, at 101.

<sup>11</sup> *Id.* at 103.

<sup>12</sup> *Id.* at 102.

<sup>13</sup> *Id.* at 106.

<sup>14</sup> *Id.* at 105.

<sup>15</sup> *Id.* at 101.

<sup>16</sup> I. Kant, *Lectures on Ethics* 180 (L. Infield trans. 1978).

<sup>17</sup> 45 M. Luther, *Luther's Works* 255-61 (American ed. 1962).



must rely on their Father in heaven to provide their daily bread (*Matthew 6:11*). This may apply to the Christian attorney who faces a fee dispute with his client.

Secondly, the Christian is called upon to give freely to those who need it (*Matthew 5:42, Luke 6:30*). Christian attorneys have a compelling reason for *pro bono* work. They must trust in the Lord for their needs. "I will not fail thee, nor forsake thee" (*Joshua 1:5*).

Third, Christians can lend expecting nothing in return. "Lend, hoping for nothing again; and your reward shall be great, and ye shall be the children of the Highest" (*Luke 6:35, KJV*). Perhaps there are times when a Christian attorney should loan his time and services to *pro bono* or contingency cases that may pay nothing but serve the Lord's purposes. Fourth, Luther deals with the topic of buying and selling goods.

Luther notes that a Christian should suffer wrong rather than take legal action against a brother. Luther holds the temporal authorities responsible for seeking justice, but he would not have the Christian seek their assistance against another Christian (*1 Corinthians 6:7*).

The Christian attorney can easily practice within the general ABA fee setting guidelines. But he has good reason to go beyond these requirements to reach a purpose set out by his Creator: "to do justly, and to love mercy, and to walk humbly with thy God" (*Micah 6:8*).

## REVIEWS

## REVIEWS

*Holy Writ informs us that "of making many books there is no end." The conclusion is therefore inescapable that a scholarly journal cannot review everything. The Simon Greenleaf Law Review has chosen to focus its attention on a limited number of recent publications which fall within the ambit of the School's special interests: integrating theology and law, examining the case for Christianity, and applying historic biblical faith to human rights.*

### WHAT CONSTITUTES PERSONHOOD?

Michael Tooley, *Abortion and Infanticide* (Oxford: Clarendon Press, 1983), 441 pp. Price: 20.00 Pounds sterling.

A polarization of world views is evident in today's thinking about the role and nature of man. One side proclaims that man is unique and distinct from other animals; the second, that man is merely a place marker on the evolutionary scale. The two cannot occupy the same belief space at the same time.

The revolution of modern thinking that has gained the upper hand compasses the change in thinking from "What makes man unique?" to "Is man unique?" The human and life sciences have gathered forces to forward the idea that "Better living through chemistry" is more than a motto: it is a credo upon which contemporary scientific research is founded. They believe that chemistry is life; there are no metaphysi-

cal strings attached to our universe. For the Christian, the implications of this scientific materialism can be shattering.

Michael Tooley has written an engaging and confrontational book worthy of more than a glance since it is very nearly a chorus of the naturalistic anthem about the nature of personhood — the very core of the controversy about the make-up of man.

Tooley treats three positions on abortion: pro-life/anti-abortion; moderate/abortion-under-certain-conditions; and liberal/pro-abortion. His analysis leads him to conclude that the liberal view is the best of the three. He includes an examination of infanticide through a survey of its historical and anthropological aspects and the accompanying moral issues.

The liberal position on abortion must lead, he admits, to allowing infanticide under some conditions. Similarly, he believes the pro-life view must lead to vegetarianism. It must be noted that such a position is dependent upon a strict equation of human and non-human life forms. Tooley does not make a distinction between humans and non-humans when writing about personhood; his materialistic perception of life will not allow him to do so. Therefore, when one says that a "moral intuition" prohibits the killing of babies, Tooley rejects the principle since it does not take into consideration species other than *homo sapiens*. Only if human and non-human life are essentially the same can a pro-life view be said to lead to vegetarianism. This notion reveals the underlying assumption of deterministic materialism: what you see is all there is!

