# the Simon Greenleaf



# Law Review

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

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R.A. Torrey — Defender of the Faith

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**VOLUME VII** 

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

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#### EDITOR'S INTRODUCTION TO VOLUME VII

This number of the Simon Greenleaf Law Review features the complete text of the brief submitted by Simon Greenleaf's Christian Civil Liberties Union in the historic trial of "The Athens 3," May 21-27, 1986. When three missionaries received prison sentences for "proselytizing" in Greece, Simon Greenleaf sent its founding Dean, Dr. John Warwick Montgomery, to Athens to argue the human rights aspects of the case. Readers of the Law Review now have available to them the English-language text of the brief Simon Greenleaf submitted (the only written brief in the case). See for yourself why the Greek Court of Appeals reversed the lower court and freed the missionaries!

Dr. Montgomery described the setting in the following manner: "The atmosphere in the small courtroom, packed with hundreds of concerned spectators, was literally electric. Everyone knew how much was at stake: not only human rights and religious liberties in general, but also the public perception of evangelical witness to Jesus Christ. I had intended to argue only the technical human rights issues along the lines of our brief, but finally determined to serve as theological expert witness as well in order to counteract the gross misunderstandings of evangelical missionary proclamation offered by the prosecution. I learned that the President of the Greek Court of Appeals (the chief judge) had studied in Germany, so in my oral argument I used the distinction between the two German verbs "to know" (wissen - formal, scientific knowledge; and kennen - personal knowledge by acquaintanceship). The missionaries, I argued, had not been trying to change anyone's formal, doctrinal beliefs, much less had they been attempting to get their hearers to leave the Greek Orthodox Church and join some other denomination; instead, their whole object was to present a personal acquaintanceship-knowledge of Jesus Christ. Church membership has never saved anyone, and the missionaries were not in the church membership business; only Jesus Christ personally saves (whatever the church connection), and they were holding Him up to a lost world. Thus I was privileged to do some solid gospel preaching of my own in the Athens courtroom — and the tribunal got the message. Even the advocate general, in his recommendation to the three-judge bench, shifted over to our side, asking how the court could uphold prison terms for men who were only trying to counteract the secularistic immorality and meaninglessness engulfing Greek young people today."

In the United States as well, Christians suffer legal impediments when spreading the gospel of Christ. Readers will appreciate Simon Greenleaf's alumnus Thomas Alderman's stimulating insights into "Secularism, Neutrality and the Establishment of Religion," as well as Simon Greenleaf student Thomas Trueax's critique of the profoundly influential secularistic legal philosophy of U.S. Supreme Court associate justice Oliver Wendell Holmes, Jr.

Other essays in the present volume demonstrate the application of legal reasoning to core issues of Christian apologetics. Simon Greenleaf professor John Moen and student Jeffrey Bauer, in separate but parallel essays, analyze the Resurrection of Jesus Christ from the standpoint of juridical standards of reasoning and proof, and former Simon Greenleaf law professor David Prescott exposes the fallacious reasoning of atheist Antony Flew in a paper titled, "The Presumption of Atheism Revisited: A Christian Lawyer's Perspective."

Volume Seven of the Simon Greenleaf Law Review also contains special treats for the theologian and for the litterateur. Professor Roger Martin offers the first in-depth study available anywhere of the apologetic impact of the great R.A. Torrey — with fascinating insights into his spiritual development and his reasons for holding to the entire trustworthiness of Holy Scripture. Simon Greenleaf M.A. graduate Martin Cothran summarizes his thesis on G.K. Chesterton, whose literary apologetic reminds one of the "Inklings" (C.S. Lewis, Charles Williams, J.R.R. Tolkien) a generation earlier and is equally valuable today. Cothran's appended Chesterton bibliography is alone worth the purchase price of this number of the Law Review!

Finally, readers will not be disappointed with the wide ranging reviews of recent publications within what lawyers call the "terms of reference" of this unique Christian law school and its equally unique scholarly journal.

Editors M.D.A. R.H.C.

SIMON GREENLEAF'S APPELLATE BRIEF
IN DEFENCE OF
"THE ATHENS 3"

#### **Editor's Introduction**

# Three missionaries sent to jail in Greece

From Mario Modiano, Athens

Three protestant missionaries
- a Briton, an American and a
Greek - have received stiff
prison sentences of three and a
half years each for allegedly
proselytizing a Greek Orthodox
youth and estranging him from
his family.

The Athens court found Mr Alan Williams, aged 51, who holds dual British and New Zealand citizenship, Mr Don Stephens, aged 39, of Colarado, and Mr Constantine Makris, president of the Hellenic Apostolic Mission, guilty during a weekend hearing lasting 16 hours.

The judges were told that Constantine Kotopoulos, aged 16, had become friendly with the missionaries at Elefsis, a port west of Athens in 1981 in the hope of improving his English, but later joined their faith.

The defendants were at the time converting an 11,700-ton vessel bought in Italy into a

"ministry ship" equipped with a 50-bed hospital to bring relief to disaster areas all over the world. The ship was named Anastasis II (Greek for Resurrection).

The ship was a project lauched by "Youth with a Mission", an American-financed evangelical organization which claims 35,000 members in 50 countries. The vessel is now in Los Angeles.

Mr Williams, chaplain of the Anastasis II, and Mr Stephens, in charge of training, returned to Athens this week to try to clear their names when they heard they had been sued by the boy's mother.

Both said they had refrained from seeing the boy after his divorced mother had obtained a restraining order. The boy said he was a Protestant

The defendants said they were prepared to go to jail and spend Christmas there But the were freed pending an appeal hearing.

- Photoreproduction of the London Times article of 24 December 1984 reporting the trial at First Instance (the lower court trial) at which "The Athens 3" were convicted.

Three Christian workers convicted of "proselytism" in Greece and sentenced to three-and-one-half vear prison terms were acquitted in late May. 1986. by an Athens court of appeals. Simon Greenleaf's faculty and students, through the School's Christian Civil Liberties Union, prepared the human rights argument in the case, submitting the only written brief for the defense, and the CCLU sent Simon Greenleaf's dean, Dr. John Warwick Montgomery, to Athens as defense attornev and expert witness. After the trial, Loren Cunningham, president of Youth With A Mission, wrote Dr. Montgomery: "In the words of one of our staff who heard you make your presentation in Athens: 'Loren. it wasn't just good — it was awesome!' I will happily spread the word among YWAM workers regarding the Simon Greenleaf School of Law."



Shown left to right: Defendant Don Stephens, Max Crittenden, attorney for the defense, Costas Kotopoulos, the Greek lad who received the Bible from the missionaries, Defendant Costas Macris, Defendant Alan Williams and Dr. John Warwick Montgomery.

Greece, the birthplace of democracy, holds a unique and prestigious place in world history. One thinks of the great philosophers Socrates, Plato and Aristotle, of Euclid and his foundational works in geometry, of Hippocrates, the "father of medicine" and of all that the Greek civilization stood for in the pursuit of truth and knowledge.

The Christian thinks back to the prominent place Greece held in the early church; of Paul's letters to the Christians in Ephesus, Corinth, and Thessalonica; of his encouragement to all "the churches of Galatia" (Gal. 1:2); of his sharing the Gospel with the Epicureans and Stoics on the Areopagus, in the shadows of the Parthenon (Acts 17:16f).

Little did the Apostle know as he preached that day in Athens that nineteen hundred years later three other Christian missionaries would be on trial in the same city for sharing the Gospel of Jesus Christ, just as he and Silas had been imprisoned earlier in Philippi (Acts 16). The remarkable difference is that Paul and Silas were being tried by a society hostile to the Gospel while modern missionaries are being tried for proselytism by a society claiming to be the most orthodox of Christians, in a nation termed by Greek Embassy spokesman Achilles Paparsenos as "the cradle of democracy" where "there is religious freedom for all."

It all began back in 1979 when the M/V Anastasis arrived in the Bay of Eleusis, near Athens, for major refurbishing. The Anastasis is part of Mercy Ships International, a ministry of Youth With A Mission (YWAM). It is a nine story tall ship, built in 1953, with a gross tonnage of 11,695. The Christians who run the ship have a twofold mission: the first is to

bring food, clothing and medical aid to needy people around the world. With living quarters for 600 crew members and a cargo capacity of 3,000 tons for food, clothing, medical supplies and other basic necessities, the M/V Anastasis is potentially suited to assist in any port city of the world. Secondly, they all share the common goal of presenting the Gospel to all who will listen.

The leaders of the Anastasis were Don Stephens, an American missionary and the head of Mercy Ships International, and Alan Williams, a British missionary born in New Zealand.

While in the middle of a three-year refurbishing project, a major earthquake hit the Athens area on February 24, 1981. The Anastasis crew responded to the disaster by distributing clothing and food to the many homeless victims, as well as providing spiritual counsel and relief.

It was at this time that Costas Kotopoulos, a sixteenyear-old Greek whose parents were divorced, made contact with members of the M/V Anastasis. As Williams would later testify in court, "Young Costas approached us. He looked a bit sad, so we befriended him and accepted him like we would anyone anywhere."

He was given a Bible, at his request, and began reading it diligently. In addition, through his interaction with the Christians from the Anastasis, his life began to change.

Costas, who lived with his father, visited the Anastasis on a number of different occasions, each time either dropped off by or accompanied by his father.

A Greek court banned the visits after Costas' mother, Catherine Dougas, accused the members of the Anastasis of violating an archaic Greek anti-proselytism law.

In 1982, before the Anastasis left Greece, Don Stephens gave Costas the name and address of Costas Macris, a distinguished Greek evangelical leader and former missionary to New Guinea, who now runs the Hellenic Missionary Center in Athens. In this way they hoped that Costas Kotopoulos would be able to have fellowship with other young Christians.

Almost two-and-one-half years later, Don Stephens and Alan Williams were notified, by an interested third-party, that they were being tried for proselytism in Greece. They had not received any official notification or court summons. Costas' mother had filed suit against both them and Costas Macris on charges of "proselytism" and "support of voluntary escape of a minor." The suit also demanded that the defendants be ordered to pay her 50,000 dracmas as pecuniary satisfaction for moral damage which she suffered.

Believing it was their duty as Christians to fight for the right of religious expression, Stephens and Williams returned to Greece for the trial in December of 1984.

At the trial, Costas' mother testified that the missionaries had ruined her son, that he no longer made the sign of the cross or believed in icons, that he now read his Bible daily and was a religious fanatic, that he no longer had ordinary sexual interests, and that the only time he stayed out late was when he attended meetings and Bible studies with other like-minded fanatics. Despite the fact that Costas was still a member of the Greek Orthodox Church and that the charge of having supported his "voluntary escape" was patently false, the judges found the defendants guilty. Their sentence, the harshest in over 150 years for this type of "offense" was three-and-one-half years imprisonment! The defendants were free on bail, pending appeal of their verdict. The conviction of "The Athens Three" became a global story overnight.\*

As an international groundswell of public opinion rose against the Greek government, Greek officials seemed to harden rather than soften in their stance. Over 400,000 Americans alone signed petitions to Greek Prime Minister Papendreou. A number of U.S. Congressmen sent letters asking the Greek government to reevaluate their stand. California Governor Deukmejian wrote Greek president Sartzetakis expressing his "deep concern." So did President Reagan. However, the politically powerful Eastern Orthodox church insisted that the government enforce the antiproselytism law and send the missionaries to prison.

The appeal was scheduled for May 21, 1986. If the defendants lost, they would go to prison immediately. During the interim YWAM's house counsel in Hawaii, Max Crittenden, contacted Dr. Montgomery. He asked Dr. Montgomery if the CCLU would be able to help by submitting a legal brief detailing the reasons the original decision should be overruled. In addition, he requested Dr. Montgomery, as the Dean of the Simon Greenleaf School of Law, the author of numerous works in human rights (including the newly published Human Rights & Human Dignity\*\*) and the former Director of Studies at the International Human Rights Institute in Strasbourg, France, to come to the appellate trial and testify as an inter-

national expert on human rights. Simon Greenleaf's CCLU board approved the request and Dr. Montgomery arranged his already full summer schedule to allow him to be in Greece for the appeal.

The trial lasted for four days — with extensive international press and television coverage (e.g., Reuters News Agency, London; the European edition of **Time** magazine, etc.). The International Commission of Jurists sent an observer to ensure that the human rights of the defendants were upheld. Dr. Montgomery was on the stand for almost an hour, and his theological and legal arguments were echoed by the Greek public prosecutor, who told the judges that, in his opinion, the state had made a mistake in prosecuting the case. Finally the three-judge panel adjourned to deliberate. After conferring for  $2\frac{1}{2}$  hours, they found the defendants innocent of all charges.

In commenting on his trial testimony after the victory, Dr. Montgomery declared: "I argued that the purpose of the defendants' activity was to present a personal relationship with Jesus Christ and not to get people to leave the Greek Orthodox Church." Dr. Montgomery said that although the decision does not set a legal precedent in the Greek courts, as decisions do in American courts, still it would surely serve to increase sensitivity to religious freedom in future cases.

Will there be future cases? Indeed there will. Within the month preceding the appeals trial in Athens, six other persons were indicted for proselytism in Greece, and four were convicted. Campus Crusade converts in Egypt are in prison for apostasizing from Islam, according to a recent report in the distinguished French newspaper Le Monde (11 July 1986). And Simon Greenleaf's Christian Civil Liberties Union will be in the thick of these struggles for Christian freedom worldwide.

J.W.M.

<sup>\*</sup>See Don Stephens' book on the trial at first instance: Trial by Trial (Eugene, Oregon: Harvest House; 1985).

<sup>\*\*</sup>Published by Zondervan in Grand Rapids, Michigan and Probe Ministries in Richardson, Texas.

# A BRIEF OF THE BRIEF

The written submission by Simon Greenleaf's Christian Civil Liberties Union argued along two lines:

(1) The Greek anti-proselytism statute as interpreted by the lower court was inconsistent with Greece's commitment to the European Convention (Treaty) on Human Rights. Greece had signed and ratified the European Convention on Human Rights which contains the following two articles on freedom of religion and freedom of speech:

### Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

#### Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Both of these articles are subject to certain restrictions, but the CCLU brief contended that none of these restrictions applied to the facts of this case. Since Greece had accepted the compulsory jurisdiction of the European Court of Human Rights and had also just recently signed an article of the Con-

vention allowing an individual to bring a petition before the European Commission and Court in Strasbourg, France, this case could indeed be brought before the European Court where the judgment of the lower court would likely be overturned and the anti-proselytism law struck down. To avoid this embarrassment, the Greek court of appeals should declare the defendants innocent.

2) The Greek Constitution of 1975 had incorporated the European Convention on Human Rights into Greek domestic law, giving the Convention priority over any contrary domestic law. Thus, the CCLU brief argued that the appeals court would, at worst, have to interpret the anti-proselytism statute in such a way that it did not contradict Articles 9 and 10 of the European Convention. Such an interpretation would result in an innocent verdict for the defendants.

# SIMON GREENLEAF'S APPELLATE BRIEF IN DEFENCE OF "THE ATHENS 3":

### The Court of Appeal's Responsibility in Light of Greece's Commitment to the European Convention on Human Rights

We call upon this Honourable Court to find the defendants innocent in light of the protections of freedom of expression and religious liberty guaranteed by the European Convention on Human Rights, which Greece has signed and ratified, thereby incorporating the European Convention into Greek domestic law. Greece's proselytism statute must not be interpreted so as to conflict with the international treaty obligations as set forth in Article 28 of the Greek Constitution of 1975. The defendants' exercise of their religious liberty and freedom of expression as guaranteed by the European Convention on Human Rights must be respected. By declaring the defendants innocent of the charges against them this Court can affirm Greece's historic role as a model of freedom and democracy. Further, this Court can avoid placing Greece in the embarrassing position of having the proselytism statute declared contrary to the European Convention by the European Commission and Court of Human Rights in Strasbourg.

Professor DIMITRIOS EVRIGENIS, Professor of Law at the School of Law and Economics, University of Thessaloniki, and a Judge on the European Court of Human Rights, has stated that "... the Greek legal order seems sufficiently well equipped to be able to give an adequate response to the Community chal-

Page one of the official certified modern Greek translation of Simon Greenleaf's brief as submitted to the Athens Court of Appeal on the opening day of the trial, May 21, 1987. lenge." We are confident that this Honourable Court will meet the present challenge by ruling for the defendants, in accord with Article 28 of the Greek Constitution as applied to the incorporation of the European Convention's guarantees of religious liberty and freedom of expression into Greek domestic law.

# 1.0 Greece's Commitment to the European Convention on Human Rights

Greece initially ratified the European Convention on Human Rights on 28 March 1953. In 1967, an application was made by Denmark, Norway, and Sweden (eventually joined by The Netherlands), which complained of human rights violations that occurred during the military coup d'etat of that same year. These applications were declared admissible and following a protracted hearing by the European Commission on Human Rights, it was ultimately concluded that Greece had violated several articles of the Convention including Article 3.2 Prior to this decision by the Committee of Ministers, the Greek government denounced the Convention on 12 December 1969. Happily, democratic government was subsequently restored to Greece and on 28 November 1974 Greece renewed its ratification of the Convention.

# 2.0 The Effect of the European Convention on Greek Domestic Law

# 2.1 An Immediate Obligation to Secure the Rights and Freedoms Guaranteed

Article 1 of the European Convention provides:

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention [emphasis added].

When the Convention was originally drafted, Article 1 began, "The High Contracting Parties undertake to secure..." Referring to this, the European Court noted:

By substituting the words "shall secure" for the words "undertake to secure" in the text of Article 1, the drafters of the Convention also intended to make it clear that the rights and freedoms set out in Section 1 would be directly secured to anyone within the jurisdiction of the contracting states . . . That intention finds a particularly faithful reflection in those instances where the Convention has been incorporated into domestic law [Ireland v. United Kingdom (1978) Series A, No. 25, 2 E.H.H.R. 25, para. 239].

This change in language emphasizes the intent of the framers of the Convention that each member state of the European Convention on Human Rights incurs an immediate obligation to secure the rights and freedoms guaranteed. This is consistent with the generally accepted principle of international law that "in relations between Powers who are contracting Parties to a treaty, the provisions of municipal law

D. EVRIGENIS, "Legal and Constitutional Implications of Greek Accession to the European Communities," 17 C.M.L. Rev. (1980) 157-169, at 169.

For a more extended treatment, see A.H. ROBERTSON, Human Rights in Europe 38-41 (2d ed. 1977).

cannot prevail over those of the treaty" (Permanent Court of International Justice, Series B, No. 17, 32).3

# 2.2 The Incorporation of the European Convention into Greek Domestic Law by the New Greek Constitution

Article 28 of the Greek Constitution provides:

1. The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein, shall be an integral part of Greek domestic law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.

3. Greece may freely proceed... to limitations on the exercise of national sovereignty, provided that this is dictated by an important national interest, does not affect human rights and the foundations of democratic government and is effected in conformity with the principles of equality, and on condition of reciprocity [emphasis added].

It follows inexorably from Article 28, paragraph 1, that the European Convention, as an international treaty ratified by Greece and currently in effect, has been integrated into Greek domestic law and will prevail over any contrary provisions of Greek domestic law. Moreover, Greece has made specific provisions in paragraph 3 to disallow any international agreement that would negatively "affect human rights and the foundations of democratic government." This signifies that Greece has clear domestic

intentions of protecting human rights, and its membership in the European Convention on Human Rights indicates that it accepts the European Convention as defining human rights.<sup>4</sup>

The argument may be made that while Article 28 gives the European Convention law priority over Greek domestic law, it does not prevail over provisions of the Greek Constitution of 1975; and, since Article 13(2) of the Greek Constitution provides that "proselytism is prohibited," the proselytism statute can be upheld. But, as Professor EVRIGENIS, Professor of Law at University of Thessaloniki, has written in discussing the rank of Community law with laws of Constitutional level:

It is nevertheless to be expected that . . . enforcement of Community law against possible contrary rules of national law of whatever king will, in principle, be accepted by the courts as a necessary corollary of the substantial legal implications of membership permitted by the Constitution itself on the strength of paragraphs 2 and 3 of Article 285 [emphasis added].

<sup>&</sup>lt;sup>3</sup> Cf. Article 27 of the Vienna Convention on the Law of Treaties: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" [emphasis added]. We may note also at this point that the European Court has declared that Articles 31-33 of the Vienna Convention are to be used in interpreting the European Convention [Golder v. United Kingdom (1975) Series A, No. 18, 1 E.H.H.R. 524, paras. 29-30, 35].

It may be argued that the limitation of Article 28(1), restricting the application of international law to aliens under the condition of reciprocity, would exclude defendant Stevens, a U.S. citizen, as the United States is not a signatory to the European Convention. But this would be contrary to Article 1, which extends the protection of the Convention to "everyone." The Convention has consistently been applied to aliens regardless of reciprocity (See Section 5.1.1, infra.). Further, even if it were granted that the European Convention did not apply to defendant Stevens, the Universal Declaration on Human Rights would apply, as both Greece and the United States are signatories to that international declaration, and its language is virtually identical to the European Convention in the applicable articles (See Appendix A).

D. EVRIGENIS, "Legal and Constitutional Implications of Greek Accession to the European Communities," 17 C.M.L. Rev. (1980) 157-169, at 167. See also A.A. FATOUROS, "International Law in the New Greek Constitution," 70 A.I.I.L. (1976) 492-506, esp. 501-503.

Article 28 of the Greek Constitution is not limited to Community law, for it extends its scope to "international conventions as of the time they are sanctioned by law" [emphasis added]. Thus, there is a strong argument that, in accordance with the provisions of Article 28, European Convention law would prevail even over Greek Constitutional law.

However, it is not necessary for this Court to decide this difficult question. For Article 13 of the Greek Constitution, while prohibiting proselytism, does not define it. It is a fundamental rule of legal interpretation to interpret one provision of a document so as not to conflict with any other provision of that document. Therefore, Article 13 must be interpreted so as not to conflict with Greece's Article 28 commitments, and since Article 28 incorporates the European Convention into Greek domestic law, Article 13 must be interpreted in a manner consistent with the provisions of the European Convention. Since, according to Article 28, international conventions that have been ratified "prevail" over any contrary domestic law, it follows that European Convention human rights law will prevail over any domestic proselytism law that is contrary per se, or is interpreted to be contrary to the provisions of the European Convention.

# 3.0 The Jurisprudence of the European Convention vis-a-vis Religious Freedom and Its Application to Greek Domestic Law

# 3.1 Freedom of Religion

Article 9 of the European Convention provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9(1) not only provides for freedom of religion in general, but also specifies that a person has the freedom to "change his religion or belief." It extends this freedom to expression in the public as well as in the private sphere, and, most importantly, it defines religious freedom as including the right to manifest one's religion "in worship, teaching, practice, and observance" [emphasis added]. Thus, any anti-proselytism statute would appear inherently suspect. But before examining the specific statute in question (Article 4 C.L. 1363/1938 as amended by Article 2 C.L. 1672/1939), it is necessary to look at the case law of the European Commission and Court to see how Article 9(1) has been interpreted.

### 3.2 The Arrowsmith Case

Most pertinent is the case of Arrowsmith v. United Kingdom [(Application No. 7050/75) 1978, 19 D. & R. 5, 3 E.H.R.R. 218]. The applicant in this case, Ms. Arrowsmith, a convinced pacifist, was arrested for distributing leaflets to British Army soldiers which urged them to go absent without leave, or to refuse to be posted in Northern Ireland. The Commission concluded that pacifism was a philosophy which "falls within the ambit of the right of freedom of thought and conscience" (para. 69), and proceeded to examine

the case under Article 9 and Article 10 (freedom of expression).

The Commission stated that "[i]t is true that public declarations proclaiming generally the idea of pacifism and urging the acceptance of a commitment to nonviolence may be considered as a normal and recognized manifestation of pacifist belief [emphasis added] (para. 71). Though, the Commission finally concluded that the leaflets passed out by Arrowsmith did not actually express pacifist ideas and were thus not protected, the clear implication is that the passing out of materials that do in fact express specific religious beliefs would be considered a manifestation of religious belief and therefore would be protected. Further, there were two dissenting opinions by Mr. Opsahl and Mr. Klecker which found even this decision of the Commission's opinion too narrow, and would have extended the protection of the article to include Ms. Arrowsmith's action.

# 3.3 App. No. 9820/82 v. Sweden

The other relevant case is App. No. 9820/82 v. Sweden. This involved a conviction for disorderly behavior for repeatedly proclaiming with a loud voice the dangers of pornography, fornication and alcohol. The Commission found the applicant's conviction to be an interference with his freedom to manifest his religious beliefs, but that the restrictions were necessary to protect the public order and the rights and freedoms of others. "The Commission notes that the applicant was not prevented from conveying his religious messages to the public, neither by word of mouth or by showing placards" [emphasis added] [5 E.H.R.R.

269, at 297). The applicant's conviction was upheld, not because of his public proclamation, but because he did this in a disorderly manner. It follows that had the applicant "conveyed his religious messages to the public . . . by word of mouth" in a non-disorderly manner and been convicted for so doing, the conviction would have been an interference with the applicant's freedom to manifest his religious beliefs. This holding, in conjunction with the holding in Arrowsmith makes it clear that the freedom to manifest religious belief includes the right of public proclamation, both by word of mouth and by the distribution of written expression in the form of leaflets.

# 3.4 Application of Article 9 European Convention Case-law to Article 4 C.L. 1363/1938

Applying this jurisprudence to the present case before this Honourable Court, it seems incontrovertible that the right of the defendants publicly to proclaim their religious beliefs ought to be protected. The materials used in evidence against the defendants include The Living Bible, a modern paraphrase of the Bible, and The Gospel of Matthew, both of which are central expressions of the Christian religion. These must be seen as expressing the religious beliefs of the defendants. Further, as the Commission states in Arrowsmith, "urging the acceptance of commitment to non-violence may be considered as a normal and accepted manifestation of pacificist belief" [emphasis added]. Not only is public proclamation of religious beliefs seen as a protected manifestation, but also the urging of acceptance of such beliefs. This is entirely consistent with Article 9(1), for if a person is allowed the freedom to change his or her religious beliefs, it

would be inconsistent to prevent one person from informing another of a different religious viewpoint or endeavoring to convince him or her of the truth of that religious belief.

If we compare this jurisprudence with the interpretation of the Greek proselytism statute as interpreted by the Court of First Instance, serious tensions appear. By the terms of the statute, proselytism is defined as "any direct or indirect effort to intrude on the religious conscience of heterodox individuals with a purpose of alteration of its contents through offerings of any nature . . . " [emphasis added]. The Court of First Instance interpreted proselytism as the "making of acquaintance with them during various musical programs and discussion of religious contents" and "proselytism was continuous and took place by discussions and delivery to him of books as The Living Bible, The Four Spiritual Laws, etc..." But Article 9 protects both verbal and written proclamation and discussion. Thus if Greek law Article 4 C.L. 1363/1938 is not per se contrary to Article 9(1) of the European Convention on Human Rights, the Court of First Instance's interpretation of it certainly is. The only remaining question is whether the Greek proselytism statute is permissible as a valid limitation under Article 9(2).

## 3.5 Article 9(2) Limitations

Article 9(2) reads:

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The rights that are protected in Article 9(1) may be limited only by the restrictions in paragraph 2. The case law to this point has allowed only the narrowest range of permissible restrictions, e.g., laws forbidding National Socialism or Fascism, and restrictions to maintain public safety. The only case in which religious proclamation was limited was in App. No. 9820/82 v. Sweden (discussed above) because the applicant was loud and disorderly. The limitation was justified solely because it was essential for the maintenance of public order. But in the present case, there is no indication that the defendants were disorderly or loud, and the public order, safety, or health provisions were in no sense imperiled by their activity.

The limitation of defendants' freedom of religious proclamation was hardly "necessary in a democratic society", for as the Commission in Arrowsmith declared while interpreting a similar clause under Article 10(2):

The notion 'necessary' implies a 'pressing social need' which may include the clear and present danger test [of the United States Supreme Court] and must be assessed in the light of the circumstances of a given case [emphasis added] (19 D. & R. 5, 3 E.H.H.R. 218, para. 95).

The prohibition of religious evangelism, especially when there is no evidence of disorder or antisocial conduct, can hardly be regarded as a "pressing social need."

The only possible remaining limitations on religious freedom are the morals clause and the clause protecting the rights and freedom of others. Again, however, the facts of this case do not indicate that the defendants prevented the young man from return-

Rather, the testimony of the defendants indicates that they repeatedly told Costas not to come back to see them since this was not permitted by his parents. There is no additional evidence to demonstrate that the defendants coerced or in any way prevented Costas from returning to his parents. It is true that Constantine Katopoulos evidenced a change of religious belief, and became quite zealous in professing his new belief and wanted to manifest this belief in community with the defendants. But this is precisely the sort of religious freedom that is protected by Article 9. By encouraging Costas to return to his parents, the defendants respected the parents' rights.

In sum, the proselytism statute as applied to the defendants by the Court of First Instance does not fall within the permissible limitations set forth in Article 9(2). Since the judgment of the Court of First Instance clearly interferes with the defendants' Article 9(1) rights of freedom of religious expression, and no permissible limitations have been found, the defendants must be found innocent of the charges against them. The statutory interpretation of the Court of First Instance, if not the statute per se, sweeps too broadly, condemning proselytism per se, rather than narrowly limiting its restrictions consistent with Article 9.

We would urge this Court to interpret Article 4 C.L. 1363/1938 broadly enough to render it consistent with Article 28(1) of the Greek Constitution and of Greece's commitment to Article 9 of the European Convention, thereby recognizing the innocence of the defendants. If the decision of the Court should go against the defendants, this case will ultimately be brought before

the European Commission and Court of Human Rights in Strasbourg, which will in all likelihood insist that the entire proselytism law be struck down.

# 4.0 The Jurisprudence of the European Convention vis-a-vis Freedom of Expression and Its Application to Greek Domestic Law

Article 10 of the European Convention provides for the protection of freedom of speech:

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprise [emphasis added].
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Of particular relevance to the present case is the declaration that freedom of expression includes the right to "receive and impart information and ideas without interference by public authority." This gives an even stronger basis for freedom of religious expression than does Article 9. The Arrowsmith Case is illustrative of this, for while the Commission found that the leaflets that encouraged soldier desertion were beyond the scope of pacifistic belief, it concluded that leaflet distribution per se was freedom of expression under Article 10 and that interference with it had to conform to the limitations of paragraph

2 [(Application No. 7050/75) 1978, 19 D. & R. 5, 3 E.H.R.R. 213, para. 77].

#### 4.1 Handyside v. The United Kingdom

Handyside is one of the most significant freedom of expression cases decided by the Court. In Handyside, the Court declared:

Freedom of expression constitutes one of the essential foundations of such a [democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to para. 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb the State or any sector of the population [emphasis added] [(1976) Series A, No. 24, 1. E.H.R.R. 737, para. 49].

The Court interpreted the words "necessary in a democratic society" as follows: "[W]hilst the adjective 'necessary,' within the meaning of the Article 10(2), is not synonymous with 'indispensible', neither has it the flexibility of such expressions as "'admissible', 'ordinary', 'useful', 'reasonable', or 'desirable'." It further stated that there was a "margin of appreciation" within which domestic courts would be allowed to operate in interpreting this Article and securing these rights; nevertheless, "the domestic margin of appreciation . . . goes hand in hand with a European supervision" (paras. 48-49).

The Opinion of the Commission in the Handyside case clearly stated the law with regards to the restrictions in paragraph 2:

As regards the relationship of para. 2 to para. 1 of Article 10, it is clearly that of an exception to the general rule. The general rule is the protection of the freedom; the exception is its restriction. The

restriction — interpreted in the light of the general rule — may not be applied in a sense that the expression or the dissemination of an opinion in a particular matter is completely suppressed. In other words, an expression of an opinion or its dissemination may only be restricted in so far as it is necessary for preserving the values protected in para. 2 of Article 10. The grounds permitting such restrictions are exhaustively enumerated in Article 10(2) [emphasis added] [Opinion of the Commission (1975) Series B, No. 22, para 137].

# 4.2 The Sunday Times v. The United Kingdom (1979) Series A, No. 3, 2 E.H.H.R. 245

The celebrated Sunday Times case followed closely after the Handyside case. In this case the Distillers Company, a manufacturer of the drug thalidomide, had made a court settlement with the parents of "thalidomide" children. These children were born with deformities caused by the use of thalidomide. The Sunday Times published an article critical of this court settlement. An injunction was granted against the publication of an additional article on the grounds that, since there was pending litigation, such publication would be in contempt of court. The House of Lords, in a unanimous opinion, ruled in favor of the injunction as a valid restriction on the freedom of speech.

When the case was brought before the European Court on Human Rights, the Court demonstrated its willingness to limit the "margin of appreciation" by overruling the unanimous judgment of the House of Lords. Referring to the margin of appreciation, the Court declared:

This does not mean that the Court's supervision is limited to ascertaining whether a respondent state exercised its discretion reasonably, carefully and in good faith. Even a Contracting Party so acting remains subject to the Court's control as regards the com-

patibility of its conduct with the engagements it has undertaken under the Convention [(1979) Series A, No. 3, 2 E.H.H.R. 245, para. 59].

Professor EVRIGENIS, Professor of Law at the School of Law and Economics, University of Thessaloniki, and a Judge on the European Court of Human Rights, commenting on the meaning of the Court's decision in Sunday Times, stated that the case

... should not, in our view, be allowed to extend a State's sphere of immunity through recognition of an — at times virtually uncontrollable — power of discretion, but should, on the contrary, render the control exercised by the organs of the Convention, within the limits defined by it, more penetrating and more subtle.<sup>6</sup>

With regard to the restrictions in paragraph 2, Professor Evrigenis noted that "[t]he Court then stressed that, being exceptions to full enjoyment of the rights defined in paragraph 1 of Articles 8 and 10, the restrictions provided for in paragraph 2 must be narrowly interpreted" [emphasis added].

Anthony Lester and David Pannick, in a summary of the Convention's jurisprudence on the freedom of speech, point out two additional factors:

[A] factor which should be considered is the breadth of restriction on freedom of speech. The greater the breadth, the closer the scrutiny called for: The Sunday Times Case, paragraph 63 . . . [Another] relevant factor in applying the test of necessity is the type of information, idea or opinion which would be communicated but for the restriction imposed by the State. We think it probable that the Court would apply a scale of protected expression, with political, philosophical, religious information, ideas and opinions

receiving the most protection and with personal or trivial information receiving the least degree of protection<sup>8</sup> [emphasis added].

# 4.3 Application of Article 10 European Convention Case-law to Article 4 C.L. 1363/1938

The case law of the European Court and Commission make it clear that freedom of speech, including religious speech, is one of the most fundamental rights protected by the Convention. Restrictions on freedom of speech must therefore be narrowly interpreted and must never completely supress expression on a particular matter. Restrictions which have been allowed by the European Commission and Court include prohibition of possession and distribution of leaflets inciting racial discrimination [Glimmerveen and Hagenbeek v. The Netherlands, (Application Nos. 8348/78 & 8406/78) 1979, 4 E.H.H.R. 260]; prohibitions on pornographic publications (Handyside case, supra.,); and restrictions on the passing out of leaflets urging soldiers to desert the army (Arrowsmith case, supra.). In a case that dealt with restrictions of "publications liable to corrupt the young," the Commission found such restrictions permissible (X and the German Association of Z against the Federal Republic of Germany (Application No. 1167/61) 1963, 12 C.D. 70]. But again, the subject matter that was restricted was pornographic material.

D. EVRIGENIS, "Recent Case-law of the European Court of Human Rights on Articles 8 and 10 of the European Convention of Human Rights," (1982) 3 H.R.L.J. 121-139, at 135.

<sup>&</sup>lt;sup>7</sup> Id. at 137.

A. LESTER and D. PANNICK, Advertising and Freedom of Expression in Europe, Joint Opinion on the Scope and Effect of the European Convention on Human Rights, 1984 [Quoted by LORD McGREGOR of Durris in "Freedom of Expression and Information: Conditions, Restrictions and Limitations Deriving from the Requirements of Democracy, 6 H.R.L.J. (1985) 384, at 395-396].

All of these restrictions have dealt with blatant acts of social misconduct. The restriction in the case before this Court deals with an act specifically protected by Article 9 of the European Convention. As interpreted by the Court of First Instance, the proselytism statute severely restricts the defendants' freedom of expression and religion. The Court of First Instance held that the defendants were guilty because

they attempted to change his religious conscience and persuaded him to accept the religious sect which they believed, which was different from the Orthodox Christian Religion. This was done by teaching and delivery to him for study various books and pamphlets as The Living Bible, The Gospel According to Matthew, . . ."

But this is precisely the sort of activity that is protected by Article 10 — the right "to receive and impart information and ideas." The lower Court's interpretation would apparently limit any religious expression of information intended to persuade. But the very purpose of the freedom of expression is to allow individuals to impart information with the intention of persuading others. Since freedom of expression is one of the fundamental rights in a democratic society, any limitation on it must be interpreted narrowly. The Court of First Instance's interpretation is clearly contrary to Article 10, and thus the protections of Article 10 must prevail over it. It follows that the

jurisprudence of Article 10 of the European Convention on Human Rights as incorporated into Greek domestic law by Article 28 of the Greek Constitution of 1975 requires that the defendants must be found innocent of the charges against them.

Any argument that the defendants' behavior interfered with Protocol No. 1, Article 2, and with Article 8 of the Convention, protecting family life, would be misapplied. Protocol 1, Article 2 applies to education, protecting the parents' right to ensure that education is "in conformity with their own religious and philosophical convictions." But, as the defendants' actions did nothing to prevent the parents from giving their child whatever schooling they wished, this article has no relevance to the instant case. The right to education is not the right to exclude a child from all contact with diverse viewpoints.

Article 8(1) states that "[e]veryone has the right to respect for his private and family life, his home and his correspondence." It is certainly true that religious expression must be tempered to protect the rights and freedoms of others. There may also be some justification for a more careful scrutiny of freedom of expression as applied to minors. But this cannot be understood to limit entirely any expression to minors, especially to one as close to majority as Constantine Katopoulos. The parents' rights of family life must be balanced against the rights of freedom of religion and expression of the defendants and the rights of the minor to receive such information. Again, since freedom of expression and religion are such fundamental rights, any restriction placed on them, even as to minors, must be narrowly interpreted and applied. The defendants cannot be

If the proselytism statute is applied only against members of religious groups other than members of the Orthodox Christian Religion, it would also be in clear violation of Article 14 of the Convention which prohibits discrimination on the basis of religion. Even if the statute on its face is not discriminatory (and it does appear so), the application of the proselytism statute by the Court of First Instance indicates that there may be defacto discrimination in violation of this Article. Further, if the second charge concerning the voluntary escape of a minor is being applied not for its intended use, but for the purposes of religious discrimination against the defendants, any conviction under it will also not stand. And, if the statute is applied so erratically as to make it difficult for one to know when he is in violation of the statute, the statute will also fail for vagueness under Article 7 of the Convention.

convicted simply because Costas changed his religious convictions. It would be inconsistent to extend to a minor the freedom to "change his religion or belief" and the freedom to "receive information," and then prohibit his very opportunity to receive information that might influence that choice. If the judgment of the Court of First Instance be upheld, the result would be a chilling effect on any religious expression to minors. Such a ruling is overbroad, extending beyond the limitations on freedom of religion and expression in the European Convention.

To summarize, freedom of speech includes the right to impart information. Religious speech is one of the most highly protected areas of expression. Even offensive speech is protected. Thus it is quite clear that the defendants' activity falls under the protection of Article 10 and that a restriction on that activity is a violation of their Article 10 right. We have also seen that the limitations of paragraph 2 are to be interpreted narrowly, and that the Court, while allowing the state a margin of appreciation, will not hesitate to strike down unjustifiable restrictions on freedom of expression even when these are the product of a member state's Supreme Court [the House of Lords in Sunday Times). Given the high value placed on freedom of speech as "essential in a democratic society" and the strict scrutiny that would likely be used in interpreting a broad statute like the proselytism statute in question, the interpretation employed by the Court of First Instance, if not the statute itself, must be seen as contrary to Article 10 of the European Convention on Human Rights.

We call upon this Honourable Court so to interpret the proselytism statute that it will not contradict the Greek Constitution of 1975 and Greece's commitment to the European Human Rights system. Only by declaring the defendants innocent of the charges against them can this court prevent the very real likelihood of the European Commission and Court's declaring this proselytism law itself contrary to the European Convention, to the embarrassment of Greece as a historic model of freedom and democracy.

# 5.0 Petition to the European Commission of Human Rights

If this Court were to make the grave mistake of ruling against the defendants, this case can and will be brought before the European Commission in Strasbourg. Having exhausted all domestic remedies, the defendants will have no recourse but to seek justice from the European Commission and Court of Human Rights, which Greece recognizes as having compulsory jurisdiction. A judgment in Strasbourg, therefore, will be binding on Greece.

# 5.1 The Jurisprudence of the European Convention Regarding Admissibility

### 5.1.1 The Status of Aliens

It may be thought that since two of the defendants are aliens to Greece, they have no standing with regard to the European Convention. However, the jurisprudence of the Convention makes it clear that aliens are protected as well as nationals. Professor ROBERTSON notes that in 1971, forty-nine applications were filed by persons who were nationals of

non-member states or stateless. 10 These applications by aliens were admitted on the basis of Article 1 ("The High Contracting Parties shall secure to every one within their jurisdiction the rights and freedoms defined in Section 1 of this Convention." [emphasis added]) and Article 14 (which prohibits discrimination on the ground of "national or social origin"). Thus it is clear that the rights of all three defendants are protected by the European Convention.

#### 5.1.2 Individual Petition

Article 25 of the European Convention states:

1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

Until very recently, Greece had not recognised the competence of the Commission to receive individual petitions. While another member state of the Convention could file a petition against Greece, an individual had no standing to file a petition. However, on 20 November 1985 Greece recognised the right of individual application in accordance with Article 25. This declaration had immediate effect, effectively opening the door for individual victims of human rights violations to apply to the European Commission on Human Rights.

### 5.1.3 Ratione temporis

It might also be argued that since the actual facts of this case and the lower court decision preceded the recognition of individual petition by Greece, the defendant's petition to the European Commission would be inadmissible in accordance with Article 27. Article 27, paragraph 2 reads:

2. The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.

The Commission has found that the Convention, according to the generally recognised principles of international law, does not have retrospective effect. However, the Commission has made the following ruling regarding a series of legal proceedings:

Where these facts consist in a series of legal proceedings extending over some months, the date of entry into force of the Convention in respect of the State in question has the effect of dividing the period in two, the earlier part escaping the Commission's jurisdiction ratione temporis whereas the later part cannot be rejected on this ground (emphasis added) [X v. Switzerland (Application No. 7211/75) 1976, 7 D. & R. 104, at 106-107]. See also (Application No. 7703/76) 1979 [unpublished] and (Application 8261/78) 1979, 18 D. & R. 150, at 151.

Applying this rule to the present case, the lower court trial would not be admissible by individual petition, although it must be stressed that it would be admissible if an application were brought by another member state. But this present Appeals Court action is occurring after the date of recognition of individual petition, and therefore an application appealing it could indeed be found admissible by the European Commission.

A.H. ROBERTSON, Human Rights in Europe 33 (2d ed. 1977).

# 5.2 The Compulsory Jurisdiction of the European Court

Article 46 of the Convention provides for the compulsory jurisdiction of the European Court for those member states who have recognised it. It reads:

Any of the High Contracting Parties may at any time declare that it recognises as compulsory ipso facto and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.
 The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.

In accordance with this article, Greece has recognised the compulsory jurisdiction of the Court since 27 December 1978 subject to the condition of reciprocity. The practical effect of this recognition is that the Commission itself, or any member state whose national is alleged to be a victim, or any other member state which has referred the case to the Commission and fulfills the reciprocity condition — could bring this case before the Court in accordance with Article 48. That being the case, the following Articles of the Convention explicitly state the Court's authority:

Article 52. The judgment of the court shall be final.

Article 53. The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

In sum, Greece has ratified the European Convention on Human Rights, recognised individual petition, and accepted the compulsory jurisdiction of the

European Court of Human Rights. If the decision of this present Appeals Court is in any sense contrary to the provisions of the European Convention, the case can clearly be brought before the European Commission by individual petition, and if necessary, be brought before the European Court. The Court's decision will be binding on Greece.<sup>12</sup>

### 5.3 The Implications for Greece of a Negative Decision by the European Commission and Court of Human Rights in Strasbourg

If this case should go to the Court in Strasbourg, there is every likelihood that the European Court will not only find the interpretation of the proselytism statute contrary to the European Convention, but it will also find that the statute itself is contrary to the Convention. In that case, Greece would suffer the international embarrassment of having its own domestic law struck down by the European Court.

The European Court of Justice has increasingly expanded its application of human rights law. In the Internationale Handelsgesellschaft case the Court noted that "respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice [Case No. 25/70 (970) E.C.R. 1161, at 1174]. This was explicated in the Nold decision, which reads:

Greece's recognition of the European Court's compulsory jurisdiction according to Article 46 was extended on 31 January 1985 for 3 additional years.

It should also be noted that this case could also be brought before the European Court of Justice in Luxembourg. As a member of the European Communities, Greece is also subject to the authority of the European Court of Justice and acknowledged this by making explicit provision in its Constitution to accommodate the primacy of Community Law (Article 28, para. 1-3). We have already cited the conclusion of Professor DIMITRIOS EVRIGENIS of the University of Thessaloniki: "It is nevertheless to be expected that having regard to the Communities' respect of the basic constitutional traditions of the Member States, enforcement of Community law against possible contrary rules of national law of whatever kind will, in principle, be accepted by the courts as a necessary corollary of the substantial legal implications of membership permitted by the Constitution itself on the strength of paragraphs 2 and 3 of Article 28" [17 C.M.L. Rev. (1980) 157-169, at 167].

The European Court may also, in accordance with Article 50 of the Convention, award "just satisfaction to the injured party." It should be noted that damages have been awarded not only for pecuniary loss, but also for such non-pecuniary loss as humiliation, stress and anxiety (For example, see Young, James and Webster v. United Kingdom (1982) Series A, No. 55, 5 E.H.H.R. 201.] The defendants would certainly seek such an award if forced to take their case to Strasbourg.

As the court has already stated, fundamental rights form an integral part of the general principle of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitution of those States."

"Similarly, international treaties for the protection of human rights on which Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law" [emphasis added] [Case No. 4/73 (1974) E.C.R. 291].

This language especially has in mind the provisions of the European Convention of Human Rights, as the treaty dealing expressly with "human rights and fundamental freedoms" to which all Community members are signatory. That this was the Court's intended meaning is made clear in the Rutili case, where the Court made specific reference to provisions of the European Convention as limiting the action of member states [Case No. 36/75 (1975) E.C.R. 219]. Other Court decisions have made express reference to the Convention as well. As a member state of the European Communities which has incorporated the European Convention on Human Rights into her domestic law (argued supra.), Greece would be subject to the jurisdiction of the Luxembourg Court of Justice for human rights violations contravening the European Convention on Human Rights, as well as other international treaties (See Appendix A for the other relevant treaties to which Greece is a signatory).

### 6.0 Conclusion

The interpretation of the proselytism statute by the Court of First Instance is clearly contrary to Articles 9 and 10 of the European Convention on Human Rights. We call upon this Honourable Court to interpret the proselytism statute in a manner consistent with Article 28 of the Greek Constitution of 1975, which establishes the priority of the provisions of the European Convention on Human Rights over Greek domestic law. Only by declaring the defendants innocent of the charges against them can this court affirm Greece's commitment to the European Human Rights System and avert the embarrassment of having this proselytism law struck down by the European Commission and Court. We are confident that this Honourable Court will seize this unique opportunity to demonstrate to the international community Greece's strong commitment to the fundamental principles of democracy and freedom by declaring the defendants not guilty.

> — John Warwick Montgomery Defence Counsel & Expert Witness

### APPENDIX A

## RELEVANT INTERNATIONAL DECLARATIONS AND CONVENTIONS TO WHICH GREECE IS A SIGNATORY<sup>13</sup>

# The Universal Declaration of Human Rights

#### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance [emphasis added].

#### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to see, receive and impart information and ideas through any media and regardless of frontiers [emphasis added].

# International Convention on the Elimination of All Forms of Racial Discrimination

The State Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms of all, without distinction as to race, sex, language or religion [emphasis added].

#### Article 5

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (d) Other civil rights in particular: . . .
- (vii) The right of freedom of thought, conscience, and religion;
  - (viii) The right to freedom of opinion and expression [emphasis added]; . . .

These relevant provisions in comparison with still other relevant international treaties may be found in P. SIEGHART, The International Law of Human Rights 321-336 (1983).

tionale for liberty that will hold up under all the pressures to which nations are subjected from within and from without. And if we can agree that a religious foundation is indispensable, it would seem that the theistic Declaration of Independence may be a serviceable beginning point, philosophically, morally and legally.

### OLIVER WENDELL HOLMES, JR.: SECULARIZER OF AMERICAN JURISPRUDENCE

by

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### OLIVER WENDELL HOLMES, JR.: SECULARIZER OF AMERICAN JURISPRUDENCE

The external facts of the life of Oliver Wendell Holmes Ir. can be recounted in a few sentences: volumes have been devoted to his influence on American law. Holmes grew up in the intellectual atmosphere of aristocratic New England, receiving his education at private schools and Harvard College.1 Upon graduation, he enlisted in the Union Army and fought in the Civil War for three years. That experience had a profound effect on his personal and legal philosophy. Thirty years after the war, in his speech "The Soldiers Faith," Holmes thought he had caught a glimpse of its meaning — that "combat and pain still are the portion of man," that "the struggle for life is the order of the world, at which it is vain to repine."2 He had realized that "as long as man dwells upon the globe, his destiny is battle."3

Upon returning from the war, Holmes entered law school and began to formulate his philosophy of law. During this time there was an interest in Roman law, wherein the laws of society were regulated by the will of the sovereign. Holmes wasn't satisfied with this view in that he believed the sovereign legitimatized the needs of the society. At this time (1876) his friend,

Max Lerner, The Mind and Faith of Justice Holmes, x (1945)

Id. at xxiii

<sup>3</sup> Id. at xxv

David H. Burton, Oliver Wendell Holmes, Jr., What Manner of Liberal?, 2 (Huntington, N.Y., 1979)

Id. at 4

Henry Adams, published Essays in Anglo-Saxon Law. Contained in these essays was the argument that Anglo-American legal institutions derived from Teutonic, and not Roman origins. In his book, Oliver Wendell Holmes Jr., What Manner of Liberal?, David Burton summarized the inferences that Holmes was able to make from these essays:

It meant that law did not have its provenance in the will of the Emperor or the laws of the Senate which seemed by acceptance and usage cut in stone. Instead a search for the sources of Anglo-American law led back to the tribal customs of Teutonic or Frankish tribes, customs which were susceptible to slow but sure alteration but which in any case were not fixed or final according to their nature.<sup>7</sup>

These essays, combined with Holmes own research regarding the origins of Anglo-American law, were instrumental in his attempt to expose as a myth the changeless nature of truth. Holmes' approach was questioning, empirical, and pragmatic. It was postulated on the constant changes occurring in life that required similar changes in the law — which is but one expression of life. It rejected absolutes, whether moral or legal.

In 1881, Holmes published The Common Law, a collection of university lectures that became his best known work. In it he propounded the idea that the law develops from social conditions rather than from abstract rules.<sup>8</sup> He wrote that:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

What Holmes did, in truth, was to play a leading role in promoting an externalization of legal standards. Taking the general ground that there were no absolutes in life, it followed that there were no absolutes in the law. A human act, therefore, was not illegal because it was intrinsically evil, because evil was internal to the action. Human action had to be restrained because of the effects it had on society, because of its external results and not its internal character.

#### He further stated that:

The substance of the law at any given time pretty nearly corresponds, so far as it goes with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.<sup>11</sup>

Law, like life was constantly changing. Since law was based on the life of the community, it reflected the community's moral outlook — but law and morals were not the same thing. The role of the judge was to keep his own preferences out of his decisions, and to discover and follow, so far as he could, the substance of the law which, at any given time, corresponded with what was understood to be convenient.