The question of the constituent parts of personhood has been discussed by Tooley in an earlier work. His latest book shows some variation, in at least one area, from the earlier work. In the essay, "Would ETI's Be Persons?" (*Extra-Terrestrial Intelligence: The First Encounter* [Buffalo, New York: Prometheus Books, 1976]), Tooley addresses the issue of the determination of personhood in preparation for Earth's initial meeting with beings from another world. Citation of a few passages on personhood will enlighten us on his proposal:

[R]ationality, or the capacity for thinking, [to] transform a merely conscious being into a person [isn't sufficient ground for personhood]. What counts as thinking? Does one have thinking wherever one has 'insightful learning'? . . . If so, chimpanzees are certainly capable of thinking . . . [and] . . . it would accordingly be seriously wrong to kill them.

[Movement from being to personhood requires] one's awareness that one is a self . . . a continuing subject of experiences and other mental states that can envisage a future for itself and that can have desires about its own future states.

The revision Tooley makes in *Abortion and Infanticide* is to eliminate self-awareness and tighten his argument: "The non-potential property that makes an individual a person . . . is the property of being an enduring subject of non-momentary interests." Such non-potential property does not include "the capacity for rational thought; the capacity for free action; the capacity for self-consciousness."

Self-consciousness is eliminated because it is not necessary to establish personhood, and its sufficiency to make something a person is doubtful. Tooley unfortunately relies too heavily on modern opinion when searching for his own. His conclusion about the sufficiency of self-consciousness is graded according

to its agreement with "most current ethical theories." For the Christian, this is barely tolerable since most such modern theories have very little to offer non-situational systems.

In order to appreciate Tooley's perspective on personhood and the logical outcome as it relates to his topic, one must investigate the steps that lead to his conclusions about abortion, and in particular, infanticide. His presupposition is that life can be quantified, measured, observed, predicted, altered. Personhood is directly related to function: the more functional one becomes, the less right it is to terminate that one's life.

To make his case for infanticide, Tooley insists that personhood requires certain necessary psychological characteristics, such as the capacity for thought, self-consciousness, and rational deliberation. (This is interesting since elsewhere, as we noted, Tooley does not allow these factors to count toward personhood!) Adding to these characteristics certain scientific findings about linguistic and non-linguistic behavior and observations of the neurophysiological state of infants, he arrives at the conclusion that the behavior of new-borns does not allow for attribution of higher mental capacities. The data inform us that new-borns lack the essential "something" which makes persons. Infanticide is therefore an option during that period of lack, a period which can extend as long as three months.

Tooley makes no allowance for potentiality, either active or passive: "New-born humans are neither persons nor even quasi-persons, and their destruction is in no way intrinsically wrong." Unfortunately,

there is no set age at which a thing becomes a person, so, one supposes, the determination will have to be left to experts. Perhaps personhood is finally achieved when one is appointed a professor of philosophy. We must seriously ask: Who will determine personhood? Which standards will we use in that determination? If we follow Tooley's idea that one must be capable of enjoying a "certain sort of mental life," who will be in charge of that government department?

Tooley will not find an enthusiastic audience among Christians because of his denial of the intrinsic worthiness of man (in opposition to biblical propositions proclaiming man's nobility), and his view of morality as a matter of counting hands ("The willingness of most people to accept termination of life in [certain cases] . . ."). Tooley combines both of these elements in his belief that the refusal to allow the death of a member of the species *homo sapiens* will lead to large numbers of women being "compelled either to bear children they do not wish to bear, or to seek criminal abortions." But is that really the issue? Are we to accept abortion as a convenience?

Furthermore, Tooley's advocacy of "the adoption of sound moral principles" to govern the act of infanticide cannot hope to cover his willingness to justify his abdication of other moral principles in that act as well as in the act of abortion.

Philosophy cannot answer the basic question: does the fetus represent human life? Scientific research has pushed the "beginning of life," at least in materialistic terms recognizable to the average man, closer and closer to the moment of conception. Tooley offers us no good reason to reject the person-

hood of the fetus, particularly in the light of seemingly contrary evidence that demands we declare a moratorium on abortion. The extension of Tooley's views on the nature of personhood and the very meaning of life itself leads necessarily to allowing infanticide. The danger is that it also opens the door for other acts of violence against human persons: against the elderly, the infirm, the helpless. Those who can no longer function to the satisfaction of the new order will not enjoy a bright future.