<sup>&</sup>lt;sup>6</sup> Id. at 8

<sup>7</sup> Id. at 5

<sup>8</sup> O.W. Holmes, The Common Law 1 (1881)

Id. at 1-2

Bruton, supra note 4, at 2

Holmes, supra note 8, at 2

As to the paradox of form and substance which presents itself in the development of the law, when it is considered, as here, as a process of continuous growth, Holmes offers the following explanation:

In form its growth is logical. The official theory is that each new decision follows syllogistically from existing precedents. But just as the clavicle in the cat only tells of the existence of some earlier creature to which a collar-bone was useful, precedents survive in the law long after the use they once served is at an end and the reason for them has been forgotten. The result of following them must often be failure and confusion from the merely logical point of view. 12

On the other hand, in substance the growth of the law is legislative. And this in a deeper sense than that what the courts declare to have always been the law is in fact new. It is legislative in its grounds. The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less traceable to views of public policy in the last analysis.<sup>13</sup>

Part of his deep feeling for the common law was his feeling for the sheer accumulation of experience that was invested in it. Logic was not excluded: it could not be. Rather, logic was a tool of the law, a necessary one, as was historical analysis. Experience was the starting point where logic began; and where different logics clashed, experience was used as a touchstone for the selection of the relevant logic. Holmes pointed out that:

<sup>12</sup> Id. at 35

History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational, because it is the first step toward an enlightened scepticism, that is, towards a deliberate reconsideration of the worth of those rules. 14

The experience, moreover, was that which was common to all the people, and which therefore pointed to the social interest. That was why Holmes always regarded the notion of copyright at common law as nonsense; for it maximized the individual benefit at the expense of common experience.<sup>15</sup>

While history and social forces were assigned a large role in the life of the law by Holmes, the ethical or ideal element in law was deemphasized by him. As an ethical skeptic, he regarded law largely as a body of edicts representing the will of the dominant interests in society, backed by force. "When it comes to the development of a corpus juris" (body of law) "the ultimate question is what do the dominant forces of the community want and do they want it hard enough to disregard whatever inhibitions may stand in the way."18 Although Holmes admitted that moral principles were influential in the initial formulation of rules of law, he was inclined to identify morality with the taste and value preferences of shifting power groups in society. He stated that: "The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race."17 Furthermore, he thought it would probably

<sup>&</sup>lt;sup>13</sup> Id. at 36

Holmes, The Path of the Law, 10 Harv. L. Rev. 457 (1897).

Lerner, supra note 1, at 208

O.W. Holmes, The Wit and Wisdom of Oliver Wendell Holmes Father and Son, 58 (L. Dennonn ed. 1953)

<sup>17</sup> Id. at 57

be a gain for the interpretation of the existing positive law if "every word of moral significance could be banished from the law altogether." His basic philosophy was that life meant essentially a Darwinian struggle for existence, with the survival of the fittest as the prize, and that the goal of social effort was "to build a race" rather than to survive for the attainment of humanitarian ethical objectives. 19

Holmes' ethical agnosticism also influenced his general attitude toward the institution of law. In his well known essay The Path of the Law, an address prepared for law students in 1897, he included a lucid statement of his contention that law and morality should be neither confused nor identified. Holmes would have endorsed Austin's statement that "the existence of law is one thing; its merit or demerit another." The law is not a "brooding omnipresence in the sky." Nor is it coextensive with any system of ethics. Holmes believed that:

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside it, in the vaguer sanctions of conscience.... If we take the view of our friend the bad man we shall find that he does not care two straws for the axioms or deductions, but that he does want to know what the Massachusetts or English courts are likely to do in fact. I am much of this mind. The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.<sup>22</sup>

The bad man does not give two straws for morality but he, no less than the good man, wishes to avoid an encounter with the law. When he asks his lawver whether some contemplated action is legal, what he wants to know is how public power is going to affect him. In answering this question, according to Holmes. the lawyer's job is one of prediction. "If . . . then" was the clue to understanding, though Holmes did not literally use the formula. A legal duty, said Holmes, was "nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court — and so of a legal right."23 Laws are "prophecies of what the courts will do in fact."24 The kind of prophecy intended by Holmes is a generalized prediction of judicial judgments in a given type of case and not a prediction of the decision of some particular judge in a specific case. The prediction theory, however, is not a theory of the development of the law but of the "limits" of law, a theory of what are the laws of society.

Through Holmes we see the law as reflecting the will of the majority, the courts, as the instruments of society, modifying the past to fit the needs of the present. We see the pragmatic approach, the separation of law and morals, the application of the external standard, the triumph of the scientific method.

The reputation of Justice Oliver Wendell Holmes, Jr., one of the chief architects of twentieth century American law, has gone through a number of phases, changing from being altogether praiseworthy in the last years of his life and the first years after his death

Holmes, supra note 14, at 458

O.W. Holmes, Ideals and Doubts, in Collected Legal Papers 306 (1920)

<sup>&</sup>lt;sup>20</sup> Martin Golding, Philosophy of Law, 25 (1975)

<sup>21</sup> Holmes, supra note 16, at 60

Holmes, supra note 14, at 459

<sup>23</sup> Id. at 460

<sup>24</sup> Id. at 458

in 1935 to that of more sober evaluations. At the fore. front of the people criticizing Holmes' philosophy was Francis E. Lucy. In his essay Natural Law and American Legal Realism, Lucy argued that the natural law principles of our legal system had been weakened by Holmes' legal realism which stressed the changing nature of truth and goodness.25 His main concern was with what he deemed the bad effects of legal realism, in which the external results of human behavior determined the law and in which the law had become what the courts said it was.26 Realism, when put fully in practice, would destroy the basis of democracy by eroding the natural rights of man. Lucy compared what could happen in America with what already had happened in Germany, observing that the dominant group, whether called class, race, or party, had acquired something more powerful than divine right of kings; it had acquired divinity itself.27

Following Lucy's lead, Paul Gregg published an essay entitled The Pragmatism of Justice Holmes in which Gregg accused Holmes of being inconsistent in his philosophy. He began his essay by noting that as a judge Holmes had given effect to the natural law theory as part of his duty under the Constituion. As a philosopher, Holmes did not give intellectual assent to the theory of natural rights. Gregg concluded his essay by stating that:

Lucy, Natural Law and American Legal Realism, 30 Geo. L.J. 493-523 (1942)

Holmes' pragmatism springs from his skepticism. Objective reason is cast off as the norm of right and wrong, and subjective desires are put in its place. Inalienable human rights and absolute principles of law are denied. Man is the tool of dominant powers. All that he has, even his life, is the proper subject for even the wildest social experiments. God, of course, is ruled out of the juridical scheme of things. In His place, the ultimate authority is brute force. Truth, man, the common good, even God, are nothing, desire and power are everything." 30

Another critic of Holmes' philosophy was Ben Palmer. In Hobbes, Holmes, and Hitler he underlined the materialist philosophy of Holmes which led back to the place of force.<sup>31</sup> "The fact that Holmes was a polished gentleman who did not go about like a storm-trooper knocking people down and proclaiming the supremacy of the blonde beast," wrote Palmer, "should not blind us to his legal philosophy that might makes right, that law is the command of the dominant social group."<sup>32</sup> Predictably, he denounced Holmes as a moral relativist, observing that in Holmes, "since both law and morals represent a will and that will may change, certainly no one can hope to find in morals any absolute standards."<sup>33</sup>

Henry M. Hart, Jr. took issue with Holmes in a manner which lacked the dramatic qualities of the foregoing arguments but which was more profoundly oriented in philosophic rationalism. In his essay Holmes' Positivism — An Addendum he finds a patent contradiction in the Holmes theories of the separation of law and morality and the ever-changing nature

<sup>26</sup> Id. at 506

<sup>27</sup> Id. at 521

<sup>&</sup>lt;sup>28</sup> Gregg, The Pragmatism of Justice Holmes, 31 Geo. L.J. 262 (1943)

<sup>&</sup>lt;sup>29</sup> Id. at 268

<sup>30</sup> Id. at 294

Palmer, Hobbes, Holmes, and Hitler, 31 A.B.A.J. 571 (1945)

<sup>&</sup>lt;sup>32</sup> Id. at 572

Id. at 571

of the law.<sup>34</sup> Hairt maintained that the law was in constant flux and Holmes repeatedly affirmed his belief in this proposition. If this is so, then we cannot know what the law is solely by what judges have declared it to be.<sup>35</sup> We must consider the moral issues of what law ought to be as well. By the same token, the result would be that the reasoning of judges would lose its significance, our capacity for change would diminish and the law would become static.<sup>36</sup> He concluded by acknowledging Holmes' judicial sensitivity to the changing times while warning that to accept his understatement of the integral importance of morality in law is a dangerous hindrance to a proper comprehension of and insight into our fundamental democratic conceptions.<sup>37</sup>

The criticism hurled at Holmes prompted several different responses from his supporters. Mark Howe responded to the charge of amorality in Holmes' philosophy. He pointed out that Holmes' approach to the law not only demonstrated the need for empiric observation, but also asserted, as a mandate for jurists and lawyers the continued process of re-examination and re-evaluation of the moral postulates of the law. Howe's contention finds support in Holmes' The Path of the Law. At the outset, Holmes told the law students whom he was addressing that the division of the two elements was necessary only insofar as the goal of learning and understanding the law was concerned, "... and it is for that that I ask you for the

moment to imagine yourselves indifferent to other and greater things."39

philosophy in his lecture on The Attack on Justice Holmes.<sup>40</sup> In it he respected the essence of law as physical force, but he denied that Holmes meant this simplistically. Rather, he maintained that Holmes was referring to power of the government to enforce the law.<sup>41</sup> On the universality of the natural law, Biddle asked:

Does natural law exist in a civilization dominated by Communist dogma? If not, was it ended at a certain time and place, or does it still hover to descend to earth when the time is ripe; or is there natural law of Communism which has its own set of dogmatic absolutes? 42

Finally, he pointed out that the underlying difference between the views of Holmes and his critics "boiled down to whether or not you believe in absolutes."<sup>43</sup>

One of the inconsistencies in Holmes' legal philosophy is the rejection of absolutes. By dismissing the notion of absolutes, he in fact establishes an absolute. That being, that there are no absolutes.

An important question that Holmes does not take up is whence the courts derive their authority. What is it that constitutes courts as jural agents and the decisions of judges as jural acts? A standard way of

<sup>34</sup> Hart, Holmes' Positivism - An Addendum, 64 Harv. L. Rev. 929 (1951)

<sup>35</sup> Id. at 930

<sup>36</sup> Id. at 929

<sup>37</sup> Id. at 929

Howe, The Positivism of Mr. Justice Holmes, 64 Harv. L. Rev. 529 (1951)

Holmes, supra note 14, at 459

Biddle, Mr. Justice Holmes, Natural Law and the Supreme Court, 28-49 (1961)

Id. at 34

<sup>12</sup> Id. at 32

<sup>43</sup> Id. at 41

answering this is by reference to power-delegating laws or laws of competence. To interpret these as predictions of the judgments of courts would seem to involve a circularity.

Through the influence of Holmes and others, the absolutes contained in our law have gradually eroded. We live in a society which is governed by sociological law. Francis Schaeffer defined sociological law as; "law that has no fixed base but laws in which a group of people decides what is sociologically good for society at the given moment; and what they arbitrarily decide becomes law." This is exactly what Holmes expounded.

Holmes' philosophy manifest itself in the Roe v. Wade decision, in which the right of abortion-on-demand was upheld. This decision was the result of Holmes' philosophy taken to its logical conclusion. Without absolutes, who is to say whether or not a fetus should live or die. Man's God-given right to life is ignored.

By insisting on absolutes, the Christian base has been eliminated from the law. The only absolute remaining is the insistence that there is no absolute.

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A LAWYER'S LOGICAL AND SYLLOGISTIC LOOK AT THE FACTS OF THE RESURRECTION

Francis Schaeffer, A Christian Manifesto, 41 (1981)

<sup>45</sup> Roe v. Wade, 410 U.S. 113-78 (1973)

### A LAWYER'S LOGICAL AND SYLLOGISTIC LOOK AT THE FACTS OF THE RESURRECTION\*

In the century before Christianity was born, the average citizen seemed to have lapsed into the same despair that grips so many Americans today. Epitaphs found upon early First Century tombs all too often carried the cynical inscriptions. "I was not; I became; I am not". We see, therefore, that the great mass of men in their personal relations with others and with themselves has not changed.

The Greek concept of the immortality of the soul predates Christianity. This helps to explain why Socrates was eager to take the cup of hemlock and be freed from his human body. But, even here, their concept of after life for the soul freed from the (SARX) body, represented an after life as a cold, shadowy existence, devoid of cheer or progenitor but with the persistence of personality. From this milieu it is easy to see the rise of the Stoics, who disciplined their emotions more rigorously than the common herd. They looked upon this mortal coil as a predicament that could be escaped by suicide when it became too wearisome for the flesh.

Into this sick and dying world shone the gospel of Jesus Christ. It saved the First Century Christians from the wages of sin — death. It is also the sole hope for modern man who has become so cynical and calloused in his hubristic and hedonistic endeavors.

<sup>\*</sup>An invitational presentation at the Far Western Regional Conference of the Evangelical Theological Society, Long Beach, California, April, 1986.

It appears that there are two competing concepts of life and death presented to us by Jews today — one is the concept of sin and death proclaimed by the dialectical materialism of atheistic communism prepared by a Jew, Karl Marx, in an upper room in London during the last century. The second is the gospel message giving eternal life to believers in Jesus Christ as their personal Lord and Savior. This Good News was presented to the world by the Son of God in the upper room that first Maundy Thursday and by his death that first Good Friday and resurrection that first Easter Sunday.

Therefore, in order to receive this greatest of gifts—eternal life with Jesus Christ as our personal Lord and Savior—let us examine the core and kerygma of the Christian faith; the resurrection of the physical body of Jesus Christ in a logical and syllogistic manner.

Too many theological scholars and quasi scholars today say that you can be a Christian without belief in the resurrection of the body of Jesus Christ the third day after his death. I submit that this is impossible. We will examine a number of New Testament scriptures in our objective search for truth, including I Corinthians 15 and Luke 24:1-49.

The resurrection is the central fact of the Gospel message. This is the central and most important aspect of the Christian Kerygma. I submit that without the resurrection the words of St. Paul would stand as the epitaph of a dead Christianity: "Your faith is futile and you are still in your sins" (I Corinthians 15:17). Without the resurrection, Jesus would have been just another unfortunate victim of man's

inhumanity to man. With the resurrection, the death glory motif of St. Luke's gospel reaches a new high.

The position taken by some who want to discard long established truths of the Christian faith are natently inconsistent with the gospel witnesses to the resurrection of Christ contained in the gospels of St. Luke 24:36 to 43 and St. John 20:19 and following.1 In these narratives, Jesus appears to the disciples and convinces them that it is He Himself. risen bodily, by showing them His hands and feet. He then eats before them. Modern exegetes like Rudolf Karl Bultmann state that it makes no difference whether or not Christ truly and factually arose on the third day from the dead. What appears to be enough for Bultmann and many other modern theologians is, do you believe Christ rose from the dead in your mind! For millions of intelligent Christians, this is not enough, for you can find thousands of people in insane asylums who can conjure up any number of false beliefs and start moral cults. It appears that too many modern scholars, in their quest for making the gospel meaningful in today's world, are ready to throw the baby out with the bath water.2

The importance of the resurrection to Christianity is well stated by Bruce Wawter who states as follows, to wit:

Bultmann, Rudolf Karl, All in German and now translated to English. (a) Essays Philosophical and Theological, 1955; (b) Das Evangelum des Johannes, 1952; (c) Evangelische Problemme des Zweiter Korinthersbriefes; (d) Existence and Faith; (e) Form Criticism, A New Method of New Testament Research; (f) History and Eschotology; (g) History of Synoptic Tradition; (h) Jesus; (i) Kerygma and Meth

Bultmann's works demonstrate this throughout.

The resurrection is the historical fact, the thing which God has done, that underlies Christianity. If the resurrection is not true, then Christianity is a sham, and Christian morality an idle and vain pursuit.  $^{3}$ 

From the totality of Luke's gospel, I get the clear impression that the resurrection is the seal of God's approval on the Son's work of redemption, the acceptableness of his sacrifice and the ultimacy of his victory over sin, death and the devil. God has made himself known to man through his acts in history. These acts in history reached their climax in the decisive and final act of God in the life, death and resurrection of Jesus Christ. This is clearly shown in the death glory motif that runs through St. Luke's Gospel.

In order to limit this Treatise to a relatively brief and accurate account, I will look at two main areas that have caused trouble for the clear language of St. Luke's Gospel in explaining the bodily resurrection of Jesus Christ. One will be a description and review of Tillich's new approach to the doctrine of the resurrection and the other will be the frequently misunderstood intentions of St. Paul in his epistle to the Corinthians to wit: 1 Corinthians Chapter 15.

I fully recognize the value and the inevitability of historical criticism in the area of New Testament exegesis but, with Thielicke, I will insist on the even greater necessity of "anti-criticism" as a counterbalance to criticism which has all too often been accepted at face value. The folly of the uncritical acceptance of new theological ideas in the name of modern enlightenment is well illustrated (though unintentionally) by Stephen Neill in his book The

Many ideas have arisen in the last 100 years and their originators have been acclaimed as heroes. Terdinand C. Baur is a good example. As a founder the Tübingen School of Interpretation, he was a moneer in his field and the idol of Germany in his lay. That he made some real contributions is not to be denied, but only at a cost. The final assessment of elistory in the words of Neill are to wit:

"Incautious assumptions at the start led Baur to error on every principal point of New Testament criticism. His diligence and brilliance could not overcome the false foundation upon which he built." 4

His contributions might have been beneficial to the church while much loss to the church, occasioned by his errors might not have occurred had his fellow contemporary scholars fostered a dynamic "anticriticism" instead of either following him like so many gullible sheep or refusing to really meet his challenge which was often the case of the orthodox who tended to retreat behind their wall of "verbal inspiration." The uncritical acceptance of new ideas no matter how plausible they may seem on the surface or how great the fame and the prestige of the originator renders any further scientific inquiry almost impossible. In this connection, I must express my wholehearted agreement with Neill who observes that the weakness of much of the New Testament scholarship of the last 100 years is "that really valuable observations are frequently lost in a maze of secondary and ill-established imaginings. Having thus stated my own bias, I will now turn to Tillich

<sup>&</sup>lt;sup>3</sup> Cf. Bruce Vanter, "Resurrection and Redemption" Catholic Biblical Quarterly (1953), p. 11-23.

Cf. Stephen Neill, The Interpretation of the New Testament (1861-1969) (London, 1964), p. 27.

and his doctrine of the resurrection, or perhaps  $m_{\mbox{\scriptsize Ore}}$  specifically, his theories of the resurrection.

For Paul Tillich the resurrection is both symbol and event. He recognizes that a factual element is implied in the symbol and allows that historical research is justified in trying to elaborate on this element. He asserts, however, that historical research can only establish probability (or lack of it) but in the final analysis it is not historical research or acceptance of biblical authority which creates certainty but [I]t is the certainty of one's own victory over the death of existential estrangement which creates the certainty of the resurrection of the Christ as event and symbol." <sup>5</sup>

Tillich cites three theories "which try to make the event of the resurrection probable." These are the "physical", the "spiritualistic" and the "psychological". He regards all three of these as unsatisfactory. I submit that Tillich is correct that the "spiritualistic" and the "psychological" theories are inadequate. Therefore, we will drop them from our discussion. Close analysis shows that the "physical" theory corresponds most nearly to the Biblical witness and to that end I quote Tillich's consideration of it as a basis for discussion:

"The most primitive theory, and at the same time beautifully expressed is the physical one. It is told in the story of the tomb which the women found empty on Easter morning. The sources of this story are rather late and questionable, and there is no indication of it in the earliest tradition concerning the event of the resurrection, namely 1 Corinthians, chapter 15. Theologically speaking, it is a rationalization of the event, interpreting it with physical categories that identify resurrection with the presence or absence

of a physical body. Then the absurd question arises as to what happened to the molecules which comprised the corpse of Jesus of Nazareth. Then absurdity becomes compounded into blasphemy." <sup>6</sup>

Tillich, we have noted, rejects all three general theories. What then is the position of Tillich? He first of all asserts that the symbol of the resurrection is based on fact. He states something happened but he does not say just what took place that first Easter.

But one thing is obvious. In the days in which the certainty of His Resurrection grasped the small, dispersed, and the despairing group of the followers, the church was born, and, since the Christ is not the Christ without the church, He has become the Christ. The certainty that He Who is the Bringer of the new eon cannot finally have succumbed to the powers of the old eon made the experience of the Resurrection the decisive test of the Christ-character of Jesus of Nazareth. A real experience made it possible for the disciples to apply the known symbol of the Resurrection to Jesus, thus acknowledging Him definitely as the Christ. They called his experienced event the "Resurrection of the Christ," and it was a combination of event and symbol. <sup>7</sup>

Tillich then confronts us with a combination of symbol and event. The idea of the resurrection of a god was widely known in the pagan religions of Christ's time. According to Tillich something happened which caused the disciples to come to the conclusion that Jesus of Nazareth still lived although He had been crucified, dead and buried. As a result of

Paul Tillich, Systematic Theology Volume II, (Chicago, 1957), p. 155

Ibid.

lbid., p. 154

their mysterious ecstatic experience, the Apostles applied the known symbol of the Resurrection to Jesus and proclaimed "Christ is Risen!" At this point it would be appropriate to let Tillich clarify his position further in his own words (I italicize certain portions which I desire to mark for particular notice):

"We must ask anew what this reality (the resurrection) is? In order to describe it, we must look at the negativity which is overcome in it. Certainly, it is not the death of an individual man, no matter how important. Therefore, the revival of an individual man or his reappearance as a spirit cannot be the event of the Resurrection. The negativity which is overcome in the Resurrection is that of the disappearance of Him Whose being was the New Being. It is the overcoming of His disappearance from present experience and His consequent transition into the past except for the limits of the memory. And, since the conquest of such transitoriness is essential for the New Being, Jesus, it appeared, could not have been its bearer. At the same time, the power of His Being had impressed itself indelibly upon the disciples as the power of the New Being. In this tension something unique happened. In an ecstatic experience the concrete picture of Jesus of Nazareth became indissolubly united with the reality of the New Being. He is present wherever the New Being is present. Death was not able to push Him into the past. But this presence does not have the character of a revived (and transmuted) body, nor does it have the character of the reappearance of an individual soul; it has the character of spiritual presence. He 'is the Spirit' and we 'know Him now' only because He is the Spirit. In this way the concrete individual life of the man Jesus of Nazareth is raised above transitoriness into the eternal presence of God as Spirit. This event happened first to some of His followers who had fled to Galilee in the hours of His execution; then to many others; then to St. Paul; then to all those who in every period experience His living presence here and now. This is the event. It has been interpreted through the symbol "Resurrection" which was readily available in the thought forms of that day. The combination of symbol and event is the central Christian symbol, the Resurrection of Christ." 8

The preceding theory concerning the event which underlies the symbol of resurrection summarily dismisses both a physical as well as a spiritualistic literalism. The author replaces both the physical and spiritualism.

malistic theories by description, which Tillich claims. are nearer to the oldest source (Corinthians, Chapter asl and with it he places at the center of his analysis the religious meaning of the resurrection for the diswhiles (and all their followers), in contrast to the early christians' previous state of negativity and despair. This view is the ecstatic confirmation of the indesmuctible unity of the New Being and its bearer, Jesus of Nazareth. In eternity they belong together. In contrast to the physical, the spiritualistic, and the psychological theories concerning the resurrection event, one could call this the "restitution theory." According to it, the resurrection is the restitution of lesus as the Christ, a restitution which is rooted in the personal unity between Jesus and God and in the impact of this unity on the minds of the Apostles. Historically, it may well be that the restitution of Jesus to the dignity of the Christ in the minds of the disciples may precede the story of the acceptance of lesus as the Christ by Peter. The latter may be a reflex of the former, but even if this is the case, the experience of the New Being in Jesus must precede the experience of the resurrected Son of God. This is true because the Church of Jesus Christ is not founded upon the rock of Peter, but rather upon the truth to which Peter confessed; that Jesus Christ is the Son of the Living God. The diety of Jesus Christ is the foundation upon which the church rests. It is the fundamental creed of all Christendom. Although it is my belief based upon a logical and syllogistic analysis of all the evidence that the restitution theory is a most adequate explanation under the facts, it must also be submitted as a theory.

It therefore remains in the realm of probability under the facts and does not have the certainty of faith. Faith

<sup>&</sup>lt;sup>8</sup> Ibid., p. 156ff. (emphasis mine)

provides the certainty that the picture of the Christ in the Gospels is a personal life in which the New Being has appeared in its fullness and that the death of Jesus of Nazareth was not able to separate the New Being from the picture of its bearer. If physical or spiritualistic literalists are not satisfied with this solution, they cannot be forced to accept it in the name of faith. But they can perhaps grant that the attitude of the New Testament and especially of the non-literalistic Apostle Paul justifies the "theory of restitution."

What Tillich calls the "physical theory" is the unequivocable testimony of the New Testament, particularly the gospels of Luke and John. These accounts clearly and unequivlocally assert that Jesus of Nazareth having conquered death, rose from the tomb with a glorified corporeal nature. There is a pronounced emphasis (present also in 1 Corinthians, Chapter 15) on real continuity between the person of Jesus who had been crucified and buried and the one who exhibited Himself to the disciples in the resurrection appearances. The story of doubting St. Thomas can hardly be interpreted in any other way than asserting that Jesus was raised in the same body in which He was buried. Whatever changes that body might have undergone at the resurrection, it was clearly still a body; but not necessarily the same (sarx-) or body. (This resurrection body is what Jesus Christ gives to each of us who live and die in Him.)

Clearly the synoptic gospels show us that Jesus Christ's resurrection body looked like His former body. However, it was a body that could pass through solid walls. There is no evidence His original body

eguld do this. (However, all things are possible with God. Therefore, this evidence is not required.) Tillich is aware of all of this but it appears to mean nothing to him. He casts aside all the patristic evidence, history and tradition except for that contained in 1 Corinthians, Chapter 15 as "rather late and questionable." Of course, he is not dogmatic on the subject - he grants us the privilege of not accepting the restitution theory which asserts that the resurrection has nothing to do with the return of the body of Iesus. Our responsibility cannot be so easily dismissed, however. As responsible Christians we must judge whether the restitution theory is of Christ or not. This is essential because the entire Christian faith stands or falls on the fact of the resurrection of Jesus Christ our Lord and Savior on the third day as He had predicted before His death.

From the time that the New Testament was first reduced to writing until the rise of liberal Protestantism in the last century that which Tillich labels the "physical theory" was taught in all of the churches of Christendom. This can even be inferred from Tillich's description of the primitive theory. All of the ancient creeds (the Nicene and the Apostles Creeds) as well as the later confessional writings and catechisms proclaim a belief in a physical bodily return of our Lord and Savior Jesus Christ. Patristic support is all but unanimous. In fact, it would seem that the only precedent for anything like the restitution theory with its anti-body bias is to be found among

Cf. Murdoch Dahl, The Resurrection of the Body, A Study of 1 Corinthians 15, (Naperville, 1962) p. 7, 37ff; also J.A. Schep, The Nature of the Resurrection Body, (Grand Rapids) p. 220ff; also Richard Riss, The Evidence for the Resurrection of Jesus Christ, (Minneapolis, 1977).

the ancient docetic gnostic heretics (and of course the old liberal protestantism tradition from which Tillich himself came).

Tillich is swimming against the current insofar as the total view of church history is concerned. However, this alone would not justify our arbitrarily slamming the door on his ideas without further consideration. No person can claim an absolute monopoly on the truth and this fact must compel us to listen to Tillich with sympathy while at the same time, guarding ourselves against the trap of thinking that our generation finally has a peculiar insight which is so far superior to all that has gone before that the past may be jettisoned without further ado. I submit that the Holy Ghost is active in the church and in individual lives and the Canonical Scriptures of the New Testament are the constitution and charter of the church and the standard by which all doctrines are to be judged. If I understand Tillich correctly, this is also his implied intent. Now if we believe that the Holy Spirit leads us in the truth today, we must also allow that He led the patristic fathers who have gone before so that they should not have been too far from the truth as they harkened to the voice of God in the Scriptures through the inspiration of the Holy Spirit.

I strenuously object to Tillich's reference to the belief that Christ was raised with a glorified corporeal body as a "theory." This is dishonest in that this disguises the fact that this has been the unequivocable teaching of the universal church from at least the time the synoptic Gospels were reduced to writing during the First Century A.D. until the rise of liberal Protestantism during the Eighteenth and Nine-

teenth centuries. What he calls the "physical theory" is the accepted doctrine; all the others including his proposals are revisionist theories. Seen in this light, and only then, should we make our evaluations. Only in doing this do we see the matter in its proper perspective. Tillich is a man standing before the universal church declaring that for over 1,900 years its understanding of the resurrection is not only incorrect but even tending toward blasphemy and apostacy. Now, we may indeed be in the presence of another Athanasius or a Luther and not a Marcion or a Basilides. However, the burden is upon Tillich to convince us of this. I submit that by the evidence he has not done this.

That there are discrepancies in the resurrection accounts in the New Testament is not a new discovery. I submit that the clear evidence of modern scholarship points to the possible inclusion of legendary factors and creations. But if any unified picture is presented by the Canonical Writing of the New Testament at all, it can only be that reflected in the traditional doctrine. (I believe I can say that Tillich would allow this since this is implicit in his rejection of some of the New Testament.) When we deviate from the total view we may well ask the question as to whether or not we have in fact given up our Biblical witness and substituted something else for it. When we reject one tradition contained in the New Testament in favor of another (listen to one, refuse to hear the other except to reject it), we have in fact introduced a new standard into the church . . . Historical . . . criticism. The contents of the Holy Scriptures will provide only outer limits. The historian will be our "pope" and will announce what is authentic and/or "late and questionable" and since his judgments are subjective and subject to constant change, we must be prepared for numerous revisions of our theories. Our picture of Jesus will constantly change. Clearly the modernist school of Biblical interpretation has been losing ground during recent years because many of the Biblical truths that were rejected by the followers of the school of historical criticism have been proven to be true, in this scientific age, by the findings at Qumran and the findings of the Dead Sea Scrolls at various areas of the near east since 1946.

The only Scriptural support Tillich claims for his theory of restitution is 1 Corinthians, Chapter 15. His first act must be to set up 1 Corinthians 15 over against the rest of the New Testament, particularly the Gospels of Luke and John which put the greatest possible emphasis on the bodiliness of Him who appeared outside the tomb and in Galilee. Even greater problems for Tillich are the allusions to the physical aspects contained even in his proof passages which militates against the ideas of his restitution theory. First of all, St. Paul specifically refers to the fact of the physical burial of Christ (v. 4). Logically, if St. Paul is not concerned with the tomb or a physical body, why the referral to a burial at all? When St. Paul then speaks of Christ being raised to life the third day (also v. 4), how can one deny that St. Paul is talking about a body (the body of Christ which had been buried) coming out of a tomb? Therefore, it is apparent that 1 Corinthians 15 is not as free from the traditional view as some would like to have us believe. We have a definite allusion to a place and also the statement of a particular time, so it would seem hard to deny that St. Paul is talking about something that happened "once upon a time." Finally, the reference to the

gcriptures (v. 4) ties us to Old Testament concepts which we will have to investigate carefully.

1 Corinthians 15 is presented as the "earliest tradi-Hon concerning the resurrection" while the opposing widence is characterized as "rather late and ques-Monable." 10 Most modern scholars will agree with willich regarding the early date of Paul's letter to the Corinthians assigning it to about the year 56 A.D. 11 The Gospel of St. Mark is usually dated between 65 and 70 A.D.;12 St. Luke between 60 and 90 A.D.;13 and St. Matthew about 85 A.D. 14 The Gospel of St. John is usually dated around 100 A.D. although in the not too distant past this Gospel was confidently dated by some scholars as being written as late as 150 A.D. However, it must be admitted that there were always some dissenting voices who argued for a much earlier date. 15 From this we see that the dates when the traditions of St. Paul and St. Luke first appeared in writing may differ as little as ten years and certainly by no more than thirty or thirty-five years. The date that they appeared in writing does not necessarily establish the relative age of the traditions though it has the effect of guarding them against further development. One of the amazing things about the Biblical witness is that it was actually reduced to writing at a time when most traditions were only given orally from father to son. It is conceivable that a tradition first reduced to writing in 80 A.D.

Tillich, p. 155

Emil Brunner, Dogmatics Volume II, (Philadelphia, 1952), p. 366

Floyd V. Filson, A New Testament History, (Philadelphia, 1961), p. 82

<sup>&</sup>lt;sup>18</sup> Ibid., p. 85

<sup>&</sup>lt;sup>14</sup> Ibid., p. 84

Ibid., p. 370 See also the footnote

may actually be older and more authentic than one first recorded in 50 A.D. depending on the relationship of the recorder to the original event. Consequently, a tradition marked as late on the basis of date reduced to writing must not be rejected out of hand because it may result from honest corrective action initiated by a knowledgeable person or persons (i.e. to combat a growing misunderstanding or misinterpretation of a simpler rendering) rather than fanciful elaboration.

Those who assert major deviations in essential matters from the apostolic tradition on the part of the writers of the synoptic gospels do not adequately explain how this could have reasonably occurred in a community which must have still included percipient ear and eyewitnesses of the original events when the gospels were reduced to writing. A deviation from basic content of the tradition, a significant crime in primitive communities, must have brought on serious controversy. This crime required specific intent, as do most crimes in anglo-saxon jurisprudence today. This concept clearly comes to us from the Biblical showing of increased culpability where the perpetrator of a crime possessed mens rea or scienter (guilty mind). There is no evidence of a controversy on the subject of someone having rationalized the Resurrection experience to make it "physical."

On the surface the priority of 1 Corinthians over that of the Gospel of St. John appears impressive. But even here we must hesitate. In a book published as late as 1938, Morton Enslin, a liberal New Testament scholar and a confirmed dedicated follower of historical criticism of the Bible confidently asserted, to wit: The date of the Gospel (John) cannot be set before 100 A.D. Its use of the synoptic gospels, its obvious antipathy to the Docetic heresay, its utter recasting and evaluation of the earlier traditions are definitive... It would seem most likely to have been penned during the first three or four decades of that century." 18

The discovery of the Rylands fragment of St. John dated during the reign of Trajan who died in 135 A.D. has rendered any date much later than 100 A.D. both logically and syllogistically untenable. The basis on which Enslin and others would assign a date as late as 100 A.D. have even further eroded their position. This is another clear case where the evidence has been discredited specifically with the discovery of the Dead Sea Scrolls and other physical evidence in the near east since World War II. One of the key factors in the dating of the Gospel of John was the alleged relationship of the terminology of St. John to that used by the Alexandrine school of philosophy and allusions to the Docetic heresy. 17 Frank M. Cross, Jr., one of the leading authorities on the Dead Sea Scrolls, asserts categorically that the Gospel of St. John preserves authentic historical material which first took form in an Aramaic or Hebrew milieu where Essene currents still ran strong. W.F. Albright provides numerous concrete examples demonstrating that the phrases heretofore used to relate the Cospel of St. John to the second century really came from an era of Jewish history which comes to an abrupt end no later than 70 A.D. Unlike Enslin's examples, which are nothing more than a few phrases, Albright produces many conclusive ones. Included are/ "a simple dualistic phraseology, contrast-

Morton Enslin, The Literature of the Christian Movement Part III, (reprint, New York, 1956), p. 451

<sup>19</sup> Ibid., p. 450

ing good and evil, light and darkness, truth and false. hood; the opposition of the Spirit of Truth and the Spirit of Perversity; expressions such as the 'sons of light,' 'light of life,' 'walking in darkness,' 'doing the truth,' the 'works of God,' etc." In summary he adds: "The supposed cases of Gnostic influence on the Gospel of St. John actually do not belong in the true Gnostic horizon of the second century A.D. at all but provide the close relations in time between the Essenes and Jesus." Albright's inquiry also touches on topographical features. Enslin acknowledges that the Gospel of St. John contains certain geographical and chronological touches which give it the appearance of an early date but he dismisses this evidence as irrelevant with the comment that "any pilgrim to the holy sites in Palestine at the beginning of the second century - an ancient forerunner of the modern Cooke's tour — could easily have acquired such local colour." 18 In the place of opinions (Enslin), Albright provides concrete examples based on recent archaeological discoveries, of topographical data. This is all correctly reflected in the Gospel of St. John. I submit this could not have been really known by a person who visited Palestine after the catastrophe of 66 A.D., and the fall of Jerusalem in 70 A.D., and after the fall of Masada to the tenth Roman Legion, the last Jewish outpost on the Dead Sea, three years later. These facts undermine many of Enslin's arguments and thesis and provide strong arguments for treating the traditions of St. John with respect regardless of the date when they actually were reduced to writing.20 Albright's conclusion regarding the Gospel of St.

John is that "there is scarcely a passage in the Gospel which was appreciably influenced in form by the history of the church in the decades immediately following the year A.D. 70."<sup>21</sup> He regards a date between 80 and 90 as not unreasonable for the Gospel which agrees substantially with ancient tradition. <sup>22</sup> We must acknowledge that not all scholars and theologians have reacted to the new evidence in the same way. For example, C.C. Torey propounds the fact that St. John is a translation from an Aramaic Text written down well before A.D. 70. Other distinguished scholars, such as Erwin Goodenough and A.T. Olmstead, maintain that the narratives of St. John are the oldest and most authentic sources for any biographer of Jesus, the Christ.

All this does not disprove Tillich's thesis that 1 Corinthians 15 represents the "oldest tradition." Certainly some scholars have not reacted to this overwhelming new evidence. The evidence does, however, show that liberal historical-criticism is a rather uncertain "pope". Therefore, all positions of liberal historical criticism must be examined by the same skeptical scholarship that has so long examined all positions of conservative historical theology. The basis on which Tillich builds his theory remain debatable and there is much evidence which does not support his arguments and his conclusions.<sup>23</sup> Even Emil Brunner who likewise holds 1 Corinthians to be the "most ancient and most reliable" account of the resurrection feels obliged to admit that the early existence of the well-published legend that the disciples stole the body plus the absence of any trace of a "tomb" of

W.F. Albright, The Archaeology of Palestine, (Baltimore, revised, 1960) p. 249

<sup>19</sup> Enslin, p. 445

<sup>&</sup>lt;sup>20</sup> Albright, p.245ff

<sup>21</sup> Ibid., p. 248

<sup>&</sup>lt;sup>22</sup> Ibid., p. 242

Cf. Gary R. Habermas, The Resurrection of Jesus, (Grand Rapids, 1980).

Jesus in the early Christian period does give "some historical weight to the tradition of the Empty Tomb," a (a tradition which in fact points unmistakably to a bodily resurrection).

So far we have contented ourselves with looking at the written documents. Though the value of form criticism has not been universally acclaimed, it claims to offer the tools needed to go back behind the written Gospels and Epistles to confront the most ancient traditions. Based upon this source, Thielicke asserts that the "oldest form of the Easter kerygma accessible to us is doubtlessly to be sought in the Christological creedal traditions of the pre-Pauline period. These can be discovered through a historical analysis of the forms in the Pauline Epistles and in the Acts of the Apostles." He goes on to assert that the oldest form available to us is not 1 Corinthians 15 which is itself a later theological elaboration but is to be found, for example, in Romans 10:9." "God raised Him (Jesus) from the dead."25 Now we must ask: How would a lew of the first century have understood this assertion if he heard these words? If Paul Tillich is right, he would have had no thoughts about a body coming back to life or being transmuted — Tillich's restitution theory or something like it would have instantly come to his mind. The historical sources available to us are quite insistent, however, that the old Jewish concepts of resurrection involved the physical return of a body. The inquiry of the Jews in Mark 12:18ff and Matthew 22:23ff furnishes evidence of this. As further background for the Jewish belief, we have Ezekiel 37:11-28. Isaiah 26:19. and

paniel 12:2 which would have been known and respected by well-informed and religious Jews of Christ's day. Dahl in his study, The Resurrection of the Body characterizes the old Jewish ideas as "crude" or "materialistic." (It is worthy of note that Dahl is at this point trying to show that Paul emancipated himself from these crude conceptions.)26 It is therefore submitted, that the evidence clearly, convincingly and overwhelmingly indicates that the term "He is Risen" would have been understood by the percipient witnesses of Christ's day, as some type of bodily resurrection; and that the oldest traditions of the Gospel message are and were, in fact so understood and so intended.27 The best explanation of the physical elements of the tradition to be found in the Gospel accounts is that they are a part of the earliest tradition and are clearly evident also in 1 Corinthians. For Paul to have wanted his hearers to understand something else would have required considerable embellishment to make his intent specific.

Does St. Paul in fact do this in 1 Corinthians 15?

Does 1 Corinthians 15 actually teach a resurrection of the type referred to in Tillich's dogmatics? Does the restitution theory fit 1 Corinthians 15 better than any other? Unfortunately, Tillich takes it for granted that his assertion is self-evident and does not elaborate on his exegesis of 1 Corinthians 15. This is perhaps understandable since a spiritualizing exegesis of this reference is popular today, so much so that Dahl in his study refers to it as the "Accepted Exegesis" with no citations or substantiating argument. The thrust of this unsubstantiated approach is that

Brunner, p. 368

L. Goppelt, H. Thielicke, H.-R. Muller-Schwefe, The Easter Kerygma in the New Testament, (Wuppertal, 1964), p. 35f

Dahl., p. 12f. See footnote on page 16

Dahl., p. 11ff. Compare also Brunner p. 367ff

since St. Paul makes no reference to the tradition of the Empty Tomb, and does not indicate that he is aware that there is a difference between his resurrection experience and that of the other disciples. Therefore, we must conclude he does not know of the Empty Tomb (although he refers to a burial). These illogical positions regard all of the other resurrection experiences as being identical (or substantially so) with St. Paul's. This then is reinforced by his statement in 1 Corinthians 15:50 that "flesh and blood cannot inherit the Kingdom of God," which is supposed to prove that the resurrection has nothing to do with the raising of corporeal or incorporeal bodies.

Dahl's position is supported by many other scholars. Therefore, I submit a substantiating summary of the approach from another source:

"The view that St. Paul means that all appearances of the Risen Lord were of the same immaterial kind as that to himself does not rest merely on the fact that he draws no distinctions between them. The whole of his argument in 1 Corinthians 15, to the effect that flesh and blood cannot inherit the Kingdom of Heaven, is based on the parallelism between the Resurrection of Christ and the Resurrection of Christians." 28

But Dahl shows rather conclusively that the "accepted exegesis" is inadequate on the "flesh and blood" passage — that the nature of the change is pressed too far in the face of a context which moves toward a climax (in vv. 53ff.) which emphasizes identity, as opposed to difference. "The very word 'resurrection,'

implies the restoration of something lost, rather than the provision of something new. Likewise the word 'sown' implies something

that is to grow and develop rather than something that is to be done away with altogether. <sup>29</sup>

The traditional view asserted a change in the nature of the body even though it insists on a real identity setween the resurrection and the crucifixion bodies of Christ.) But Dahl has more for us: "Saint Paul would not have thought of our 'essential being' as illtimately distinct from the 'physical' aspect of our being. All is one totality." 30 "Body" for St. Paul means the whole personality, and "resurrection" means the restoration — the final salvation — of the unified personality. Hence it is vital to insist on the word identity as describing this relationship because the whole idea has no meaning unless it is the same personality that is to be raised that exists now. 31

It is apparent that 1 Corinthians 15 insists on a real relationship between that which was buried and that which was raised. Such an identity is difficult to find in the restitution theory which attempts to eliminate the body of Jesus Christ from the event even though according to the Jewish concept of the essential unity of man, this also eliminates any actual participation by lesus except in the subjective consciousness of the viewer. That this is Tillich's intent is reinforced by his description of the "event" by the term "ecstatic experience" and by the further assertion that the same kind of event can happen (and apparently does) "to all those who in every period experience his living presence here and now." Addicts of the "existentialist philosophy" may call this a "concrete event" or an "experience." To persons, like myself, who do not

Thomas S. Kepler, The Meaning and the Mystery of the Resurrection, (New York, 1963) p. 97f.; also Pinchas Lapide, The Resurrection of Jesus, A Jewish Perspective, (Minneapolis, 1983)

Dahl, p. 28ff. and 93ff.

<sup>&</sup>lt;sup>30</sup> Dahl, p. 91

<sup>&</sup>lt;sup>31</sup> Dahl, p. 94

believe that it's "existentialism or drown", the restitution theory becomes nothing more than a more elaborate re-hash of the psychological theory. This approach presupposes nothing more than an internal change in the disciples. Such a proposition cannot be harmonized with 1 Corinthians 15 without excising those positive statements of St. Paul which assert an historical event. (The term is used here according to ordinary usage — not as it has been mutilated by the existentialists.)

The most that can be said, even if one applies the most charitable understanding to Tillich's restitution theory, is to allow for a real act of God in that Paul does not contradict it, at least not directly. For the most part he depends upon an argument resulting from St. Paul's silence. But the cold fact is that just because St. Paul does not mention the tradition about the Empty Tomb does not prove that he does not know of it. The fact that he does not immediately mention that his resurrection experience was different from others (if this were the case) does not prove that it is not so. After all, why would he? If anyone had a unique experience with Jesus Christ, it was St. Paul. Why should he emphasize this? The only end result, we could expect, is that it would cause some to question his full apostolic authority. We must not overlook the fact that he has not asserted that his experience was in every way identical to that of the other witnesses. Neither must we overlook the fact that St. Paul may not have been aware that he was writing a "word of God" about which men would quarrel later. I suspect he would be astounded if he knew what men try to read into his letters at times. How can we characterize a person who throws in personal greetings and requests coats and other items as a careful

and precise correspondent? Everything seems to ndicate he was writing casually to his beloved Christan congregation. Why should he give an elaborate exposition of the resurrection tradition instead of a mere summary? Must we not assume that he had previously instructed the Corinthians on the subject and to repeat himself other than in summary form would be superfluous insofar as basic content is concerned?

Perhaps the strongest argument against the "accepted exegesis" of 1 Corinthians 15 comes from 1 Thessalonians, an earlier writing of St. Paul. The reference here is to the resurrection of believers but since the resurrection of Christ and believers are so closely related in the theology of St. Paul, such a reference is pertinent to our discussion. The concept expressed in 1 Thessalonians 4:133ff is strictly physical. The dead "sleep" and will awaken, etc. How is it that we find such "crude" concepts which are supposed to be characteristic of "late and questionable" rationalizations in this very early tradition? Kepler who subscribes to the "accepted exegesis" of 1 Corinthians 15 observes this and explains it by asserting that there has been a development in St. Paul's thinking. 32 In order to logically and syllogistically follow this theory, we would have to recognize a "young" St. Paul and an "old" St. Paul. This would be similar to our understanding of the "young" Luther and the "old" Luther. The only problem with this explanation, which is adequate for explaining the differences in St. Paul's thinking, is that the crude physical concepts stand closest to Paul's "resurrection experience." Under the laws of the development of tradition we would then expect that 1 Corinthians would reflect the

<sup>32</sup> Kepler, p. 98f

rationalization occasioned perhaps by the intrusion of spiritualizing concepts from Greek sources or such Jewish sources as the Book of Enoch. This would be the exact opposite of what Tillich asserted happened and would be destructive of his contention that the physical aspects are "late and questionable."

One more aspect of Tillich's criticism of the traditional doctrine needs discussion. This is his assertion regarding the "absurd question" which leads to absurdity and perhaps even to blasphemy. Tillich is aparently referring to the conservation of matter. I certainly agree with him that it is absurd that he should have raised the issue at all (I realize that this was not his intent). To deny the possibility of the resurrection of a corpse (which is implied in Tillich's remarks) is to deny the power of our infinite God. All sorts of problems about recovering the same molecules and atoms presumably have disturbed the church. If this were not true I doubt whether Tillich would have mentioned the matter. The church has had too many discussions of such subjects but suffice it to say that actual identity of material is not demanded by the traditional doctrine of a resurrection body. The human body can be compared to a river which retains an identity though the water content changes. Probably an even better comparison would be a whirlpool in the ocean or in your kitchen drain. It looks the same but different molecules of water are always present. We also find this in our human bodies. My present body does not contain the same elements it did 10 years ago, yet I am the same person — there is a real identity.

Now to the question of resuscitation of a corpse. Scripture guarantees all who die in Christ a resurrec-

tion body. The molecules may be different from our present bodies. Certainly, the God who created the niverse should have no problem creating or disintegrating a corpse at will several times a day. Presumbly, mass and energy to include atoms and molecules have no eternal right of existence or resistance in the presence of the God of Abraham, Isaac, Jacob and Jesus for whom "nothing shall be impossible." There is, of course, no apparent rational reason why God should have chosen to reconstitute a corpse and possibly dematerialize it for each resurrection experience (if that is what happened) just to convince a handful of people that Jesus was raised and that God loves them. But, then there is really no rational (from a human standpoint) reason why God should appear on earth as a man and suffer and die on a cross either or that He should use the "restitution theory" to convince some Iews that "Jesus has become the Christ," either. While the idea of the resuscitation of a corpse may be an offense to some, just as many other aspects of the story of Jesus and His life are offenses, we dare never characterize it as impossible. To take such an attitude toward what has been the consistent teaching of the whole Christian Church, presumably under the guidannce of the Holy Spirit, is crass unbelief and not a little presumptuous if not blasphemous. That Paul Tillich seems to do this leads me to question as to whether the God of Tillich, the 'Ground of Being' or 'Being Itself' (what is your ultimate concern — there is your God) is really the God of Jesus Christ or whether it is the 'god of the philosophers.' Tillich's intention is, of course, to worship the God of Jesus, God the Father, Son and Holy Spirit. The Trinity — One God in three personalities. But does he realize his intention? It is possible that we must distinguish between his intention which is certainly

Christian and his thought which may in fact miss the mark and constitute apostasy.

It is submitted that the best summary of the objections to Paul Tillich's restitution theory is supplied by George H. Tavard, to wit:

"The trouble is that this theory does not do justice to St. Paul. Jesus was understood to be still the Christ in spite of the tomb 'on the third day'. To say this is neither absurd or blasphemous. It is the apostolic faith. The absurdity would be to believe that the Apostles accepted the Resurrection stories and the fact of the rising from the tomb while knowing perfectly well that Jesus had not risen from the tomb and had not resurrected in his own body. The myth of the resurrection makes no sense unless it refers to a bodily Resurrection. It would have been much simpler to say that Christ was still present as Spirit, if this is what the Apostles experienced, than to invent a Resurrection myth which they knew would be taken literally and would therefore mislead people. There was no point in delivering to others the faith that 'the Christ was buried and that He rose on the third day,' if they only experienced His spiritual presence. This indeed would have been an absurdity and a blasphemy." 33

Paul Tillich's theory of the resurrection of Jesus Christ is in keeping with his departure from the faith of Chalcedon. (I would not stress this position after carefully examining the evidence, though I do object to it.) There would be little basis for a Resurrection of Christ in the flesh, if God had not been incarnate in the symbol of the Resurrection. Tillich had to find a theory that would preserve the symbol while emptying it of its reference to the flesh. If Tillich was not entirely a Docetist in denying the two natures of Christ, he became one in describing the Resurrection. I have no doubt that his theology is, on this matter, heretical. It is unbiblical. It is not in keeping with the traditional formulations of the pastristic

fathers of the Christian Church or of the early Church councils. It is incompatible with the historical theology of the Christian Church and that of the medieval scholars and theologians. It is irreconcilable with the faith of the Protestant Reformers in the sixteenth century. In our century it appears as an outgrowth of liberal Protestantism, substituting an ontological principle for the latter's moral emphasis. To be sure, it appeals powerfully to those who, without being too scrupulous about the sources of the Christian faith, wish to absorb that faith into the existential emphasis of modern philosophy.

Is this matter of how Jesus arose from the dead of vital importance? I submit that it is central to the vital question of the person of Christ. Jesus Christ is either the Son of the Living God and He did what He said He would do in rising from the dead on the third day or He is a fraud. We must take a stand on this vital point. If Jesus Christ did not rise from the dead, we witnessed 2,000 years ago another illustration of man's inhumanity to man and Jesus was a fraud because he failed to do what he said he would do. We Christians must take a firm stand on this issue. The easy way out of saying Jesus was just a nice man or a good teacher is not available to us as Christian apologists. Those such as Tillich who depreciate or deny the traditional doctrine of the bodily resurrection try to fill the void with an emphasis on faith in the "Easter Event," but I wonder how far faith can legitimately extend without an anchor in history, such as that given in St. Luke's account of the bodily resurrection of Jesus Christ. Cullmann emphasizes that "the whole early Christian thought is based on Heilsge-

George H. Tavard, Paul Tillich and the Christian Message, (New York, 1962), p. 136f.

schichte, (the salvation history of the world as contained in both the Old and New Testaments) and everything that is said about death and eternal life stands or falls with a belief in a real occurrence, in real events which took place in time."<sup>34</sup> In other words: "How can we enter into a relationship with God by believing in an Act of God — if God has, in fact, done nothing?" Does this not apply especially to the resurrection of Christ, an event on which Paul in 1 Corinthians 15 asserts the Gospel stands or falls? Karl Barth seems to think that it does make a difference.