The only possibility for escape from the vicious circle of Tooley's logic is to turn to the absolutist view which finds in Scripture the revelational concept that life begins with the tiniest stirrings in the womb:

For Thou didst form my inward parts; Thou didst weave me in my mother's womb . . . My frame was not hidden from thee, when I was made in secret, and skillfully wrought in the depths of the earth. Thine eyes have seen my unformed substance; and in Thy book they were all written, the days that were ordained for me, when as yet there was not one of them. (Psalm 139:13, 15, 16)

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### ATHEISM FOR THE TOUGH-MINDED

Paul Kurtz, *In Defense of Secular Humanism* (Buffalo, N.Y.: Prometheus Books, 1983), 273 pp. Price \$17.95.

In a recent *New York Times* article Sen. Daniel Patrick Moynihan (D-N.Y.) said, in response to the New Right's claim that secular humanism had inundated the public school system, that he frankly did

not know what secular humanism was and doubted its very existence as a philosophical force. I suggest that the Senator pick up a copy of Paul Kurtz' *In Defense of Secular Humanism*. Kurtz, a professor of philosophy at the State University of New York at Buffalo and one of the world's leading humanists (he spearheaded and edited the well-known *Humanist Manifesto II* and *A Secular Humanist Declaration*), has given us a much-needed exposition of secular humanism.

This work, a collection of essays penned by Kurtz, dispels many of the myths connected with secular humanism. For example, Tim LaHaye's accusation that secular humanism is merely a species of political liberalism is simply not true. Kurtz writes that humanists are of every political stripe and philosophical preference (such as the right-wing atheist and anti-communist, Sidney Hook, and the left-wing feminist, Betty Friedan). In one essay Kurtz accurately points out that humanists have been in the forefront in promoting tolerance [albeit, their definition], democracy, and free-thinking. In addition, Kurtz has an excellent section for those interested in the investigation of the occult, entitled "Science and the Paranormal," in which he examines the arguments for and against the existence of occultic phenomena.

Though Kurtz dispels many myths and points out some of the good in secular humanism the fact of the matter is that his philosophy is ardently anti-Christian. Because of this he often disguises, under a cloak of tolerance, his desire to completely expunge Christianity from any place of cultural influence. For example, throughout the entire book Kurtz makes the

completely absurd inference that Bible-believing Christians are against the pursuit of the humanities (history, science, philosophy, law, etc.). In light of Augustine, Thomas Aquinas, Luther, Erasmus, Newton, Copernicus, Pascal, Thomas More, Cardinal Newmann, Blackstone, Greenleaf, Chesterton, Lewis, Tolkein, Schaeffer and a host of others, Kurtz' accusation reveals its vacuousness. Though a few wild eyed fundamentalists may fit Kurtz' stereotype, most orthodox Christians would find his assessment laughable.

In addition, in *A Secular Humanist Declaration* it is claimed that secular humanism opposes "any tyranny over the mind of man, any efforts by ecclesiastical, political, ideological, or social institutions to shackle free thought" (p. 15). However, in all ten sections of the declaration religious belief is belittled as irrelevant for society. The declaration wants all religious influence antiseptically removed from the government, moral education, science and technology, and education in general, all in a spirit of religious skepticism grounded in non-theistic evolution (pp. 16-20). One wonders who the "intolerant" one is. As the Catholic moralist Joseph Sobran once wrote: "A religious conviction is now a second-class conviction, expected to step deferentially on the back of the secular bus, and not to get uppity about it . . . . The consequence is that the believer is expected to behave as if he didn't believe: he is to treat his own belief as if it were false, simply because others can't be expected to treat it as if it were true" (*Single Issues*, pp. 57, 60, 61). In other words, Christians have a right to believe what they want to believe, but they have no right to act as if their beliefs are true. In this regard secular humanism has redefined tolerance so

as not to accommodate traditional orthodox Christian action. Doublethink revisited.

One of the flaws that is present throughout Kurtz' fine exposition is that he cannot decide whether he is an absolutist or a relativist. For example, it is stated that "secular humanism is not a dogma or creed" (p. 15), but we are then told that secular humanists "call upon all men and women of good will who agree with us to join in helping to keep alive the commitment to the principles of free inquiry and the secular humanist outlook" (p. 22). If secular humanism is not a dogma or creed it has a relative base and could change tomorrow. However, we are told to commit ourselves to the principles of secular humanism. How can one commit oneself to principles that could change in the next minute? This dilemma is never answered by Kurtz or, for that matter, any philosophical system that has worn the name of "skepticism."