It is impossible to erase the bodily character of the resurrection of Jesus and His existence as the Resurrected One. We may not as Christians gloss over this element in the New Testament record of the forty days and forty nights when Jesus walked this world between the resurrection and His bodily ascension to Heaven, as those who advocate a false dualism between spirit and body have repeatedly tried to do. For unless Christ's resurrection was a resurrection of the physical body, we have no guarantee that it was the decisively acting Subject Jesus Christ Himself, the total man and total God Jesus Christ, who rose from the dead. 35

The fact that Tillich and others who tend to "spiritualize" the resurrection event resort to historical research on the subject is in itself their implicit admission that "what actually took place" is a matter of significance for us, if we are to fully understand Jesus Christ in His paradoxical Christian position as both total man and total God.

## THE LOGICIAN'S MODEL OF JUDGMENT AND THE RESURRECTION OF CHRIST

by

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<sup>34</sup> Cf. Oscar Cullmann, Immortality of the Soul or Resurrection of the Dead? in K. Stendahl (ed.), Immortality and Resurrection, (New York, 1965), pp. 9-53

<sup>35</sup> Karl Barth, Church Dogmatics, Volume III, part 2, (Edinburgh, 1960), p. 448

# THE LOGICIAN'S MODEL OF JUDGMENT AND THE RESURRECTION OF CHRIST

It is easier to make judgments than it is to explain just how they are made. In daily life ordinary people make judgments all the time by natural modes of reasoning. Likewise, ordinary citizens, chosen at random to serve in juries make vital decisions in courts everywhere. If analyzed, judgments are based on the believability of the facts involved. Outside the realm of pure logic and mathematics, proof is never anything more than probability. It is the courts' job to decide whether the probabilities are strong enough or one sided enough to amount to legal proof. Proof then involves probability, and this must exist to an extent which is overwhelming. With regard to the resurrection of Christ, we are involved immediately with historical eyewitness testimony. The eyewitness historical account can be examined and crossexamined to determine its factual probability. "Historians, and indeed all of us, must make decisions constantly, and the only adequate guide is probability." Marcus Stone in his Proof of Fact in Criminal Trials gives us several guidelines for determining any verdict based upon probability. We can look at several of these guidelines and apply them to the resurrection account in order to arrive at a verdict.

#### The Real Issues

The way in which the real issues in a trial emerge and what those issues are is focused by the narrow-

John Warwick Montgomery, History and Christianity (Downers Grove: Inter-Varsity Press, 1961), p. 79

ing of the matters in dispute to a single and simple question of fact. In our case, did Jesus Christ rise from the dead as claimed in the accounts? The real issues in a trial will emerge starkly. The overwhelming number of trials concern simple questions, i.e., whether the thing was done or not.<sup>2</sup>

The same disputed points are gone over again and again by each advocate in the examination-in-chief, cross examination and reexamination of one witness after another and again in speeches and in the judge's charge to a jury. <sup>3</sup>

But in the case of the eyewitnesses involved in the resurrection event two thousand years of history prevent us from cross examining them. Simply, the eyewitnesses of the event are not alive to question. How then do we apply this criterion of verdict finding to the resurrection account given by the eyewitnesses?

This requirement is met fully by the presence of hostile witnesses involved during the time the resurrection claim was being made by the disciples. We are in touch with the evidence laid down by the principal eyewitnesses. The earliest preachers of the resurrection knew the value of first hand testimony. They claimed to be witnesses of these things. Many of Christ's disciples were around who could remember what had and had not happened. This is a factor fully capable of being checked and cross checked for any verbal and written accounts of the events. But it is the presence of the unfriendly eyewitnesses that is of spe-

Marcus Stone, Proof of Fact in Criminal Trials (Edinburgh: W. Green and Son, Ltd., 1984), p. 359 hat the early preachers had to contend with. These here equally conversant with the main facts of the ministry and death of Jesus. F.F. Bruce, Rylands Prolessor of New Testament at the University of Manchester, sums up the value of the hostile witnesses in providing cross examination evidence. "The disciples could not afford to risk inaccuracies (not to speak of wilful manipulation of the facts) which would at once be exposed by those who would be only too glad to do so." 4

Actually, maintaining a lie in the face of skillful questioning is extremely difficult. The chances of the witness succeeding under these circumstances might be compared to those of successfully riding a bicycle on a high wire from the Empire State Building to the World Trade Center in New York City. It may even be fair to say that dramatic revelations discrediting the witness in the eyes of the tribunal are only a matter of time if the witness is lying . . . . 5

One of the strongest points in the original apostolic preaching is the confident appeal to the knowledge of their hearers. They not only said, "we are witnesses of these things" but also "as you yourself also know" (Acts 2:22). "Had there been any tendency to depart from the facts in any material respects, the possible presence of hostile witnesses in the audience would have served as a further corrective." Thus, the presence of hostile witnesses of the same events the disciples were speaking of is the equivalent of cross examination.

<sup>&</sup>lt;sup>3</sup> Ibid., pp. 359-360

F.F. Bruce, The New Testament Documents - Are They Reliable? (Grand Rapids: William B. Eerdmans Publishing Company, 1943), p. 43

Richard A. Givens, Advocacy: The Art of Pleading a Cause, 2nd ed. (Colorado Springs: Shephard's/McGraw-Hill, 1985), p. 116

Bruce, p. 46

### Consistency and Incomsistency of Evidence

If the facts to which the evidence refers are related in some way, consistency in the evidence about them is especially important. Consistency of evidence is also important where a number of independent witnesses all speak to the same fact. However, it is commonly contended that differences between witnesses evidence points to their honesty and lack of collusion. Stories identical in every detail are usually suspect especially if the event happened long ago and the details might be expected to have been forgotten. The credibility of a witness is greatly strengthened if his testimony is corroborated by other witnesses who testify substantially to the same thing. Additional supporting witnesses give greater credibility to the witnesses corroborated.

The records the evangelists write about the resurrection event corroborate each other. This is important because much criticism has been leveled by skeptics upon the so-called discrepancies of the gospel narratives. An investigation of the charge of discrepancy against the Gospel writers will show that the critics have classified mere omissions as contradictions. Walter M. Chandler in his Trial of Jesus speaks to this point.

Nothing could be more absurd than to consider an omission a contradition, unless the requirements of the case show that the facts and circumstances omitted were essential to be stated, or that the omission was evidently intended to mislead or deceive. 7

Chandler points out that any other contention would turn historical investigation into a maze of confusion. ion Cassius, Tacitus and Suetonius have all written bout the reign of Tiberius. Many things are mentioned each that are not recorded by the other two. "Are to reject all three as unreliable historians because this fact?" No, each historian corroborates the thers in substance. Likewise,

Abbott, Hazlitt, Bourrienne, and Walter Scott have written biographies of Napoleon Bonaparte. Not one of them has recited all the facts recorded by the others. Are these omissions to destroy the merits of all these writers and cause them to be suspected and rejected? Grafton's Chronicles rank high in English historical literature. They comprise the reign of King John; and yet make no mention of the granting of the Magna Charta. 9

Even with this omission Englishmen still view Grafton's Chronicles as valuable records of the history they portray. Josef Blinzler in his monumental Trial of Jesus summarizes the gospel narrative concerning the passion.

Nothing which could materially supplement the trial narratives of the gospels is to be found anywhere. Any apparent divergences which occur can be explained without difficulty. Therefore, there is no reason to correct the picture gained from the gospel narratives of the passion. <sup>10</sup>

William Paley in his famous View of the Evidences of Christianity makes a pertinent observation about the gospel variations. He says,

The usual character of human testimony is substantial truth under circumstantial variety. This is what the daily experience of courts of justice teaches. When accounts of a transaction come from the mouths of different witnesses it is seldom that it is not possible to pick out apparent or real inconsistencies between them . . . . On

Walter M. Chandler, The Trial of Jesus - From a Lawyer's Standpoint (Norcross: Harrison Company Publishers, 1976), p. 15

lbid.

Ibid.

Josef Blinzler, The Trial of Jesus (Westminster: The Newman Press, 1959), p. 288

the contrary, a close and minute agreement induces the suspicion of confederacy and fraud.  $^{11}$ 

So we are speaking of consistency in substance here. A severe rationalistic approach would demand an artificial correspondence of testimonies. Paley points out that when written histories touch upon the same scenes of action the comparison affords ground for like reflection. When numerous variations present themselves this phenomena is not deemed sufficient to shake the credibility of the main fact. The differences in the gospel accounts themselves show that there was no confederacy and fraud since intelligent conspirators would have fabricated exactly the same story in substantially the same language. The authors of the Gospels were independent historians who wrote at different times and places.

#### **Probability**

Bishop Butler said "probability is the guide of life." Probability in the sense of arriving at a verdict is a quality of belief about human affairs. It is an expectation that something has happened. The version of events which is finally accepted must always be the one which is regarded as the most probable in all the circumstances. So the test which determines the verdict ultimately is not certainty but belief.

In the case of the crucifixion of Jesus we are immediately presented with the historical phenomena of an empty tomb. In ascertaining an explanation for

this we must assess the plausible explanations on their probability value. The explanation we will accept must be the one that is the most probable in all the circumstances.

We must first deal with the naturalistic explanations of the empty tomb. The first possibility is that the disciples stole the body and subsequently fabricated a resurrection story. This theory is even recorded by Matthew. It is significant that Matthew didn't even bother to refute it. Matthew writes that the Roman guard went immediately to the Jewish high priest knowing that they would have been in trouble had they gone to Pilate. Wilbur M. Smith says of this,

It should be noticed first of all that the Jewish authorities never questioned the report of the guards. They did not themselves go out to see if the tomb was empty because they knew it was empty. The guards would never have come back with such a story as this on their lips, unless they were reporting actual, indisputible occurrences as far as they were able to apprehend them. The story which the Jewish authorities told the soldiers to repeat was a story to explain how the tomb became empty. <sup>13</sup>

#### Matthew explains it,

And when they had assembled with the elders and counseled together they gave a large sum of money to the soldiers and said, 'You are to say, His disciples came by night and stole Him away while we were asleep.' (28:13)

This theory would not hold up under cross examination for an obvious absurdity is latent within it. If the Roman guard had fallen asleep how could they have known it was the disciples (or anybody else) who stole the body? As to the probability of the guards actually

William Paley, A View of the Evidences of Christianity (London: Religious Tract Society, 1848), p. 319

<sup>12</sup> Ibid.

Wilbur M. Smith, Therefore Stand (Boston: W.A. Wilde, Co., 1945), pp. 375-376

falling a sleep, the classical philologist and historian T.G. Tucker speaks to this point.

Any neglect of duty or act of disobedience is inevitably punished, sometimes by hard labour [sic] in digging trenches, sometimes by a fine, sometimes by stripping the soldier of his armour and making him stand for hours in civilian attire as a butt for ridicule in the middle of the camp, sometimes by a lowering of his rank corresponding to the modern taking away of a man's 'stripes.' If a soldier proves a hopeless case, he is expelled with ignominy from the camp and army. If he deserts or plays the traitor he may either be decapitated or beaten to death with cudgels. <sup>14</sup>

Tucker speaks about the guard that joined the Roman unit.

On joining his company he is made to take a solemn oath that he will loyally obey all orders of his commander-in-chief, the emperor, as represented by that emperor's subordinates, his immediate officers. That oath he will repeat on each first of January and on the anniversary of the emperor's accession. <sup>15</sup>

It is unthinkable that all of the guards would have fallen asleep at the same time.

Another similar theory is that Roman or Jewish authorities took the body and put it in safe keeping so there would be no deception by anyone alleging a resurrection from the dead. This theory is equally flawed. Why would the authorities do the very thing that caused all their problems? The disciples returned to Jerusalem preaching "Christ is risen." If what they were teaching was false all anyone had to do was produce the body. Where was the official denial? The authorities would have certainly been motivated to say, "That's nonsense! We gave orders to move the

body." As a final resort they could have silenced the new cult by putting the body of Christ on a carriage and parading it about the Via Dolorosa. They certainly had the means, the motive and the opportunity to do so, had there been a body.

It passes the bounds of credibility that the early Christians could have manufactured such a tale and then preached it among those who might easily have refuted it simply by producing the body of lesus. 16

There is, of course, the resuscitation theory which has been revived in modern days by Hugh Schoenfield in his Passover Plot. According to this theory Jesus didn't really die on the cross. He merely fainted (swooned). The disciples, mistaking Him for dead, buried Him alive. Jesus revived in the cold tomb. The disciples were so ignorant that they couldn't believe mere resuscitation revived Him so they insisted it was an actual resurrection. In Schoenfield's modern twist of this theory Jesus had previously arranged a feigned death on the cross by being administered a drug (when the wine and vinegar was offered). The plan was for Joseph to take the body to one of his tombs. When the effects of the drug wore off Jesus would appear alive and reveal Himself as the Messiah. But, according to Schoenfield, the plot backfired when unexpectedly the Roman guard thrust a spear into Jesus' side. He regained consciousness only temporarily and died later. Before dawn, the remains of Jesus were quickly taken away and disposed of so His grave would be empty. The "unknown young man" then, was mistaken for Jesus by the emotionally distraught Mary. Likewise, the disciples made the same mistake. This theory constitutes a classic ex-

T.G. Tucker, Life in the Roman World of Nero and St. Paul (New York: MacMillan, 1911), pp. 345-346

<sup>15</sup> Ibid., p. 342

Montgomery, op. cit., p. 78

ample of approaching the evidence with a preconceived theory and selecting only those facts which support a particular view and rejecting all others. In logic this is known as special pleading. The legal scholar J.N.D. Anderson writes of Schoenfield,

This is ingenious to a degree. But the book is marked throughout by a willingness to stress the merest detail in the gospel records where this assists the writer's strange hypothesis, and to reject everything, however important, which points the other way. The possibility that the central figure might have been more than a mere man is not regarded as even worthy of consideration. Instead, he is made to act in such a way as to be guilty of leading those who were the chief recipients of his teaching sadly astray. Nor is there any suggestion as to why the unknown messenger was mistaken for Jesus himself, why the conspirators never told the apostles what had really happened, or what, indeed, would have been the outcome of this fantastic plot if it had succeeded. 17

With a stroke of the pen this theory eradicates all but four of the eyewitness appearances of Christ because they do not fit into the theory. It ignores the fact that Paul's appeal to 500 witnesses was written at a time when the majority of those 500 were still alive and could confirm or deny the report.

Then one can postulate that the women, upon returning Sunday morning to finish the burial ceremony, went to the wrong tomb. But this was no public cemetery. It was a private burial ground. It is highly doubtful that the women, who watched from a distance where He was buried (Matt. 27:55), would soon forget the place where their dearly beloved was buried. This theory creates more problems than it solves for to postulate it one has to suppose that not only the women went to the wrong tomb but that Peter and John ran to the wrong tomb. Also, it would suppose

that the Jews went to the wrong tomb followed by the Romans. It would suppose that Joseph of Arimathea, the owner of the tomb, went to the wrong grave. In short, the whole world has gone to the wrong tomb, as nobody was capable of locating the right tomb. What proves too much, proves nothing at all. This theory destroys itself. Paul Maier, Professor of Ancient History at Western Michigan, addresses these various theories.

None of these theories, then, offers any solid base for historical reconstruction of what happened on the first Easter morning. If honestly examined, they appear quite fanciful, and all of them raise far more difficulties than they solve. No one theory explains all the phenomena reported at the time, and it would take an incredible combination of several of them to begin to do so. This much must be admitted, not merely on any basis of Christian apologetic, but of sober historical inquiry. <sup>18</sup>

#### **Assessment of Witnesses**

Stone provides this further category of criterion for verdict finding. This is a category of assumption about human nature. The underlying assumption of all courts is that truthfulness is a more fundamental human quality than lying. It is trust in the witnesses which establishes the facts. A court must actually believe the witnesses whose evidence it accepts. It must have confidence in him. "A witness is successfully impeached only when the trier of fact determines that the witness is not worthy of belief or that certain parts of his testimony are incredible." There is no reason to assume the disciples lied in their account

J.N.D. Anderson, Christianity: The Witness of History (London: Tyndale Press, 1969), p. 65

Paul L. Maier, First Easter (Nw York: Harper and Row Publishers, 1973).
p. 113

Leo R. Friedman, Essentials of Cross Examination (Berkeley: Regents of the University of California, 1968), p. 134

of the resurrection event. They were eyewitnesses of the events. "This Jesus did God raise up whereof we are all witnesses." (Acts 2:32). We notice in this address that Peter is appealing to the public knowledge of the event. Louis Gottschalk in his primer of historical method, Understanding History, points out that, of the various conditions favorable to the credibility of an eyewitness, matters of common knowledge are important. Facts that are well known, matters of common knowledge would make the witness unlikely to be mistaken or lie about them.20 This factor is looked for in considering the probability of a witness telling the truth. "Ability to tell the truth rests in part upon the witness's nearness to the event. Nearness is here used in both geographical and a chronological sense."21 Gottschalk sets up a four-fold criteria for judging the authenticity of any detail of historical account.

The historian . . . is prosecutor, attourney [sic] for defense, judge, and jury all in one . . . To him any single detail of testimony is credible . . . provided it can pass four tests. 1) Was the ultimate source of detail (the primary witness) abile to tell the truth? 2) Was the primary witness willing to tell the truth? 3) Is the primary witness accurately reported with regard to the detail under examination? 4) Is there any independent corroboration of the detail under examination? Any detail (regardless of what the source or who the author) that passes all four tests is credible historical evidence. 22

The writers of the New Testament recorded that they "... did not follow cleverly devised tales when we made known unto you the power and coming of our Lord Jesus Christ but were eyewitnesses of His majesty." (II Peter 1:16). Luke, the historian, wrote,

Inasmuch as many have undertaken to compile an account of the things accomplished among us just as those who from the beginning were eyewitnesses . . . it seemed fitting for me as well, having investigated everything carefully from the beginning, to write it out for you in consecutive order. (Luke 1:1-3).

Concerning Luke, Archeologist Sir William Ramsay, the foremost authority on the history of the early church says, "Luke is a historian of the first rank; not merely are his statements of fact trustworthy... this author should be placed along with the very greatest of historians." The writers of the gospel accounts fall well within all four categories set up by Gottschalk.

#### Logicians' Model of Judgment

This final category is perhaps the most important as it deals with the actual reasoning process used in arriving at a verdict. It is related to the probability category because it is dealing empirically with the facts. "In criminal trials, what is vital is that the beliefs which are formed about the facts should correspond to reality and not that one statement of belief should be related with perfect logic to another." An empirical approach is being stressed here rather than a strictly rationalistic one as in the criterion of seeking consistency of evidence. Evidence could have a perfectly logical relationship and still be false. In assessing evidence we must approach it empirically, inductively drawing conclusions from it to arrive at a verdict.

Louis Gottschalk, Understanding History (New York: Alfred A. Knopf, 1960), p. 161

<sup>&</sup>lt;sup>21</sup> Ibid., p. 150

<sup>22</sup> Ibid.

<sup>23</sup> W.M. Ramsay, The Bearing of Recent Discovery on the Trustworthiness of the New Testament (Grand Rapids: Baker, 1953), p. 222

<sup>24</sup> Stone, op. cit., p. 378

Inductive reasoning goes from the known to the unknown. It is a generalization drawn from particular facts not as necessarily conclusive from them but as a matter of greater or lesser probability. "If facts A, B, C and D are accepted then a conclusion E may be reached, which is not certain but likely."25 This is how the courtroom logicians model of judgment is related to probability. "Who finds a heifer dead and bleeding fresh, And sees by a butcher with an axe; But will suspect 'twas he that made the slaughter."26 Everyone thinks inductively in daily life. "It is a universal tendency in the mind to derive meanings from the facts which go beyond them."27

What is needed to prove a resurrection? Simply that a person was A. alive, B. then dead, and C. subsequently alive again. Several events converge to establish that this was the case (and in that order) with Jesus. First was the whipping He endured before ever ascending the hill of Golgotha. The Journal of the American Medical Association provides excellent current medical insight into the death of Christ.

Flogging was a legal preliminary to every Roman execution, and only women and Roman senators or soldiers (except in cases of desertion) were exempt. The usual instrument was a short whip (flagrum or flagellum) with several single or braided leather thongs of variable lengths, in which small iron balls or sharp pieces of sheep bones were tied at intervals. <sup>28</sup>

The severity of a Roman scourging depended on the disposition of the lictors involved. A scourging was intended to weaken the victim to a state just short of collapse or death.<sup>29</sup> The Romans perfected crucifixion into a form of torture and capital punishment designed to produce a slow lingering death with maximum suffering.

Before being actually impaled on the cross, the victim was thrown to the ground on his back with his arms outstretched along the patibulum. Archeological remains of a crucified body found in an ossuary near Jerusalem and dating from the time of Christ, reveal that the nails used were tapered iron spikes five to seven inches long with a square shaft 3/8 of an inch across.30 The nails were usually driven through the wrists rather than the palms as it has been medically demonstrated that the wrist can support the weight of a body and the palms cannot. The length of survival generally ranged from three or four hours to three or four days, depending on the severity of the previous scourging. I Peter 2:24 indicates that the scourging of Jesus was particularly harsh. However, even if the scourging was not particularly severe soldiers often hastened death by breaking the legs below the knees.

Since no one was intended to survive crucifixion, the body was not released to the family until the soldiers were sure that the victim was dead. By custom, one of the Roman guards would pierce the body with a sword or lance. <sup>31</sup>

The scourging before the crucifixion served to weaken

<sup>&</sup>lt;sup>25</sup> Ibid., p. 379

William Shakespeare, Henry VI, Part 2, III..2, ed. Norman Sanders (New York: Penguin Books, 1981), p. 114

<sup>27</sup> Stone, op. cit., p. 379

William D. Edwards, Wesley J. Gabel, and Floyd E. Hosmer, "On the Physical Death of Jesus Christ," Journal of the American Medical Association, 255, no. 11 (March 21, 1986), 1457

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., p. 1459

<sup>31</sup> Ibid., p. 1460

the condemned man and, if blood loss was great, it produced orthostatic hypotension and even hypovolemic shock.

No single cause was universally responsible for the death of a crucifixion victim.

The actual cause of death by crucifixion was multifactorial and varied somewhat with each case, but the two most prominent causes probably were hypovolemic shock and exhaustion asphyxia. Other possible contributing factors included dehydration, stress-induced arrhythmias, and congestive heart failure with the rapid accumulation of pericardial and perhaps pleural effusions. Crucifracture (breaking the legs below the knees), if performed, led to an asphyxic death within minutes. Death by crucifixion was, in every sense of the word, excruciating (Latin, excruciatus, or 'out of the cross'). <sup>32</sup>

The soldiers broke the legs of the two thieves but not those of Jesus because they saw he was already dead. The thrusting of the spear into Christ's side left no doubt as to His death. The water and blood that flowed was most likely serous pleural and pericardial fluid. Jesus' death was probably hastened by his state of exhaustion and the severity of His scourging, with its resultant blood loss and preshock state.

The fact that he could not carry his patibulum supports this interpretation. The actual cause of Jesus' death, like that of other crucified victims, may have been multifactorial and related primarily to hypovolemic shock, exhaustion asphyxia, and perhaps acute heart failure. A fatal cardiac arrhythmia may have accounted for the apparent catastrophic terminal event. <sup>33</sup>

Any interpretation of the events surrounding the crucifixion that is based on the assumption that Jesus did not die simply does not line up with current med-

ical knowledge. "Romans were grimly efficient about crucifixions; victims did not escape with their lives." 34

Stone reminds investigators that "the soundness of an inductive conclusion, and the degree of probability which it may have, will depend on the extent to which it is supported by evidence." We have looked at the facts concerning Jesus' death. We can, with equal empirical method, assess the facts of His subsequent post-crucifixion appearances. Generally speaking in a court of law, the more numerous and varied the individual facts are upon which a conclusion is based, the more likely it is to be correct. With the resurrection account we can examine the variety of circumstances and people who subsequently saw Jesus alive. There was a large number of witnesses of Christ after that first Sunday morning.

An early record of Christ's appearing after His resurrection is by Paul. The apostle appeals to his audiences' knowledge of the fact that Christ had been seen by more than 500 people at one time. Paul reminds them that the majority of these people were still alive and could be questioned. This is important because when assessing any event in history, it is important to investigate whether enough people who were participants or eyewitnesses to the event were alive when the facts about the event were published.

The variety of locations and people involved in Jesus's appearances is important.

Eleven manifestations of Jesus are cited in the Gospels and Epistles as evidence for the resurrection. They differ widely in time, set-

<sup>&</sup>lt;sup>32</sup> Ibid., p. 1461

<sup>33</sup> Ibid., p. 1463

<sup>34</sup> Maier, op. cit., p. 112

<sup>35</sup> Stone, op. cit., p. 380

ting, persons involved, and results. They agree unanimously, however, that His physical presence was attested by competent witnesses . . . .  $^{36}$ 

The appearances of Christ are not stereotyped. No two of them were exactly alike. Jesus appeared to Mary Magdaline in the early morning. He appeared to the two Emmaus travelers in the afternoon. Apostolic appearances occurred in the evening. Mary was alone when she saw Christ. The disciples were together in a group. The reactions were equally varied. Mary was overwhelmed by emotion, the disciples were frightened. Thomas was an incredulous unbeliever until Christ manifested Himself to him, at which time he worshipped Him.

The hostile viewers of Christ's post resurrection appearances must be taken into account as well. Paul was probably the most hostile of all witnesses. He despised Christ and persecuted Christ's followers. Paul's shattering conversion is recorded in Acts 9. The gospel record indicates that Jesus' brothers were unbelievers prior to His resurrection (John 7:5). Yet James later became a follower of His brother. What had caused such a change in attitude? The historical explanation is that Jesus appeared also to James (I Cor. 15:7). It is noteworthy too that there were a number of Jerusalem priests who believed (Acts 6:7). This possibly may have been due to appearances to them as well. It at least points out that they recognized the evidence for the empty tomb.

If Christ had risen from the dead, His enemies were thereby put in the position of having killed their

Messiah — a charge which the early evangelists made (Acts 2:23, 36; 3:14, 15; 4:10; 5:30, 31; 7:51).

To voice such an accusation publicly without sufficient evidence to support it would be foolhardy. Why should these followers of Jesus have risked imprisonment and death for a lost cause? Why should they have asserted that Jesus had risen if their opponents could prove that He was still in the tomb? The evidence must have been strong enough from the beginning to make the case for Christian faith unshakable. 37

It is the silence of the evangelist's opponents on this point that is so compelling. "A hostile witness may also make truthful concessions because of not wanting to lie or not knowing what else to say . . . ."38

The particular facts of Christ's life, death, and subsequent life have been assessed. Particular stress has been placed upon the direct evidence for His resurrection. There is much circumstantial evidence for Christ's resurrection as well.

Black's law dictionary perhaps best defines circumstantial evidence.