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### THE NEW TESTAMENT UNDER FIRE

Michael Arnheim, *Is Christianity True?* (Buffalo, N.Y.: Prometheus Books, 1984), 198 pp. Price: \$9.95.

Michael Arnheim, Jan Hofmeyer Professor of Classical Civilization in the University of Witwatersrand, attempts to undercut the evidential foundation of Christianity by a direct attack on the New Testament's reliability and its interpretation of the Old

Testament. It goes without saying that the author's presentation cannot be fully responded to in a short book review. However, almost all of Arnheim's arguments have been more than answered in the writings of F. F. Bruce, Gleason Archer, and Walter Kaiser (who, oddly enough, are absent from the book's bibliography).

It is reassuring, despite his negative assessment, that Arnheim has not capitulated to the theological modernist's view of Christian truth. He writes: ". . . if Jesus were so shadowy a figure as to belong more to the realm of myth and legend than to that of history and fact, the whole edifice of Christianity must surely crumble" (p. 4). To this extent (but, sad to say, no further) does Arnheim agree with St. Paul (1 Corinthians 15:14; cf. vs. 1-8). His methodology suffers from a number of gross errors.

Arnheim consistently impugns the motives of the New Testament authors and never gives them the benefit of the doubt. This is in direct conflict with what Simon Greenleaf referred to as the "ancient document rule." Simon Greenleaf, whose field of expertise was in the laws of evidence, was one of the two men who made the Harvard School of Law internationally renowned in the 19th century. Concerning the evaluation of ancient documents he stated that "every document . . . bearing on its face no evident marks of forgery, the law presumes to be genuine, and devolves on the opposing party the burden of proving otherwise" (*The Testimony of the Evangelists*).

An example of this may be seen in Arnheim's critique of Luke's writings. He does not even allude to

the fact that Luke's references to fifty-four cities, thirty-two countries, and nine islands are without error. However, Arnheim places great negative emphasis upon Luke's controversial reference to the census (Luke 1), despite the fact that Bruce, Archer, and historian William Ramsay have supplied very reasonable explanations for this Lucan material.

In his attack upon the New Testament's concept of the Messiah, Arnheim claims that the Old Testament never taught that the Messiah would be virgin-born. He claims that the New Testament's citation of Isaiah 7:14 (" . . . and the virgin shall be with child. . . ") is based on a poor translation of the Hebrew. Arnheim writes that the Hebrew word for virgin in this passage, *almah*, could also be translated young woman and that a "better" Hebrew word for virgin is *betulah* (pp. 16-25) which Isaiah does not use. This, of course, is an example of a theological sleight of hand. As Charles D. Isbell has pointed out in his fine article, "Does the Gospel of Matthew Proclaim Mary's Virginity?" (*Biblical Archaeology Review*, June 1977), *betulah* is not always translated as virgin. It also may be used to refer to other situations, such as to women who have lost their husbands (Joel 1:8). It is the context of the passage, not the word itself necessarily, which determines its meaning. Moreover, well before the Christian era (and therefore prior to any theological controversy on the question), Jewish translators of Isaiah 7:14 rendered *almah* into Septuagint Greek as *parthenos* — a word that almost invariably means virgin! (For an excellent in-depth defense of Jesus' virgin birth, see J. Gresham Machen's *The Virgin Birth of Christ*.)

Classicists, as a rule, are meticulous in their handling of the data of ancient times. Arnheim jeopardizes his place in that proud company by a book more governed by the tendentious effort to make a doubtful religious point than to deal with the factual evidence for the person whose life divides historical (as well as personal) experience into B.C. and A.D.

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### DE MORTUIS NIHIL NISI MALUM

John Beversluis, *C. S. Lewis and the Search for Rational Religion* (Grand Rapids, Mich.: William B. Eerdmans Publishing Company, 1985), 182 pp. Price: \$9.95.