The term includes all evidence of indirect nature. It is direct evidence as to facts deposed to but indirect as to the factum probandum [it is] evidence of facts or circumstances from which the existence or nonexistence of fact in issue may be inferred. 39

John Henry Wigmore describes the function of circumstantial evidence. "The primary question in regard to circumstantial evidence is whether it is relevant, and thus circumstantial evidence must

Morrill C. Tenney, The Reality of the Resurrection (New York: Harper and Row, 1963), pp. 123-124

<sup>&</sup>lt;sup>37</sup> Ibid., p. 109

<sup>38</sup> Givens, op. cit., p. 107

Henry Campbell Black, Black's Law Dictionary, 4th rev. ed. (St. Paul: West Publishing Company, 1968), p. 309

always be related to the proposed conclusion."40 What decides the relevancy of circumstantial evidence? One factor is that it must constitute proof of facts already offered as evidence from which other facts are inferred. Circumstantial evidence then, is largely inferential. Usually any one piece of circumstantial evidence is insufficient to prove an ultimate fact. The value of circumstantial evidence is in its ability to accumulate. This is one factor that makes it valuable in court.

Several areas of circumstantial evidence accumulate that are unexplainable apart from the resurrection of Christ. One major phenomena is the immediate emergence of the Christian Sunday. The early Christians were God fearing Jews devoted to the observance of the Sabbath. In view of the consequences described in the Old Testament for breaking the Sabbath, the early believers in Christ could not afford to be wrong. They must have had more than sufficient reason to change the day of worship from the last day of the week to the first. Overwhelming evidence for God's sanction of this change must have existed in their minds to offset their fear of God's disapproval. The day of public worship was changed to Sunday in recognition of the resurrection.

The very origin and existence of the Christian church is an historical phenomenon that must be explained somehow. Its beginnings were in the very city where Christ was crucified and buried. It is unthinkable that the early church could have survived in these hostile surroundings if Jesus had not been

raised from the dead. The resurrection claim of the disciples was publicly verifiable within minutes walking distance of Joseph's tomb. The result of Peter's preaching the resurrection in Jerusalem was 3000 converts. (Acts 2:41). The phenomenon of changed lives must not be ignored as circumstantially valuable. What motivated early Christians to go everywhere proclaiming a risen Christ? There were certainly no social benefits to be gained by preaching the resurrection of an unpopular Christ. For their allegiance and aggressive proclamation of the risen Christ these early Christians were subjected to the worst public ridicule and torture. They were commonly stoned, beaten, fed to lions and crucified. They laid down their lives willingly because of complete confidence in their message. They must have had convincing proof of the resurrection to give them confidence in the face of such hostility. Indeed, the convincing proof must have been of such a nature that even their opponents could not deny it. We have reasoned inductively from these facts to arrive at a verdict based upon a high degree of probability.

For conviction the law, in requiring that guilt be proved beyond reasonable doubt, expresses the effect of an overwhelming degree of probability in terms of the state of belief which it produces. This puts the responsibility for the decision where it belongs, in the minds of the tribunal of fact. 41

When a verdict is finally reached, it is stated in terms of belief, not in terms of probability. If the probabilities are strong enough or one sided enough to amount to legal proof, we say we have reached a verdict that we believe to be true. It is important that this criterion is human, not merely mathematical. It is a judgment

John Henry Wigmore, Evidence in Trials at Common Law, vol. 1A (Boston: Little, Brown and Company, 1983), p. 950

<sup>41</sup> Stone, op. cit., pp. 380-381

that the facts have established.<sup>42</sup> We believe Christ rose from the dead because this is the overwhelming degree of probability. This inductively is the state of belief which the facts, empirically examined, produce. Jesus stands convicted of doing what He said He would do. "Jesus Christ began to show His disciples that He must go to Jerusalem, and suffer many things from the elders and chief priests and scribes, and be killed and be raised up on the third day." (Matt. 16:21).

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### ANTONY'S FLEW'S PRESUMPTION OF ATHEISM REVISITED: A CHRISTIAN LAWYER'S PERSPECTIVE

by

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### ANTONY FLEW'S PRESUMPTION OF ATHEISM REVISITED: A CHRISTIAN LAWYER'S PERSPECTIVE

Antony Flew is one of the world's most vocal spokesmen in opposition to the Christian faith. He was born February 11, 1923 in London, England and is the son of a minister. He took a first class honors M.A. from St. John's College, Oxford University in 1948. Since that time he has held several important posts in philosophy, including Christ Church, Oxford, and has been visiting professor at New York University, Swathmore College and was the Gavin David Young lecturer at the University of Adelaide in 1963. He also holds the D. Litt degree from the University of Keele, Keele, Staffordshire where he became professor of philosophy in 1954.

He has written many works, but is perhaps best known for his parable of the gardener. The parable tells the tale of two explorers who come upon a clearing in the jungle.

In the clearing were growing many flowers and many weeds. One explorer says: 'Some gardener must tend this plot.' The other disagrees: 'There is no gardener.' So they pitch their tents and set a watch. No gardener is ever seen. 'But perhaps he is an invisible gardener.' So they set up a barbed-wire fence. They electrify it. They patrol with bloodhounds. (For they remember how H.G. Wells' The Invisible Man could be both smelt and touched though he could not be seen.) But no shrieks ever suggest that some intruder has received a shock. No movements of the wire ever betray an invisible climber. The bloodhounds never give a cry. Yet still the Believer is not convinced. 'But there is a gardener who comes secretly to look after the garden which he loves.' At last the Skeptic despairs: 'But what remains of your original assertion? Just how

does what you call an invisible, intangible, externally elusive gardener differ from an imaginary gardener or even from no gardener at all?" "1

This is merely an application of the falsification principle to the particulars of religion.

This parable and Flew's argument for the "Presumption of Atheism" are his major contributions to the debate between the believer and the unbeliever and are each found in his anthology bearing the same title.<sup>2</sup>

The book as a whole addresses what Flew calls the "great Kantian issues 'of God, freedom and immorality.' "3 However, the major premise, and indeed the foundation of Flew's general position with respect to theological questions, is contained in the first chapter in which he delineates his argument relative to the "presumption of atheism."

The purpose of this essay will be to analyze the presumption of atheism and its application in the parable of the gardener and to espouse a more appro-

Flew had indicated that "One reason why I decided to write the lecture... is that I found even the most acute and sympathetic critics of my God and Philosophy faulting me for asking everyone to start from my own notoriously atheist assumptions. It was clear that a more lucid and more adequately argued statement was needed." See Supra note 2 at 18

priate utilization of the judicial process model for the debate between the believer and non-believer.

## The Argument for the Presumption of Atheism

His first move is to redefine the word "atheism." He recognizes that the usual meaning of the word is "someone who asserts that there is no such being as God." But asserts that he wants "the word to be understood not positively but negatively.'' That the "Greek prefix 'a' be read in the same way in 'atheist' as it customarily is read in such other Greco-English words as 'amoral,' 'atypical,' and 'asymmetrical.' In this interpretation an atheist becomes: not someone who positively asserts the non-existence of God: but someone who is simply not a theist."5 He distinguishes this position from that of the agnostic who "having entertained the proposition that God exists, now claims not to know either that it is or that it is not true," by asserting that his "atheist" demands that a legitimate concept of God must first be shown before the question as to his existence is addressed.6 Indeed, he points out that "it is the first of these two stages which needs perhaps to be emphasized even more strongly than the second."7

He next attempts to establish that the "presumption" is strictly a matter of establishing a "procedure" for the debate between the believer and unbeliever. He does this by analogizing the "presumption" to

A. Flew, The Presumption of Atheism 72 (1976). The major essay in this analogy bears the same title

A. Flew. The Presumption of Atheism (1976).

<sup>3</sup> Id. at 7

The Presumption of Atheism was first presented as a lecture at the University of Arizona under the Howard W. Hintz Memorial Foundation. It first appeared in print in 11, no. 1 Canadian Journal of Philosophy 8 (1972).

<sup>5</sup> Id. at 14

<sup>6</sup> Id. at 14-15

<sup>7</sup> Id.

the common law presumption of innocence. He makes several comparisons:

- 1) "When the presumption of atheism is explained as insisting that the onus of proof must be on the theist, the word 'proof' is being used in the ordinary wide sense in which it can embrace any and every variety of sufficient reason." Of course, the analogy makes clear that the sufficient reason must be RELEVANT EVIDENCE.
- 2) "A second element of positive analogy between these two presumptions is that both are defensible; and that they are, consequently, not to be identified with assumptions. The presumption of innocence indicates where the court should start and how it must proceed" [emphasis added]. "Such presumptions are purely procedural. They assume no substantive conclusions." 10
- 3) The fact that a particular defendant is found guilty, does not tend "at all to show that even in this particular case the court should not have proceeded on this presumption. Still less does it tend to establish that the legal system as a whole was at fault in incorporating this presumption of atheism. Suppose that someone is able to prove the existence of God. The achievement must, similarly, defeat our presumption. But it does not thereby show that the original contention about the onus of proof was mistaken" [emphasis added].

The last step in his argument is to attempt to show the presumption of atheism to be the right one. He presents two arguments in favor of the proposition.

First, he refers to the old legal axiom: "Ei incumbit probatio, qui dicit, non qui negat.' Literally and unsympathetically translated this becomes: 'The onus of proof lies on the man who affirms, not on the man who denies.' '12 However, he quite appropriately points out that this is really a meaningless expression as with a little ingenuity most propositions can be phrased either positively or negatively. He then modifies the maxim to "The onus of proof lies on the proposition, not the opposition." Further, that "no opposition can set about demolishing the proposition case until and unless that proposition has first provided them with a case for demolition: 'You've got to get something on your plate before you can

<sup>&</sup>lt;sup>8</sup> Id. at 17

<sup>9</sup> Id.

<sup>10</sup> Id. at 19

<sup>11</sup> Id.

<sup>12</sup> Id. at 20

This point was recognized by the California Law Revision Commission in adopting what is now Cal. Evidence Code S 500. In their Comment to that section they stated:

That the burden is on the party having the affirmative (or) that a party is not required to prove a negative . . . is no more than a play on words, since practically any position may be stated in either affirmative or negative form. Thus a plaintiff's exercise of ordinary care equals absence of contributory negligence, in the minority of jurisdictions which place this element in Plaintiff's case. In any event, the proposition seems simply not to be so. (Cleary, presuming and pleading: An Essay on Juristic Immaturity, 12 Stan. L. Rev. 5, 11 (1979).)

Section 1981 of the Code of Civil Procedure (superceded by Evidence Code Section 500) provides the party holding the affirmative issue must produce the evidence to prove it and that the burden of proof is on the party who would be defeated if no evidence were given on either side. This section has been criticized as establishing a meaningless standard:

The "affirmative of the issue" lacks any substantial objective meaning, and the allocation of the burden actually requires the application of several rules of practice and policy, not entirely consistent and not wholly reliable. (Witkin, Cal. Evidence S 56 at 72-73 (1958).)

See Supro note 2 at 20

start messing it around.' (Austin (2), p. 142)'' $^{15}$  [emphasis added].

Second, he recognizes that the foregoing does not resolve the issue because, for example, to decide whether to follow a presumption of innocence or a presumption of guilt, is to adopt a policy. He proceeds as follows:

What then are the aims by reference to which an atheist presumption might be justified? One key word in the answer, if not the key word, must be 'knowledge.' The context for which such a policy is proposed is that of inquiry about the existence of God; and the object of the exercise is, presumably, to discover whether it is possible to establish that the word 'God' does in fact have application. Now to establish must here be either to show that you know or to come to know <sup>16</sup> [emphasis added]. But knowledge is crucially different from mere true belief. All knowledge involves true belief; not all true belief constitutes knowledge. To have a true belief is simply and solely to believe that something is so, and to be in fact right. But someone may believe that this or that is so, and his belief may in fact be true, without its thereby and necessarily constituting knowledge. If a true belief is to achieve this

The California courts have given what I believe would be a universally accepted (within common law jurisdictions) definition of the judicial function: "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present and past facts and under laws supposed already to exist. That is its purpose and end." Marin Water etc. Co. v Railroad Co. 171 C. 706, 712, 154 P. 864 (1916). However, it is true that some writers have emphasized the "demonstration" aspect of the proceedings. See e.g. Cleary, Presuming, An Essay on Juristic Immaturity, 12 Stan. L. Rev. 5, 7 (1959). However, this merely describes the manner in which the proceedings occur as opposed to the fundamental purpose.

## He then makes his crucial point.

. It is, therefore, not only incongruous but also scandalous in matters of life and death, to maintain that you know either on no grounds at all, or on grounds of a kind which on other and comparatively minor issues you yourself would insist to be inadequate.

It is by reference to this inescapable demand for grounds that the presumption of atheism is justified [emphasis added]. If it is to be established that there is a God, then we have to have good grounds for believing that this is indeed so. Until and unless some such grounds are produced we have literally no reason at all for believing; and in that situation the only reasonable posture must be that of either the negative atheist or the agnostic. <sup>17</sup> So the onus of proof has to rest on the proposition. It must be up to them: first, to give whatever sense they choose to the word 'God,' — and, second to bring forward sufficient reasons to warrant their claim that, in their present sense of the word 'God,' there is a God. The same applies, with appropriate alternatives, if what is to be made out is, not that theism is known to be true, not only — more modestly — that it can be seen to be at least more or less probable. <sup>18</sup>

Flew's argument raises several questions which will be addressed in the following sections.

<sup>15</sup> Id.

A crucial shift occurs after this point in his argument. Here, he has recognized that the process may be one of either inquiry or demonstration. Thereafter, in his book, he ignores the inquiry aspect and espouses that the function of the "trial" is to allow, and therefore require, the believer to demonstrate (i.e. prove) the existence of God. Indeed, on page 25 he states: "To insist on the correctness of this presumption as an initial presumption is to make a claim which is itself procedural rather than substantive; and the context for which this particular procedure is being recommended is that of justification rather than discovery." This position is, in part, consistent with the position he took in the parable of the gardener. However, it is inaccurate. See notes 27 to 36 and accompanying text.

Flew relies on Huxley's definition of Agnosticism which is that it is "not a creed but a method, the essence of which lies in the rigorous application of a single principle. (Huxley (2), Vol. V, p. 245). This principle is to follow reason 'as far as it can take you;' but then, when you have established as much as you can, frankly and honestly to recognize the limits of your knowledge." The principle is only partially consistent with the forum Flew has chosen for the conduct of the debate. The court relies upon evidence in order to render the necessary decision. However, where the evidence does not produce conviction for or against one of the parties, the court then utilizes the concept of the "burden of proof" in order to determine who shall lose. The party with the burden, and who has not produced evidence resulting in a conviction in his favor will then lose. Thus, it can be seen, that Flew's argument is inconsistent with his basic premise.

<sup>18</sup> See Supra note 2 at 22-23

#### **Questions Raised**

- 1. Is the judicial process an appropriate model? YES!
  - a) Should belief be apportioned to the evidence? — YES!
- 2. Has he appropriately applied the concept of the presumption of innocence? — NO!
- 3. What would be the appropriate handling of the questions based upon the judicial model?

#### Arguments in Opposition to the Presumption of Atheism

## 1. The Judicial Model is the Most Appropriate Model!

Flew is quite correct in recognizing the value of the legal process as a model for the debate over the existence of God, but fails to fully appreciate the implications of the model. The legal process demands that decisions be made based upon the evidence produced, the arguments made within the context of that evidence, and based upon the probabilities in support of the respective positions presented.18

It is important at this point to recognize the distinction between the working logic of the courtroom and the philosopher's theoretical ideal.20 The common law has, over the past several centuries, developed practices and procedures which are designated

Flew has chosen a forum in which a decision is mandated. However, as will become apparent from the remainder of this essay, he retreats from this mandate into an agnostic position wherein no decision can be made because of the absence of apodictic certainty with respect to the issues raised.

See e.g. S. Toulmin. The Uses of Argument 10 (1958)

to develop the truth with respect to the matters in controversy. This truth must then be recognized as having epistomological value. This is true because if, as Flew pointed out, it would be "scandalous in matters of life and death," to maintain that you know either on no grounds at all, or on grounds (which one would otherwise consider insufficient)," then it would be equally scandalous to hold as inadequate, grounds which would be sufficient in the forum designed to resolve such matters — the courtroom.21

Several of Flew's arguments are sufficiently important to bear emphasis: (1) proof embraces any and every variety of sufficient reason;22 2) that the outcome of the trial (debate) must be decided on the merits of what is said within the trial and that only.23

These contentions are correct as far as they go. But they fail to distinguish between the evidence and the arguments of the participants. The law demands, and rightly so, that the decision be based upon the evidence, not the arguments of counsel. This is not merely a matter of "precising an analogy"24 as will become apparent hereafter.

One distinction between the ordinary trial and the controversy at hand here is of significance. Obviously, in a criminal trial each person plays only one role; judge, advocate or defendant. However, with respect to the debate over the existence of God our role is trinitarian. That is we are advocates, but

See note 17 and accompanying text

See Supra note 8 and accompanying text

See Supra note 2 at 20

Goodwin, Antony Flew's The Presumption of Innocence, 57 Journal of Religion 406 (1977)

not only that, we each must decide the issue for ourselves. Even more, we are also the party impacted by the decision. Indeed, we are also the defendant.<sup>25</sup>

## 2. Has the Concept of the Presumption of Innocence been Appropriately Applied? — NO!

Flew has made two fundamental errors with respect to the presumption of innocence. First, his basic construction of the so-called presumption as procedural is in error. Second, his concept that "the presumption of innocence indicates where the court should start and how it must proceed" is incorrect. The second point is foundational from a legal perspective.

He recognizes that the expression presumption of innocence is merely an alternate means for stating that the "onus of proof"<sup>27</sup> is on the prosecution. The latter concept, or more accurately the burden of proof, is the one then that must be analyzed.<sup>28</sup>

The... "burden (of proof) is twofold, imposing upon the burdened party...1) the burden of producing evidence in the first instance,... and 2) the burden of persuasion which requires the trier of fact

to find against the burdened party...unless persuaded, in view of all the evidence, that its (the point to be established by the party with said burden) existence is more probable than not."<sup>29</sup>

The burden of persuasion then is simply a method of resolving a controversy in the event the trier of fact is otherwise undecided. Under these circumstances the party with the burden (who ran the risk of not producing the requisite degree of conviction) loses. Obviously, the burden only has significance at the end of the trial, rather than at the beginning as espoused in Flew's argument.<sup>30</sup>

Indeed, as has been pointed out by one of the leading thinkers in this area:

Determining what elements are relevant to a case and allocating them between the parties does not of necessity have to be done at any particular stage of litigation. These questions can be left suspended in mid-air like Mohammed's coffin until the very end of the case, when it can be decided what are the responsibilities of each party and whether they have been discharged. This is the practice followed in small claims cases. 31

Of course, the issue as to burden of proof on particular issues is ordinarily established in advance of trial. But the purpose of this is to "eliminate uncertainties and lend(s) direction and assurance to prepa-

See Infra 54 to 58 and accompanying text

See Supra note 2 at 17

See Supra notes 8 and 10 and accompanying text. See e.g. Taylor v. Kentucky 436 U.S. 478, 56 L. Ed. 2d 468, 98 S. Ct. 1930 (1978)

The concepts of the burden of proof and of presumptions have confounded legal scholars for a long time. The debate has been on-going since the last century and is still not resolved. Two basic views with respect to presumptions have been espoused; the Thayer view and the Morgan view. However, it is not necessary herein to investigate these respective views as it is widely recognized that the presumption of innocence is not technically a presumption. Also, the aspects of the burden of proof which must be addressed are without controversy.

Cleary. Presuming and Pleading: An Essay on Juristic Immaturity 12 Stan. L. Rev. 5, 15-16 (1959). The described burden — more probable than not — is that utilized in the ordinary civil case. Surely, Flew would not ask for a higher degree of proof.

The burden of proof may be perhaps more accurately described as the risk of non-persuasion 9 Wigmore on Evidence, S 2485. "(T)his apportionment (as to the risk of non-persuasion) depends ultimately on broad considerations of policy . . ." 9 Wigmore on Evidence S 2488

<sup>30</sup> See Supra note 26 and accompanying text

<sup>31</sup> See Supra note 29 at 14

ration and presentation."32 This rationale does not apply to the instant "case" and should not be applied.

The burden of persuasion (who runs the risk of losing in the event of a tie) is never a matter of procedure. The "rules of substantive law are 'statements of the specific factual conditions upon which specific legal (cosmic) consequences depend . . . .'"<sup>33</sup> Whereas "procedure exists only for the purpose of putting the substantive law effectively to work."<sup>34</sup> Therefore, only the burden of producing evidence is procedural.

It bears repeating that the concept of the presumption of innocence does not vary this result. As indicated above, said concept is merely an alternate way of stating the proposition as to burden of proof. Indeed, the presumption of innocence is widely recognized as not being a presumption at all. A leading California legal scholar has succinctly stated the point: the "'presumption of innocence' is not technically a presumption (mandatory inference drawn from a fact in evidence) but rather an 'assumption' that is indulged in the absence of contrary evidence."<sup>36</sup>

As Flew recognizes, the decision as to who shall run the risk of nonpersuasion is basically a matter

of policy. However, as suggested above we will suspend further discussion of these "policy" questions until the lawsuit over the "parable of the gardener" has been analyzed.

## Application of the Legal Model to the "Gardener" Parable

The basic facts of the parable are that two persons come upon a clearing where many flowers and many weeds are growing. This raises the basic metaphysical question as to "Why is there something (flowers and weeds) rather than nothing," or why is there apparent order within the "clearing"? One explorer espouses God (the gardener) as the explanation. The other does more than Flew's a-theist, he denies that there is a God.<sup>37</sup>

It is true that in the remainder of the parable Flew primarily raises questions as to the basis for knowledge. Indeed, this writer wholeheartedly accepts the point that religious assertions must be tested objectively (evidentially). However, in chapter 3, "The Religious Hypothesis," Flew states his response to the basic metaphysical question:

How it is, is just how it is; and that's that.

... The conclusion, which I believe that Hume eventually drew, is that we must take the Universe itself and its most fundamental laws as themselves ultimate....

...(H)ow can we fail to see that there is no possible explanatory point in hypothesizing a Cause to which all and only those powers and inclinations necessary and sufficient to guarantee the production of the Universe as it is, are then gratuitously attributed? 38

<sup>32</sup> Id.

<sup>&</sup>lt;sup>33</sup> Id. at 6

<sup>&</sup>lt;sup>34</sup> Id. at 5

The courts of the United States have, however, established the principle that although these concepts are in legal contemplation the same, a separate instruction as to the presumption of innocence is still required because this clarifies for the jury (layman) the meaning and significance of the expression that the prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. See e.g. Taylor v Kentucky. See Supra note 27

Witkin, California Evidence 2d Ed. S 202 at 186 (1966).

See Supra note 1 and accompanying text. See also Supra note 2 at 56

See Supra note 2 at 52

Now we have the shape of the lawsuit. The believer says God is the ultimate explanation for what is and Flew, along with Hume, says we must take the Universe itself as the ultimate. He has moved a long way from his initial premise of a-theism. Of even greater significance is the fact that he has abandoned his principle that one should follow the evidence.<sup>39</sup>

In that there are now two propositions; (1) God is the explanation, and (2) the Universe explains itself, there is no particular reason why the "believer" should present his case first. However, it is true that we must "get something on (the) plate before you can start messing it around." I will therefore, as counsel for the believer, outline our case.

As with all trials, there will be several approaches which may be taken. Also, tactical decisions will have to be made as to whether to present all of one's evidence while putting on our case, or to hold one or several lines of proof in reserve to use as rebuttal to the case presented by the opposition.

There are several available options:

1) To utilize logic and the concept of "being" to demonstrate the necessity of God's being.<sup>41</sup> Actually, this option is not truly open to me in this forum as it is not evidential, although under Flew's utili-

zation of the term "sufficient reason," it may be considered.

- 2) To show that because there is something as opposed to nothing there must be a prime mover. The Philosophical Rationalists, who espouse this position, have relied primarily on logic to move from the proposition to the conclusion. However, there is a distinct difference here from the ontological argument above. This line of reasoning could well be considered by a court as based upon the circumstantial evidence of the existence of matter. 42
- 3) The argument from design.43
- 4) The argument from the "experience" of the "believer." Again, however, this type of apologetic is not sufficiently evidential to be used in this forum.
- 5) The fundamental evidential apologetic for Christianity, to wit: (1) the resurrection and (2) fulfilled prophesy.<sup>44</sup>

It is important to recognize that these lines of proof are not mutually exclusive. However, having assumed the role as counsel for the Christian position I deem it essential to turn to the words and example of Jesus in determining my primary position. Jesus claimed to be God and stated that He would give a sign; His

<sup>&</sup>quot;In interpreting events, one's proper goal is to find the interpretation that best fits the facts. Ideally, then, one will set alternative explanations of an event against the facts themselves to make an intelligent choice." J. Montgomery, Faith Founded on Fact 55 (1978)

See Supra note 15 and accompanying text

See e.g. C Brown, Philosophy and the Christian Faith 20 (1968)

Circumstantial evidence is evidence of one fact which reasonably infers the existence of a fact sought to be proved. See e.g. See Witkin Supra note 36 at 263. See e.g. C. Brown Supra note 41 S 1 Ch. IV and S 2 Ch. III.

See e.g. C. Brown See Supra note 41 at 75 f.

See e.g. Montgomery Supra note 39 and J. McDowell, Evidence that Demands a Verdict V. 1 & V. 2 (1972) and (1975) respectively.

resurrection.<sup>45</sup> Throughout His ministry, as revealed in the Gospels, He was wont to establish that He was the One about Whom the prophecies of the Old Testament were written.

Therefore, the elements of the case for which I need to produce evidence will be as follows:

- 1) that Jesus died on the cross,
- 2) that ordinarily people who die do not come back to life,46
- 3) that Jesus did return from the dead,
- 4) that events described in the Bible, including but not limited to the resurrection of Christ, were predicted in advance.<sup>47</sup>

Once I have presented my case; be it good, bad or indifferent, the counsel for the opposition must decide upon the case which it wishes to present. The burden of producing evidence has now shifted to them. Of course, they may wish to remain silent and merely argue that our case is not good enough. This they are entitled to do. But, as has become apparent above, Flew's position is that the Universe explains

itself. He then must produce evidence to sustain this argument, if any he has.

Of course, he may wish to merely rely upon the points we have already outlined. However, as suggested above, he is not entitled to do this in his chosen forum. The outcome is to be decided upon the basis of the evidence presented. As previously indicated, the arguments of counsel at trial are not evidence, but merely that. Also, counsel may only present an argument that is reasonably raised by the evidence, not by the absence thereof.

Fortunately, we have some ideas as to how Flew would respond to the case suggested above. He has presented his argument against "miracles" elsewhere. Again, however, he has a problem in this forum. His primary move has been to place the burden upon the Christian to show a uniform law which has been

Luke 11:29 "This is an evil generation. It seeks a sign, and no sign will be given to it except the sign of Jonah the prophet." I Corinthians 15:14 "And if Christ is not risen, then our preaching is vain and your faith is also vain."

Of course, the proof of this proposition is the basic element of my case. The validity therefore of this apologetic approach rides along with the proof of the case in general.

Flew has argued in his arcle Miracles in 5-6 The Encyclopedia of Philosophy 346 (P. Edwards ed. 1967) that in order to argue a case from Miracles the proponent must first establish a "uniform law" which he may then argue has been overridden. This proposition has been more than adequately addressed by J. Montgomery. See Supra note 44. However, it should be recognized here that no such showing of any "general law" is required. Merely, that men do not, as a matter of common experience, die and rise again.

<sup>47</sup> See Supra note 23 and accompanying text

See Flew Supra note 46. Dr. Montgomery has made several excellent points in rebuttal to Flew's argument against miracles: 1) Einsteinian physics has replaced the Newtonian idea of an absolute natural law with a statistical formulation of the same problem; 2) Thus, a "miracle cannot be viewed today as a violation of cosmic or physical laws; it is best regarded phenomenally as a unique, nonanalogous occurrence;" 3) "Consistent collection and analysis of data can occur even when the data are not themselves consistent and regular. In short, whereas irregularity in basic empirical methodology would eliminate the investigation of anything, the discovery of unique, nonanalogous events by empirical method in no way vitiates its operation or renders the investigator liable to the charge of irrationality;" 4) "Where particular experience and general experience are in accord, there is no problem; but where they conflict the particular must be chosen over the general, for otherwise our 'investigations' of historical particulars will be investigations in name only since the results will always reflect already accepted general experience. Unless we are willing to suspend 'regular' explanations at the particular points where these explanations are inappropriate to the particular data, we in principle eliminate even the possibility of discovering anything new. In effect, we then limit all new (particular) knowledge to the sphere of already accepted (general) knowledge. The proper approach is just the opposite: The particular must triumph over the general, even when the general has given us immense help in understanding the particular." See Montgomery Supra note 39 at 48-73.

contravened. However, our case raises only two points relative to natural law, to wit: (1) men don't die and rise again, and (2) men cannot ordinarily predict events in advance with the accuracy manifest in the Bible. We can argue these points based upon the state of the evidence presented by the believer.

However, if the unbeliever wishes to broaden the scope of his attack, he must introduce the evidence for such uniformity. If he does so, he will have opened the door to the argument from design in rebuttal.<sup>49</sup>

Others may wish to present additional arguments to those listed above. But we will rest on the traditional apologetic as our case in chief, corroborated by the argument from design as modified to include the emerging concepts from information, science and cybernetics, in the event the unbeliever raises the points suggested above.

Of course, the unbeliever would likely attempt to attack the fulfilled prophesy argument based upon

the findings of higher criticism. However, as Flew recognized in his argument against miracles referred to above: "The whole of modern 'higher criticism' of ancient history in general, and of the Biblical history in particular, is based upon the same logic that is used by Hume."

The traditional apologetic more than adequately disposes of Flew's point that the believer must show that he has a definition of God. God is the One who has revealed Himself to us through His word and who assumed a tent of human flesh and dwelt among us.<sup>51</sup> Our case rests on the truth of that proposition.

Let us now assume that the case has been presented in accordance with the demands of the model as outlined. A decision must now be made, and the question as to burden of persuasion must now be resolved.

The burden of persuasion issue only needs to be addressed in the event the case is a toss-up. For those who are persuaded one way or the other, it is not needed. 52

Newtonian physics gave rise to the argument from design. However, Paley's concept of the grand watchmaker does not necessarily best fit with Einsteinian physics. However, the Christian community should be giving great thought to the significance of the thinking that has been developing during recent years in the sciences of information theory and cybernetics. See e.g. J. Campbell, Grammatical Man (1982). However, we must proceed with caution as it is evident that apologists who turn away from the traditional apologetic towards natural theology have tended to diminish the case for Christianity. Thus, any such argument should not ever become a primary apologetic, but should be limited to a rebuttal of the unbeliever's case if presented in the terms presented by Flew. In Part III of the present work — see Flew Supra note 2 — presents his arguments against immortality. His first move is to assert the proposition that common human experience shows that humans do not die and come back to life.

so See Flew Supra note 46 at 350

<sup>5</sup> 

<sup>51</sup> See Supra notes 6 & 7 and accompanying text

Several levels of proof are recognized within the law: 1) Preponderance of the evidence. This means "that the trier of fact must believe that it is more probable than not that the fact in question exists" (has been established), 2) clear and convincing proof. "The courts have described this degree of proof as proof 'sufficiently strong to command the unhesitating assent of every reasonable mind'," and 3) beyond a reasonable doubt as in a criminal case. This writer is convinced beyond a reasonable doubt as to the truth of the Biblical claims. Faith works towards carrying one to the philosopher's ideal. California Continuing Education of the Bar, California Evidence Manual 409-411 (1966)

#### Assuming Arguendo that the Evidence Leaves One Without Any Abiding Conviction, Upon What Should the Decision be Based?

It bears repeating that belief should be proportioned to the evidence. But, in this forum, a decision must be had even if the evidence has left one without any abiding conviction. Therefore, we must, as does the law, turn to the "policy" considerations for determining who loses under this state of affairs. 4

Flew's arguments in favor of placing the "burden" on the "believer" have, in part, been disposed of above. His analogy to the presumption of innocence, and the argument that his disposition of the question is merely procedural, simply won't do. He is left then with the proposition that it is with respect to the "inescapable demand for grounds" that the placement of said burden is justified. 55

It is based upon this demand for grounds that a "trial" is needed. This does not, however, assist us in establishing the loser in the event the evidence produces a "tie."

But then, who is the loser? Who is to decide the question? The prior admonition with respect to the role each one of us plays in this trial bears repeating. We are each at this point, advocate, judge and defend-

Of course, the whole purpose of Flew's "presumption of atheism" is to resolve this issue.

See e.g. W. James, The Will to Believe, in Classical and Contemporary Readings in the Philosophy of Religion 214 (J. Hick 2d ed. 1970).

55 See Supra note 17 and accompanying text

ant.<sup>56</sup> We each decide the question for ourselves. Upon what basis?

A concept from the law of torts will be of some assistance here. The courts have, on occasion, in addressing the question as to whether or not to recognize a duty to be owed by a civil defendant to an injured plaintiff, spoken in terms of the "calculus of the risk." They have considered the gravity of the harm as opposed to the social utility of the conduct to which the duty question is related.

What is the gravity of the harm faced for a wrong decision? Pascal addressed this idea in his famous wager. He set the scene thus:

The immortality of the soul is of such consequence to us, and affects us so deeply, that we would have to be totally devoid of feeling before we could be indifferent as to whether it is true . . . . It requires no lofty mind to understand that in this world there is no true and lasting satisfaction . . . that within a few years death, which threatens us at every hour, will inevitably subject us to the dreadful necessity of everlasting misery . . . . Nothing is so important to a man as his own state, he has nothing to fear so much as eternity; and so it is unnatural that there should be men indifferent to the loss of their being and to the peril of everlasting misery. . . .

The risk has been described, but what about the correlative value? Again, Pascal made the point: "If you bet on God, and are wrong, you have spent your life in the service of an illusion. Of course, if you are

See Supra note 25 and accompanying text

Flew has recognized the need to address Pascal's argument and does so in Chapter 5 of the Instant Work. See Supra note 2 at 61

incorrect, you have gained an eternity of ecstasy."58

Flew addresses Pascal's wager in chapter 5 of the instant work. His arguments in opposition thereto are basically as follows:

1) Pascal premised his wager on the proposition Reason cannot decide for us; one way or the other. He then takes Pascal to task for having taken what he (Flew) considers would have been heretical at the time Pascal wrote.

Here, the evidence can decide for us, but we are now addressing the question as to how that individual who is ambivilant might; best go about making the mandated decision (it is mandated by the forum, and indeed by the magnitude of the risk). The calculation of the risk versus the potential loss calls for the use of reason. This is not merely an emotive decision.

- 2) How could there be an ominipotent, omniscient, all good God and evil still exist? This does not respond to the wager, but is evidence which may be presented by the unbeliever relative to the issue as to the existence of God.
- 3) As Flew expresses it, the heart of the matter is that if reason cannot decide the issue, there is no

This argument does not touch the issues raised in this proceeding. However, were we to expand the proceeding to include other religious claims, the procedure established here would be equally efficacious. Let them produce the evidence to substantiate their claims. We will then weigh them against the evidence thus far adduced. The basic "calculation" demands a decision in favor of religious belief, and against the risk of annihilation.

Flew's argument is with the Christian believer and he is merely attempting to hide behind a smoke screen when he raises the question as to the relative merits of the various religious options.

With those few persons who remain ambivalent to the end of the trial, the burden of proof, based upon the policy analysis reflected herein, demands that said burden of proof rest on the unbeliever. Mr. Flew is now free to bring forward what he considers to be superior religious claims. In the meantime, the previously undecided party should consider himself in the Christian camp.

Id. As William James and the apologists who utilize the experience of salvation have shown, to serve this "illusion" is probably to live a more enjoyable life in any event. Therefore, nothing has been lost. Businessmen utilize a "calculus of the risk" on a daily basis in making their decisions. Indeed, one cannot, at least had better not, even cross the street without doing so. Is the benefit of being on the other side worth the risk inherent in getting there?

See Supra note 20 and accompanying text

#### Conclusion

The Christian believer should wholeheartedly endorse the use of the legal system as a model for the debate over the questions as to why we are here, and whether there is life after death. Our response should be that God has, through his Son, and in His Word, revealed to us the answer to those questions.

Let us follow the evidence wherever it leads, but recognize that as is stated by the common law judges in their instructions to the jury in criminal cases: all things relating to human affairs are subject to some doubt. Apodictic certainty is a philosopher's dream, or perhaps nightmare. Indeed, without room for doubt, there would be no room for faith. The evidence for the Christian faith, in the opinion of this writer, is beyond reasonable doubt. Faith carries me towards apodictic certainty. If the evidence only carries you to a point of being undecided as to whether God has explained the nature of His universe to us, or that it explains itself, the risks demand that you place the burden of proof upon the unbeliever and against the so-called presumption of atheism.

### R.A. TORREY — DEFENDER OF THE FAITH

by

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# R.A. TORREY — DEFENDER OF THE FAITH\*

Dr. Reuben Archer Torrey, who lived from 1856 to 1928, was an imposing figure in the theological world of his day. He was the pastor of two of the most significant churches in America, the Chicago Avenue Church (now Moody Memorial Church) in Chicago and the Church of the Open Door in Los Angeles. He was both instructor and dean at the two most prominent Bible institutes in America, The Moody Bible Institute in Chicago and the Bible Institute of Los Angeles. Dr. Torrey was the heir of D.L. Moody in evangelism and travelled around the globe in a very remarkable evangelistic venture. Further, he was a popular Bible conference lecturer and founded the Montrose Bible Conference in Montrose, Pennsylvania. In addition, he authored over seventy books and pamphlets and was for many years the editor of The King's Business, official publication of the Bible Institute of Los Angeles.

Dr. Torrey was also one of the editors of the well-known series of volumes, The Fundamentals, published from 1911-15, and a key figure in formulating the doctrinal platform of the World's Christian Fundamentals Association (WCFA). An individual of no mean stature, he was a prime mover among Fundamentalists and exerted a strong influence on conservative thinking in his day.

The theology of Dr. Torrey still has a continuing impact on the conservative theological world of today.

<sup>\*</sup>Invitational Presentation at the Southern Regional Conference of the Evangelical Theological Society, Nashville, Tennessee, March 21, 1986.

Curious as to the extent of his influence, this author wrote to a select list of conservative leaders and was amazed to find a pronounced effect upon some area of their ministry or theology.¹ There are instructive lessons to be learned from the life of this choice servant, and it is to this end the author has chosen to present the following paper.

The methodology of the paper is twofold. First, there is a brief consideration of his life, noting particularly the vital areas of his spiritual and theological development. Second, attention is given to his theology. In the latter instance, two key doctrines centrally involving the defense of the faith have been selected for analysis. Stress is placed upon his belief in and defense of these doctrines, which he initially rejected. Third, there is a concluding word concerning his apologetic stress.

#### **Biographical Considerations**

Two areas have been selected for analysis in the career of Dr. Torrey — his studies at Yale College and Divinity School from 1877-78 and those at Leipsig and Erlangen, Germany, 1882-83. Some of the most significant decisions in his life took place during those periods.

#### Yale

In the fall of 1871 Reuben Torrey enrolled in Yale University, the second youngest man in his class.

Not only was Yale one of the finest educational institutions of the day, but it was steeped in religious and classic traditions. Founded in 1701 it still adhered more rigidly to its founder's convictions than any other American college. Denominationally it was Congregational. Educationally, with the motto Lux et Veritas, it sought to train its students in scholarly research and to ground them thoroughly in the various fields of knowledge.

Equally important was the social traditions at Yale.
Activities in class, dormitory or chapel were all necessary to fashion the complete Yale graduate.
Harnessed to a strong sense of class consciousness, they were geared to develop character and achievement in the students. As Pierson has noted:

In the final analysis Yale College was not just a collection of students and professors, of law and customs, of buildings and of books, but an organic society of enormous vitality and power. It was a generous and enthusiastic community with its own memories, discipline, and emotions — perhaps in its peculiar way as effective and successful a society as was to be found anywhere on this earth.2

The courses at Yale followed the traditional lines with studies in the Greek and Latin classics, rhetoric and mathematics for the first two years. The Junior year followed with a stress on language studies, logic and natural philosophy. In the Senior year no less than eighteen courses were taught, including linguistics, history, law, economics, geology, history of philosophy, mental and moral philosophy, natural theology, and evidences of Christianity.

Dr. Charles Fuller, Dr. John R. Rice, Dr. R.G. Lee, Dr. Vance Havner, Dr. Lee Roberson, Dr. Oswald Smith, Dr. V. Raymond Edman, Dr. Torrey Johnson, Dr. Theodore Epp and Dr. Jack Wyrtzen to name a few.

George W. Pierson, Yale College: An Educational History, 1871-1921 (New Haven: Yale University Press, 1952), II, 43.

Reuben was especially interested in mathematics, philosophy and the natural sciences. Logic and espistemology had a peculiar fascination for him, and he was enamored with the Baconian method of inductive reasoning. Further, he was especially stimulated by the geology classes of Dr. James D. Dana, one of the most eminent geologists America has ever produced. Dana did not accept the theory of evolution and endeavored to instill in his students the essential agreement of geology with the Genesis creation account.

Though Reuben had no difficulty with his studies — largely because of his marvelously retentive memory — his main ambition was not to learn but to be a success in life. Further, as a fraternity man, he was caught up in the social swirl of the campus life. He spent many hours playing cards, smoking, drinking, and dancing — often spending as many as four evenings a week in the latter pastime. He had a good deal of spare time, and his father paid all of his bills. All the ingredients for having a "good time" were there, and Reuben took full advantage of them.

Though Reuben was not a Christian, he kept up religious appearances. He regularly attended Sunday services, read his Bible and prayed daily — habits which were ingrained in him from childhood. But a worldly outlook completely dominated his thinking. He wrote in later years . . .

I can hardly believe what I know to be true about my own affections and about my likes and dislikes . . . . In those days I hated the Bible. I read it every day, but it was to me about the most stupid book I read. I would rather have read last year's almanac any day than to have read the Bible . . . . I loved the card table, the theater,

the dance, the horse race, the champagne supper, and I hated the prayer meeting and Sunday services.  $^{\rm 3}$ 

Periodically, however, he was still haunted by the thought that God was calling him to be a minister. This was forcibly brought home to him one day as he sat in the rhetoric class of Dr. Cyrus Northrup (later president of the University of Minnesota). The professor selected as his topic, in demonstrating how to outline a speech, "A Call to the Ministry." Everything he said made Reuben uneasy, and the troubled student tried desperately to persuade himself that he was not so called. But he found it impossible to dismiss the thought.4

In this frame of mind Reuben approached the end of his Junior Year. Then one night he awoke smothered with a feeling of great despondency. In desperation he sprung from his bed to the washstand and opened the drawer. "I am going to end this whole miserable business. Where is that razor?" But God held his trembling fingers. He could not find the razor. And in that moment's lapse he dropped to his knees beside the open drawer and prayed, "God, if You will take away this awful burden, I will preach." Immediately a strange peace settled over him, and he fell into a restful sleep.<sup>5</sup>

R.A. Torrey, The Holy Spirit, Who He Is and What He Does (New York: Revell, 1927), p. 78. Some writers have tended to exaggerate regarding the depth of his sin. He was thoroughly worldly but not a derelict.

<sup>4</sup> R.A. Torrey, autobiographical notes in the Moodyanna collection, p. 1.

George T.B. Davis, Torrey and Alexander (New York: Revell, 1905), p. 23. Torrey joined several other prominent figures who turned from ambitions in law to the ministry — Martin Luther, Charles G. Finney, J.H. Jowett and Sam Jones.

As he remarked subsequently, "I had gone to bed with no more thought of becoming a Christian than I had of jumping over the moom." He did not think that anyone had anything to do with his conversion, and it was only later than he realized that his mother's prayers were a vital factor. "My mother, four hundred and twenty-seven miles away, was praying, and praying that I would become a minister of the Gospel. And though I had gotten over sermons and arguments and churches, and everything else, I could not get over my mother's prayers."

Reuben's spiritual progress was slow, however, and there was no radical change in his behaviour. When he told others that he was planning to be a minister, they thought he was joking. And it was only at the end of his Senior year that he made a public profession of his faith and united with the church. Three books profoundly influenced him — The Scarlet Letter by Nathaniel Hawthorne, Bay Path by J.G. Holland and Ecce Homo by J.R. Seeley. The latter book convinced him that he should unite with the church.

Ecce Homo is not a book written in the orthodox tradition, but it appealed to young Torrey. Seeley stressed that a person had a valid title to citizenship in the kingdom of Heaven if he was prepared to obey God and sacrifice something for Him. Entrance into the kingdom was by faith, but this was interpreted as the capability for better things. He further stressed that a person might legitimately become a Christian without full and final belief in Christ, and progress

in the things of Christ might be almost imperceptible. Thus Reuben's initial hesitation about uniting with the church because of his slow progress spiritually was overcome. Then he made a public profession in the college chapel and was received into the college church.

In the spring of 1875 Reuben was graduated from Yale with the rank of "second dispute," which ranks sixth out of eight groups of honors. But now instead of going on to law school he made preparations to enter Yale Divinity School the following fall.

Reuben's seminary career, however, did not progress as one might expect. In his final year of college he drank deeply from the well of philosophy and had revelled in the speculations of the philosophers Descartes, Locke, Spinoza, Fichte, Schelling, Schopenhauer, Kant, and above all, Hegel. In his spiritual immaturity he saw no essential conflict with Christianity, but the situation drastically changed in the seminary.

As he came into contact with agnostic literature, especially that of the celebrated Edward Gibbon, for the first time he was plunged into doubt. "I became utterly unsettled in my faith, and doubted whether the Bible was the Word of God, whether Jesus Christ was the Son of God and whether there was any God. I was utterly at sea." 9

Slowly, however, Reuben began to move from his skeptical position. The principle which set young

R.A. Torrey, "God's Blockade of the Road to Hell," Great Pulpit Masters (New York: Revell, 1950), III, 195-196.

J.R. Seeley, Ecce Homo (Boston: Roberts Brothers, 1890), pp. 75, 91-94.

Letter from Mrs. Phillip Crane, Library Assistant, Yale University Library, October 12, 1965.

Torrev, Moodyanna, p. 2.

Torrey free is that enunciated in John 7:17, "If any man willeth to do His will, he shall know of the teaching, whether it is of God, or whether I speak from myself (ASV)." Reuben saw that the key to knowledge of the Divine is found in the will. If a person is willing to do the will of God once he is shown, then he shall know of the Divine truthfulness of that will—whether Christ's teaching was truly from God or merely that from a human teacher.

To him this was squarely in line with the Baconian method of inductive reasoning. It did not ask that he be committed to a proposition without investigation, but to be committed to accept it if it was the truth. Thus Reuben set out by earmest investigation of the Scriptures and Christian evidences and through prayer to find the truth, and it was not long before he was convinced of the essential truth of Christianity.

During his pilgrimage from doubt to faith Reuben found great help in the brilliant writings of the celebrated and learned Unitariams — Channing, Parker, Hale, and Clark. At this juncture in his thinking they were more advanced in their teaching than he was. "I saw that Christ was my Brother, a Real Man, tempted in all points as I was, and that if He got the victory, I could too, the same way He did." He found on further investigation, however, that the orthodox doctrines of the person and work of Christ embraced all of the value that Unitarianism taught and much more. It led to his abandonment of their truncated, limited teaching concerning Christ.

Even after his deliverance from agnosticism Reuben till had lingering doubts about some of the orthodox doctrines, namely, the inerrancy of Scripture and the everlasting punishment of the lost. In fact he became the leader of the new theology and destructive criticism wing in the seminary, and influenced by W. Robertson Smith, even wrote an unpublished work on the importance of the higher criticism of the Bible. He had influential teachers of decidedly orthodox stamp such as Dr. Leonard Bacon and Dr. Samuel Harris in theology and apologetics, but his strongly independent turn of mind would accept nothing on the mere word of others. His continuing interest in philosophical studies was reflected in his choice of the B.D. thesis topic. It dealt with transcendentalism.

In the Divinity School Reuben registered marked achievement in Greek and Hebrew. His retentive mind aided his linguistic studies greatly, and on one occasion in a "read down" contest in Hebrew class he read too fast for his instructor to follow! Although he won the coveted Hebrew award at Yale, his main interest was in Greek. And it was in this language, under the tutelage of the recognized Greek scholar, Dr. Lewis Packard, that he excelled.

While Reuben was in the seminary, he was licensed to preach by the Association of the Western District of New Haven County (Congregational). It must have been a little disconcerting to his questioners to find that the young scholar had to rack his brain to give the basic proof texts for the deity of Christ. 12

R.A. Torrey, Christ of the Bible (New Ycork: Doran, 1925), p. 74.

Torrey, Moodyanna, p. 3.

<sup>12</sup> Davis, Torrey, pp. 32-33.

#### Leipzig and Erlangen

After four years in a pastorate in Garrettsville, Ohio, Torrey resigned to pursue studies at the Universities of Leipzig and Erlangen, dividing his time equally among them. His special interests were Biblical Studies, Dogmatic Theology and Christian Evidences.

At Leipzig he studied under Franz Delitszch, Ernst Luthardt and F.A. Kahnis although most of his time was given to the former two. Their fields of study appealed to him the most. Delitszch was the leading authority on Old Testament criticism and Hebrew in Germany and co-author of the famous Keil and Delitszch Commentary on the Old Testament. Luthardt was a well-known authority in Dogmatics; Kahnis, in Church History.

All three were representatives of the Erlangen theology, which aimed at the synthesis of the Lutheran Confessions with the newer learning — eine alte Weise, neue Wahrheit zu lehren (to teach the old truth in a new garb). It sought to combine the critical and experimental approach in a strong Biblical frame of reference. The grand concept of Heilsgeschichte (theology of redemption) was a controlling principle for the entire system. In this system revelation is centered in the acts of "holy history" whose meaning and significance is certified by the inspired Word. Scripture is the record of those historical events and words.

Reuben especially profited from Professor Delitszch in both the classroom and the private sessions with select American students. The Old Testament scholar had high regard for Reuben and, when he learned that his pupil was going to Erlangen, said, "Well, you will need a letter of introduction." The venerable professor bade Reuben goodbye with tears in his eyes.<sup>13</sup>

It was in the following year that Reuben arrived at Erlangen. The letters of introduction from Delitszch proved to be far more valuable than Reuben could have dreamed. Professor F.H.R. Frank, rector of the university, to whom the letters were primarily directed, formed an intimate friendship with Reuben and Clara. He asked the young student to study under his own personal direction and gave him free reign in his private library. This was an invaluable help to Reuben.<sup>14</sup>

Professor Frank was one of the most outstanding thinkers of his day and the most original theologian of the Erlangen school of theology. Primarily interested in the psychological element, he based the certainty of all the important truths of Christianity as a religion of redemption upon the experience of regeneration. His theology was outlined in System of the Christian Certainty, which Reuben had read before he met the famous professor. Theodor Zahn, foremost authority on the New Testament and author of the monumental three volume Introduction to the New Testament, was also one of Reuben's instructors.

It was a very stimulating experience for young Torrey to interact with the most advanced theological thought of the day, but it also sharpened the dilemma of his own theological outlook. Reuben came home

Torrey, Moodyanna, p. 3.

<sup>14</sup> Ibid., p. 3.

from his classes one day feeling himself all at sea in his thinking. He sat down at his table and put his head between his hands. It seemed as if it would burst. "Are the newer views correct? Is the Bible really the inerrant Word of God?" Then, as if it were a real voice which spoke, he heard the words, "Reuben, I know some things which you cannot know." 15

From that moment on Reuben decided to accept by faith the hypothesis — and at this point it was just that, an hypothesis — that the Bible was the inerrant Word of God. Both practically and intellectually he decided to follow the Bible wherever it led him. Slowly but surely he moved away from the critical approach to the Scriptures, and his further studies only reinforced his decision.

#### **Theological Expressions**

Initially there are four things to observe about the theology of R.A. Torrey.

(1) His Theology was Biblically grounded. He was pre-eminently a man of the Book. He accepted everything and excepted nothing. Further, he was content to limit his theological convictions to precisely what the Scripture revealed. He had little sympathy with theological guesses or speculations.

On one occasion his son asked him some questions concerning Heaven. Reuben was shocked at his answer, "I don't know."

"You don't know! What do you mean, 'You don't know.'"

"Reuben, there are some things that are not revealed. I do not waste time on the things not revealed. If God wanted to reveal them, He would have done so. My opinion is no greater than yours, and yours no greater than that baby (pointing to a grandchild in a crib nearly)."16

His most significant theological volume, What The Bible Teaches, especially illustrates this fact. His procedure was to state the Scripture passages illustrating a particular doctrine, and then inductively to formulate propositions from those passages. His propositions never extended beyond the direct teaching of the passage under consideration. He chose to treat only those issues specifically raised by the Scriptures.