One can never be too certain how much coaxing it takes to convince a world-class philosopher to endorse a new book, but John Beversluis seems to have found the answer. His book carries a *nihil obstat* from Antony Flew (one of the most prominent of atheistic analytical philosophers), as well as an acknowledgment of liberal theologian W. Norman Pittenger "for encouragement and advice" (Pittenger once wrote a truly snotty critique of C. S. Lewis in *Christian Century*, which Lewis decisively refuted — *Christian Century*, Oct. 1, 1958 and Nov. 26, 1958).\*

\* Cf. John Warwick Montgomery (ed.), *Myth, Allegory and Gospel* (Minneapolis: Bethany, 1974), pp. 14-15.

Beversluis has been a student of Lewis for at least twenty-two years, based on the date of a letter from Lewis that is printed in the book. What are his conclusions after such an extended period of study?

According to Beversluis, Lewis writes with something bordering on ignorance when it comes to discerning the core philosophical issues of whatever point he is discussing; Lewis attacks only caricatures, non-existent opponents, and imaginary positions; Lewis fell apart after the death of his wife Joy, and the tale of his inability to reconcile a loving God to a world of suffering is laid out for all with eyes to see; Lewis failed in his attempt to defend the Christian faith.

These issues form the center of Beversluis' study; many lesser points are developed as well.

Beversluis does score a direct hit that must be appreciated by partisan and non-partisan. The excessive worship of Lewis that has converted him from an Oxford don into a twentieth century incarnation of the great philosophers of all time must be resisted.

One element in Lewis that Beversluis finds distasteful is Lewis' appeal to popular audiences. He believes that Lewis' lack of sophistication is an affront to the keen mind of the erudite and particular scholar who realizes the need to carefully delineate his arguments. In a book review of Richard Purtill's, *C. S. Lewis's Case for the Christian Faith* (*The Christian Century*, March 10, 1982), Beversluis writes, "Lewis was not a philosopher, and his periodic excursions into philosophical territory during the '40s are viewed



by philosophers in general as inconsequential, light-weight efforts hardly worth refuting."

Nevertheless, Beversluis has decided to refute them, and his position on Lewis has not changed.

Lewis directed his arguments at audiences who were desperately in need of material to throw back the rush of the modern spirit. In the heat of battle there is little time to draw up new weapon designs. I maintain that Lewis used sound arguments to attack the popular, evolutionary preaching so widespread at the time. Considering the audience Lewis chose, his arguments carry great force and did much to console the front-line fighters of his generation.

Beversluis' disdain for popular arenas is evident in his writing career: the periodical guide of the Los Angeles County libraries, which indexes over 400 popular periodicals for the general public, lists only two articles by Beversluis. Articles about Lewis, on the other hand, are indexed in multiple columns. One can only wonder about the number of readers who have been given appetites for deeper study by the exposure given to Lewis throughout the years. The biblical injunction against hiding one's light under a bushel applies to philosophers as well as men in the street. Beversluis seems content to restrict philosophy to the inner court and its gnostic practitioners.

The heart of Beversluis' book is built around a challenge offered by Lewis in *Mere Christianity*: "I am not asking anyone to accept Christianity if his best reasoning tells him that the weight of the evidence is against it."

The difference between believing based on the reasonableness of facts converging on a proposition, and believing in spite of any facts for or against any proposition, is the same as the difference between true belief and stupidity, according to Lewis. His challenge was based on the seriousness with which he took the burden to present and defend evidence for the Christian faith.

Part of that evidence deals with establishing a fundamental philosophical framework from which the various propositions of Christianity can be developed by extension. In Lewis' view, philosophy itself can take us no further than the existence of a Being called "god," distinct from the Christian God by virtue of being a rational construct or assent to the possibility of the existence of a higher order in the universe.

Lewis saw as part of his mission preparing people to meet the Ancient of Days by establishing the presence of a "philosopher's god." The measure of his success, as seen by Beversluis, is determined by Lewis' arguments in three areas that might be favorable evidence for belief in such a "god": the argument from desire, the moral argument, and the argument from reason.

Beversluis attacks Lewis for three long chapters, establishing ("conclusively," most likely) that "Lewis' arguments for believing in God [the upper case 'G' is Beversluis'] are unsound. They establish the existence of neither an infinite Object of desire nor a Power behind the Moral Law nor a cosmic Mind. Since it is on these arguments that his 'case for Christianity' depends, the case fails."

For all the effort of those three chapters, Beversluis might as well have "stood in bed." He tells his readers at the outset that Lewis has no intention of philosophically establishing the existence of the Christian God by means of the three above-mentioned arguments, a fact that Lewis himself makes plain: "Do not think I am going faster than I really am," he writes, "I am not yet within a hundred miles of the God of Christian theology."

Lewis even said that the Mind he spoke of is not the same thing as the Christian God. The autobiographical *Surprised by Joy* is in part Lewis' emphatic statement that theism and Christian belief are not the same animal. His conversion to theism is the theme of the book. The step from that point to belief in the Christian God is almost overlooked as he develops the groundwork for belief in "god." "The God to whom I surrendered," Lewis wrote, "was sheerly nonhuman."

Beversluis chastises Lewis for failing to do something he had never intended to accomplish. If Lewis was merely pointing out the path, or paving the road, to Christianity by establishing intellectual or philosophical "conclusions that are relevant to religious belief and that make Christianity more plausible," as Beversluis notes, why does he call that a failure to *establish the truth claims of Christianity*? This movement from Lewis' "case pointing to Christianity" to a "case for Christianity" represents fatal confusion on the critic's part. Lewis once complained of being "blamed and praised for saying what you never said and for not saying what you have said." Beversluis

ought to return to Lewis with a fresh mind to figure out just what Lewis was talking about.

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**LORD DIPLOCK (1907-1985):**

**A TRIBUTE**

by

**Canon Joseph Robinson**

**EDITOR'S NOTE:** Lord Diplock was my table companion when I dined with the Benchers of Inner and Middle Temple following my sermon at The Temple Church on May 8, 1983; he wryly observed that I had prayed for him some eight times in the Service — in his many overlapping capacities (Privy Councillor, Lord of Appeal, etc., etc.)! Not so incidentally, Lord Diplock was the one Bencher of Middle Temple who knew by heart the Graces before and after Meat. His faithful attendance at The Temple Church was always a source of strength to me when I was reading for the English Bar: first I would study his brilliant judgments (e.g., on interlocutory injunctions in *American Cyanamid v. Ethicon* [1975] 1 All E.R. 504; [1975] A.C. 396, H.L.), and then on Sunday I would see him at the Communion Table. Here was England's most distinguished Law Lord unreservedly committed to historic Christian faith.

### **LORD DIPLOCK (1907-1985): A TRIBUTE**

Lord Diplock, the senior member of the Appellate Court of the House of Lords (the British equivalent of the Supreme Court of the U.S.A.) died on October 4th, 1985. He had been a judge for 29 years, and a Lord of Appeal in Ordinary for the last 17 of them. He was educated at University College, Oxford and was called to the Bar by the Middle Temple.

At a memorial service held in The Temple Church on December 5th, Lord Scarman said that Kenneth Diplock could only properly be described as a *Christian gentleman* and a *genius*. He applied to every problem with which he was confronted the full rigour of his keenly analytic mind and gave many lucid judgements which will influence the course of English law for many years to come. He would be remembered far beyond the shores of England. He had travelled widely in every part of the Common Law world. In fact, he was an evangelist of the Common Law, deeply concerned that it should flourish wherever it had taken root.

In addition to his judicial activity there were two aspects of his work for which he would particularly be remembered. The one was his interest in and influence upon legal education. When the Inns of Court School of Law was set up in its present form it was Kenneth Diplock, al-

most singlehanded, who created the School's syllabus. The other was an aspect of his work which was of the greatest importance but has received little attention. During the time that Lord Diplock was a Lord of Appeal in Ordinary many nations gained their independence from the British Crown and almost all of them needed written constitutions. Lord Diplock played a large part in the creation of those constitutions and thus ensured that the ideals and principles of English Law were passed on to a new stage in the lives of those countries.

The Rev. Canon Joseph Robinson,  
B.D., M.Th., F.K.C.,  
LL.D. (Simon Greenleaf).  
*Master of the Temple Church,  
London, England.*

## THE TEMPLE CHURCH

The Right Honourable

William John Kenneth, Lord Diplock P.C.

Lord of Appeal in Ordinary

1907-1985

Thursday, December 5th 1985

at 4.45 p.m.