- (2) His theology was experimentally-tested. His theological convictions were not of the theoretical variety. Rather they were moulded in the crucible of his own experience. His theology was not based on his experience, but it was tested in his experience. Torrey did not believe that any experience of whatever variety was an ultimate authority in matters of doctrine. Only the Scripture was to be considered authoritative. One must not take Scripture down to the level of experience; rather, experience must be brought up to the level of Scripture.
- (3) His theology was broadly based. It was orthodox and conservative but not limited by a particular system or easily placed within the normal categories. He felt, for example, that man need not call himself

J.H. Hunter, "A Faithful and Wise Steward," King's Business, XX (January, 1929), 11.

Interview with Reuben A. Torrey, Jr., December 22-23, 1965.

either a Calvinist or an Arminiam. There were facets of truth presented by both sides. In addition, he was generally dispensational in outlook, but did not hold to some of the common dispensational views, for example, the baptism of the Spirit: as an incorporation of the believer into the body of Christ, or that a believer should not pray for the Spirit.

As to denominations he preferred to remain independent of them, and only united with the Presbyterians because he believed that a person should be responsible to a definite orthodox body of believers. In his opinion, "denominational ffences should be so low that one can not just shake hands over them but pass back and forth." When asked by others as to his denomination, he often replied, "I am a Episcopresbygationalaptist!" He explained that his mother was a Presbyterian and his studies were taken in a private Episcopal school, a Congregational college and in two Lutheran universities. Further, he was baptized by immersion, preached his first sermon in a Methodist church and married an Episcopal wife. 18

(4) His theology was clearly and precisely formulated. His expression of theological truth is remarkable in its simplicity and freedom from theological jargon. He intended to be understood equally well by children, derelicts on skid row, fashionable middle class audiences or university professors. It was profound in its simplicity. Few indeed had any difficulty in grasping Dr. Torrey's theological declarations.

Although there were several prominent and distinctive theological emphases of Dr. Torrey, two have been selected for analysis — the inspiration and inerrancy of the Scriptures and the eternal punishment of the unbeliever. Initially Dr. Torrey did not accept these doctrines, but once he embraced them they became hallmarks of his theology. He was frequently requested to preach upon these topics.

# Inspiration and Inerrancy of Scripture

Although Dr. Torrey wrote much in defense of the inspiration and authority of Scripture, he did not major on theological definition. Curiously his volume, What the Bible Teaches, does not deal directly with the doctrine of inspiration although the entire volume is based squarely on the orthodox view. He once wrote concerning the methodology of inspiration:

I have a pretty explicit theory of inspiration of my own that I thoroughly believe, but I don't care for theories of inspiration. A man's theory about it may differ widely from mine, but if he accepts the absolute authority of the Scriptures of the Old and New Testaments in their teachings about God and His character and will, and about man, his duty and his destiny, and the way of salvation. I have no quarrel with him about theories of inspiration. But if he rejects the authority of the Bible I have a controversy with him, and shall attempt to show him in all kindness and reason that he is in the wrong and I am in the right. <sup>19</sup>

His central focus was not upon the process of inspiration but the end product, the word of Scripture.

<sup>17</sup> Ibid.

Robert Harkness, Reuben Archer Torrey (Chicago: The Bible Institute Corporation, 1929), p. 68. As an example Dr. Torrey was baptized by immersion because he was convinced by his study that this was the way Jesus was baptized. He did not legislate for others in this regard, however. Torrey, Jr., letter, December 14, 1965.

J. Kennedy McLean, Torrey and Alexander (New York, Revell, 1905), p. 70. One can gain more elaborate insights into Dr. Torrey's view of inspiration by the reading of Dr. James M. Gray's article, "Inspiration of the Bible," in The Fundamentals. He called it "the best brief statement I ever saw of the true doctrine of inspiration" (letter to James M. Gray, November 21, 1910).

His most extended discussion of the nature of inspiration is found in the chapter "Inspiration" in Fundamental Doctrines of the Christian Faith. Dr. Torrey's eight characteristics of inspiration may be conveniently classified under three headings:

- (1) Inspiration is a work of the Holy Spirit. The Holy Spirit is the true Author of Scripture. Truth which was hidden from men for ages and could not be discovered through the unaided processes of human reasoning was revealed to the prophets by the Spirit. No prophetic utterance stemmed from the prophet's own will but he was carried along by the Holy Spirit. The revelation to the prophets was independent of their own thinking and was often not understood by them. The character of this work of the Spirit in the various human authors of the Biblical books differs from His work in all other persons.<sup>20</sup>
- (2) Inspiration is verbal and not merely conceptual. The Holy Spirit gave not only the thoughts but also the precise words in which those thoughts were to be expressed. The Bible is the Word of God, inerrant even to the smallest part. He noted, in a practical vein:

The more carefully and minutely one studies the wording of the statements of this wonderful book — the Bible — the more he will become convinced of the marvelous accuracy of the very words used to express the thought. <sup>21</sup>

If the writer only more or less accurately expressed the Divinely given thought, then there would be no possibility of precisely determining the mind of the Spirit. Dr. Torrey plainly stated, "If you have an exact and logical mind, you must take your choice between verbal inspiration and bald infidelity."<sup>22</sup>

(3) Inspiration extends to the whole of Scripture. The Scriptures are a body of truth comprising both the Old and New Testaments, and all is equally inspired. There is no thought of a partial inspiration. Plenary inspiration is the only possible view which can be derived from the Scriptures.<sup>23</sup>

In the light of the above principles there are some corollary considerations, which anticipate certain problems or objections to verbal inspiration.

(1) The Holy Spirit incorporates the style, diction and vocabulary of the human author in the production of Scripture. He stated:

The Holy Spirit is infinitely wise. He Himself is the Creator of man, and of man's power of speech, and therefore, He is quite wise enough and has quite enough facility in the use of language in revealing truth to and through any individual to use words, phrases and forms of expression that are in that person's ordinary vocabulary and forms of thought, and He is also quite wise enough to make use of that person's peculiar individuality in revealing the truth through him. It is one of the marks of the Divine wisdom of this book that the same Divine wisdom of this book and the same Divine truth is expressed with absolute accuracy in such widely variant forms of expression. 24

(2) The Holy Spirit may incorporate information gained from another person in the production of Scripture. Torrey neither identified inspiration with revelation nor regarded it as synonymous with dicta-

R.A. Torrey, Fundamental Doctrines of the Christian Faith (New York: Doran, 1918), pp. 13-26.

<sup>&</sup>lt;sup>21</sup> Ibid., p. 28.

<sup>22</sup> Ibid., p. 27.

<sup>23</sup> Ibid., pp. 31-33.

<sup>24</sup> Ibid., pp. 30-31.

tion. He wrote, for example, concerning Peter's supplying information to Mark in the composition of the latter's Gospel.

Mark's information being from Peter would give it strength because Peter was an inspired apostle to whom Jesus Himself had promised in John 14:26 that the Holy (Ghost would bring to his remembrance the words of Christ and to whom He had also promised that the Spirit would guide him into all the truth. 25

(3) The Holy Spirit inspired only the original autographs of the Scriptures. The work of inspiration does not extend to the copies of the autographs of Scripture. In answer to the question as to what extent the Authorized Version or the Revised Version (the common ones of his day) were the inerrant Word of God, he replied, "They are the inerrant Word of God just to that extent that they are an accurate rendering of the Scriptures of the Old and New Testaments as originally given."28 Upon giving an explanation concerning the many variations in the various manuscripts, Dr. Torrey further noted that "there is not one single variation left that affects any doctrine held by the evangelical churches" and that the Authorized and Revised Versions are "to all practical intents and purposes the inerrant Word of God."27

Dr. Torrey always preferred the Revised Version (American Standard Version) because of its greater accuracy of translation, but for practical reasons he frequently used the Authorized Version, particularly in dealing with inquirers. Since the former was not in common use, it would often be confusing to some

and necessitate explanation. This could possibly draw the inquirer's attention away from the vital point at issue. 28 His pulpit ministry frequently was characterized by use of the Revised Version, and in his worldwide evangelistic tour he used an edition with both versions printed on pages opposite each other.

In Dr. Torrey's most famous sermon, "Ten Reasons Why I Believe the Bible to Be the Word of God," he gave evidences which were not only conclusive to him but which he felt would convince any candid seeker after truth. He often prefaced his sermon by saying, "I am not going to give you reasons why I guess, or why I think, or why I calculate — but why I KNOW that the Bible is the Word of God."<sup>28</sup> They had indeed convinced him and had brought him from a thoroughly skeptical position to a profound faith in the Scriptures.

The Bible is indeed the inerrant Word of God, but it is not simply to be honored or even believed. It must be studied.

There is in the Bible the truth that will safeguard you against every error of these times, or any times, but this truth, though it is there, will not safeguard you unless you see it and know it, and you will not see it, and cannot know it, unless you study long and earnestly the Book in which it is to be found. The Bible has no magic or 'hocus-pocus' power. It has power only for the truth it contains, and to see that truth and feel its power, you must study, study, study, the Bible. 30

Letter to Lyman Stewart, January 26, 1915.

Torrey, Doctrines, p. 36.

<sup>&</sup>lt;sup>27</sup> Ibid., p. 37.

R.A. Torrey, Practical and Perplexing Questions Answered (Chicago: Moody, 1908), p. 18.

<sup>28</sup> R.A. Torrey, The Southern Cross (special souvenir edition, 1982), p. 11.

Torrey, Is the Bible the Inerrant Word of God? (New York: Doran, 1922), p. 99.

Dr. Torrey proposed a number of methods of Bible study, topical, chronological, biographical and others. He felt that a person would profit greatly by engaging in several methods at one time. This would enable him to see the truth of the Scriptures from different vantage points. The most important quality of all in Bible study, however, is reflected in a reply to a questioner who asked Torrey, "Tell me in one word how to study my Bible." He answered, "If I must tell you in one word how to study the Bible, that word is thoughtfully." Thoughtful meditation must accompany any serious study of the Word of God.

In the interpretation of the Bible Dr. Torrey appealed consistently to a literal approach. He followed what is commonly known as the grammatico-historical method of interpretation. He wrote:

The primary meaning of any passage of Scripture, just as the meaning on any law on our statute books, is the literal meaning, unless it is perfectly plain from the context or from other scripture or from the manifestly figurative character of the passage that something else than the literal sense is intended. <sup>32</sup>

He meant by the literal sense the natural, normal intended sense of the passage under consideration.

In line with the literal procedure he followed careful laws of hermeneutics in determining the sense of Scripture. "There are certain laws of interpretation that will enable you to know in at least almost every instance just what is the true interpretation of every

verse in the Bible.''<sup>33</sup> He listed fifteen laws of interpretation.

This is not to say, however, that there will be no difficulties in interpretation. Difficulties may stem from several sources — improper text and inaccurate translation, unfamiliarity with Biblical languages, ignorance or defective knowledge of Scripture incidents, false conceptions of the nature of revelation and dullness of spiritual perception. But in dealing with difficulties and apparent contradictions Dr. Torrey wisely remarked:

Our main business is not to reconcile any two lines of truth, no matter how absolutely opposed to one another and contradictory to one another they may seem to us to be. Our chief business is to find out exactly what the various passages in the Bible mean in their natural, grammatical interpretation. Then if we can reconcile them, well and good. If not, believe them both and leave the reconciliation to increasing knowledge. It is a thoroughly vicious principle of Biblical interpretation that we must interpret every passage in the Bible so that we can easily reconcile it with every other passage. 34

Writing in the same vein Dr. Torrey expressed a very profound conviction concerning the nature of the Bible.

The Bible is a many-sided book. It is Calvinistic and Arminian, it is Trinitarian and Unitarian, it clearly teaches the Deity of Christ and insists on His real humanity, it exalts faith and demands works, it urges to victory through conflict and asserts most vigorously that victory is won by faith.35

R.A. Torrey, Divine Origin of the Bible (Chicago: Revell, 1899), p. 36.

R.A. Terrey, The Importance and Value of Proper Bible Study (New York: Doran, 1921), p. 67.

<sup>33</sup> Ibid., pp. 59-90.

Torrey, Christ, p. 72.

Torrey, Your Bible, p. 126.

Without a proper recognition of this principle one could easily develop a one-sided theology and have serious difficulties in interpretation.

Dr. Torrey's approach to the difficulties in the Bible was both honest and sensible. He gave seven important principles to consider concerning the presence of Bible Difficulties.

- (1) Difficulties are to be expected. One should not be surprised or staggered by Bible difficulties. The Bible is a revelation of the Will and Character of an infinitely wise and absolutely Holy God. That revelation is given to finite creatures. The finite cannot begin to understand the Infinite without some difficulty arising. A revelation without any difficulties at all would be unbelievable.
- (2) Grave objections to a doctrine does not prove it to be untrue. The most accepted theory of modern science has some apparent facts which cannot be reconciled to it. Only a shallow thinker will give up a well-attested Biblical truth simply because there are some difficult areas which seem incapable of reconciliation with that truth.
- (3) Much more serious difficulties face the person who endeavors to account for the Bible as fallible and of human origin. The Bible believer need not be on the defensive when one asks, "How do you explain that, if the Bible is the Word of God?" Show him some of the evidences for inspiration and ask him how he accounts for them on the hypothesis that the Bible is simply of human origin. Each of his insignificant objections to the Divine origin of the

Bible may be countered with very weighty objections to his view.

- (4) Difficulties which one cannot answer or solve are not thereby insolvable. One may not have all of the knowledge necessary to solve the problem. Or there may be a very simple solution from the standpoint of the Divine wisdom one which finite wisdom could not possibly comprehend.
- (5) Seeming defects of the Bible are insignificant in comparison to its marvelous excellencies. For a person to concentrate upon what seemed to be defects or purely human traits of Scripture would be like studying a great masterpiece of art but focusing attention on what seemed to be a fly speck in the corner of the canvas. Incomparable beauties and majestic splendors adorn almost every page. It is simple foolishness and a colossal waste of time to center attention upon the insignificant points.
- (6) Difficulties have far more weight with superficial students of Scripture. It makes a great deal of difference how one approaches the Bible. Colonel Robert Ingersol, who read the Bible to discover difficulties, was densely ignorant of the contents and true meaning of the Scriptures. George Muller, on the other hand, carefully studied the Bible from Genesis to Revelation more than one hundred times and was not in the least disturbed by any difficulties encountered.
- (7) Difficulties disappear rapidly upon careful and prayerful study. There are often difficulties in a begin-

ning study of the Bible, but as one continues in consecrated Bible study they frequently vanish.36

His influence was vast in the matter of interpretation and study of Scripture. The Scriptures were not simply to be accepted as the very word of God. They were to be studied. Thus there was a healthy balance between the doctrinal and practical. Further, his discussions on the difficulties of the Bible — how to approach and handle them — has been the means of delivering a host of Bible believers from the morass of doubt and uncertainty. One of the central aims of his life was not only to instill confidence in the Word of God, but also to aid the believer in understanding it.

It should also be observed that Dr. Torrey felt that the inerrancy of Scripture should be regarded not only as a foundation stone in the defense of the faith but that it should form the basis for a true alignment of Christians. He observed:

Personally, I think it would be desirable, if possible, there should be a new alignment of Christians. The old denominational differences have lost their significance. The alignment should be along the line of whether people accept the Bible as the inerrant Word of God or not. Those that do not should get together, irrespective of present denominational connections, and form a new denomination, and those who do should get together and form a new denomination. <sup>37</sup>

#### **Eternal Punishment of the Unbeliever**

There was no more difficult Biblical doctrine for Dr. Torrey to accept than that of the eternal punish-

ment of the wicked. He noted concerning his earlier struggles:

I doubt if any minister ever had more difficulties with the doctrine of future punishment as taught in the Bible than I did. I would come up to this doctrine time and time again, and would back off every time I came up to it. In my early ministry I succeeded in convincing myself that the Bible did not teach everlasting punishment, that while it taught that there would be a hell, and an awful hell, and a hell that might last through centuries or even thousands of years, that at 'somehow, somewhere, somewhen,' all men, and even the Devil himself, would be brought to repentance and hell would therefore cease to be. So I believed and so I taught. 38

Dr. Torrey not only accepted the teaching of Universalism, he actively promoted it. He felt that he had the unanswerable argument for Universalism and challenged all comers to prove him wrong. He looked with disdain upon those who held to the orthodox view. "I thought I was a Universalist for all time and that anyone who was not a Universalist was not well posted." This characterized his teaching throughout his Garrettsville, Ohio, pastorate and continued on into his Minneapolis ministry.

It was while he was in the latter city that he began a searching study of the Scriptures on the subject of eternal punishment. He was greatly disturbed that he could not reconcile his conceptions with the teachings of Scripture. It led to his acceptance of the doctrine, and in so doing he learned a valuable lesson.

It dawned upon me also that it was quite possible that a God of infinite wisdom might have a thousand good reasons for doing a thing, when I, in my infinite foolishness, could not see even one, and my fondly-cherished Universalism went up in smoke. 40

R.A. Torrey, Difficulties in the Bible (New York: Revell, 1907), pp. 9-16.

<sup>&</sup>quot;The Battle Within the Churches," Homiletic Review, MCMXXIII (September, 1923), 188.

R.A. Torrey, The Holy Spirit — Who He Is and What He Does (New York: Revell, 1927), p. 58.

R.A. Torrey, "Are You Criticizing God?" Great Pulpit Masters, p. 87.

<sup>40</sup> Ibid.

It was a theoretical acceptance based upon the teaching of Scripture. His mind, however, was still often repelled by the sternness of the doctrine. It was only shortly after he had moved to Chicago to work with D.L. Moody that he fully embraced the Biblical teaching on eternal punishment. Dr. Torrey was seeking God for a greater infilling of the Spirit, and there came to him a clearer apprehension of the infinite majesty and glory of Christ than he had ever known before. He saw as never before the awfulness of rejecting such a glorious and Divine Saviour. Never again did he have difficulty with the severe statements of Scripture describing the eternal state of the lost. They were demanded by the necessity of the case.<sup>41</sup>

It should be noted that Dr. Torrey did not arrive at an acceptance of this doctrine prejudiced in its favor. He would have welcomed any passage of Scripture supporting a less severe outlook for the sinner. He related:

If anyone could produce me one single passage in the Bible that, fairly constructed, according to its context and the usage of the words and grammatical construction that clearly taught that the punishment of the wicked would not be absolutely endless and that somewhere, sometime, somehow all would repent and be saved, it would be the happiest day of my life. But no such passage can be found. I have searched for it from the first chapter of Genesis to the last chapter of the Revelation but cannot find it, it is not there. I am thoroughly familiar with the passages that men urge. I have formerly used them myself, but they will not bear the construction that is put upon them if we deal honestly with them. 42

Dr. Torrey's acceptance of the doctrine was far more than simply an intellectual one. It affected

deeply his spiritual outlook. He confessed in a sermon in his later years:

I cannot tell you the pain I have in my heart every time I speak on that subject. I have lain on my face before God and sobbed as I have thought of what the Bible clearly teaches on the subject, and thought also of what it involves.... To me the doctrine of Future Punishment is not a mere matter of speculative theory that I could discuss without emotion in cold intellectuality. I see it in its practical bearings on the destiny and sufferings of the people I see around about me and thronging the streets.

He further counselled ministers not to teach or preach it in a cold, intellectual or argumentative way. One must speak of eternal punishment with a burdened heart, else men will be repelled by it.

Having considered these two areas of doctrinal expression, observe next Dr. Torrey's apologetic stress.

# **Apologetic Presentation**

Largely because of his own severe conflict with doubt, Dr. Torrey was early driven to a very searching study of Christian evidences. Thus the value of evidences, both in establishing believers in the faith and convincing unbelievers of the faith, was clearly recognized. Objectively, he emphasized the bodily resurrection of Christ from the dead and the Divine origin of the Scriptures. Subjectively, he underscored the vital importance of prayer.

In his early years Dr. Torrey had made a very careful study of the resurrection of Christ, and it had a large effect upon his own pilgrimage from doubt and

<sup>&</sup>lt;sup>41</sup> Torrey, Holy Spirit, pp. 58-59.

R.A. Torrey, The Destiny of the Christless Dead (Glendale, CA: The Church Press, n.d.), p. 3.

<sup>43</sup> Ibid.

faith. He often referred to the evidences for the resurrection as the "Gibraltar of Christian evidences" and the "Waterloo of rationalism and infidelity." Dr. Torrey firmly believed that if the scriptural statements concerning the resurrection could be demonstrated as an historical certainty that Christianity would rest upon an impregnable foundation.44

Although Dr. Torrey believed there were several lines of convincing evidence for the bodily resurrection of Christ, one of the most impressive to him was the testimony of the Biblical writers. He presented the internal evidence of the four Gospel accounts in four key propositions.

- (1) A study of the different Gospel accounts clearly reveals that they are four separate and independent narrations. The apparent discrepancy and contradiction on the surface of the accounts clearly indicate that they could not have been written in collusion. On the other hand, they could not have been made up independently, for the agreements are too marked and many. There is a real and genuine harmony to be observed beneath the surface of the accounts. They are not fabrications but a true relation to the facts from the viewpoint of four independent eyewitnesses.
- (2) The accounts bear unmistakeable indication of having been produced by eyewitnesses. They do not bear the marks of one who is merely retelling what others have transmitted to him.

- (3) The accounts are striking in their naturalness, artlessness and simplicity. There is no observable attempt at coloring the narrations. In fact, the authors simply told what they observed and did not pause to reflect upon the meaning of the facts they described. There is no explanation given, for example, of such phrases as "and Peter" (Mark 16:7) or "Touch Me not" (John 20:17). The latter one, in particular, has been a puzzle to commentators. The obvious explanation is that these phrases were simply reported as they were heard.
  - (4) The unintentional evidence of the resurrection descriptions, including what may be termed "accidental details," gives a strong witness to the truth of the accounts. It is often even more effective than direct testimony. It is the truth cropping out in unexpected fashion. A key example of this is the seemingly minor description of the undisturbed graveclothes (John 20:7). It was a seemingly minor detail, but it was very convincing. 45

These evidences were to Dr. Torrey's mind both decisive and conclusive in demonstrating the bodily resurrection of Christ as a fact. When these and other lines of argument were taken together, however, it made "doubt of the resurrection of Christ impossible to the candid mind."46

The significance of the Scriptures in Dr. Torrey's thinking has been observed above. He not only preached frequently upon the Divine origin of Scripture—his most well-known sermon was "Ten Reasons Why

R.A. Torrey, "The Certainty and Importance of the Bodily Resurrection of Christ from the Dead," The Fundamentals for Today, I (Grand Rapids: Kregel, 1958), p. 265.

R.A. Torrey, What the Bible Teaches (New York: Revell, 1898), pp. 166-167.

<sup>46</sup> Torrey, "Certainty," pp. 278-279.

I Believe the Bible to be the Word of God" - he depended upon the Scripture to convict and change lives. A multitude of striking examples in his preaching ministry may be cited to illustrate this latter point: however, he was most impressive in his personal encounters with skeptics, infidels, agnostics and atheists.

His ministry had been largely devoted to these classes. Since he had passed through the fire of skepticism and doubt himself, Dr. Torrey understood to a remarkable degree their problems and reasons. Further, he manifested an interest in them and made a special point to befriend them. For these reasons Dr. Torrey held their confidence. He stated concerning these types:

There is no more interesting class, and no easier class to deal with, than honest skeptics. Many are afraid to tackle them, but there is no need of this. There is a way out of skepticism into faith laid down in the Bible that is absolutely sure if anyone will take it. As for skeptics who are triflers, it is not best to spend much time on them, but simply to give them some searching passages of Scripture, and to look to the Spirit of God to carry the Word home. 47

For the earnest-minded skeptic, Dr. Torrey followed a standard procedure. One must first determine the precise condition of the skeptic. This can be done by asking leading questions such as "What can't you believe?" "Why can't you believe?" "Do you live up to what you do believe?" and "What do you believe?"

Once this is done the next step is to show him how to believe. Dr. Torrey invariably used John 7:17, "If any man willeth to do his will, he shall know of the doctrine, whether it be of God or whether I speak of

myself" (ASV). The verse should be presented in the following way:

Now Jesus Christ makes a fair proposition. He does not ask you to believe without evidence, but He asks you to do a thing that your own conscience approves, and promises that if you do it, you will come out of skepticism into knowledge. What Jesus asks in this verse, is that you will to do God's will; that is, that you surrender your will to God. Will you do it? 48

Upon requesting this to the skeptic, Dr. Torrey further explained that the inductive method of modern science is to follow a clue to knowledge to determine its validity. This verse gives a clue to the possible knowledge of God, and he should be urged honestly to search it out. He must be committed at this point to search out the proposition, regardless of what he presently believes or disbelieves.

He must then be asked to pray this prayer, "O God, show me whether Jesus is thy Son or not; and if You show me that He is, I promise to accept Him as my Saviour and confess Him as such before the world."49 The next step is to show him John 20:31, indicating the purpose of the Gospel of John. Its specific purpose is to demonstrate that Christ is the Son of God and that by believing in Him one may have eternal life. The skeptic must be urged to read it with an open mind, considering the commitment he has made. Dr. Torrey was absolutely assured of the results. "This method of treatment if it is honestly followed by the skeptic will never fail."50 He led a great number to Christ in this fashion.

R.A. Torrey, How to Work for Christ (Chicago: Revell, 1901), p. 122.

Ibid. If a person is an atheist, the prayer would be "O God, if there be a God" (Ibid., p. 120).

Ibid., p. 119.

Subjectively, Dr. Torrey emphasized believing prayer, based upon the clear promises of Scripture, as an essential avenue in truly knowing God. Influenced by George Muller, Dr. Torrey put his faith in God to a severe test. He recounted in later years:

I determined to put the theory that there was a God, and that the God of the Bible was the true God, and that He answered prayer on the conditions laid down in the Bible, to the test of rigid, practical, personal experiment. I say the theory that there was a God, for at that time it was to me a theory, a theory that I firmly believed, but nevertheless a theory. I determined that I would risk all that men hold dear on that theory, and on that theory I did risk my health, my life, my reputation, and the life, health and welfare of my wife and four children whom I had at that time. On that theory I risked everything that men hold dear, and if there had been no God, or if the God of the Bible were not the true God, or if He did not answer prayer on the conditions laid down in the Bible, years ago I would have lost all that men hold dear. But I risked and I won, and today I know that there is a God, and I know that the God of the Bible is the true God. 51

For a time he lived totally by faith in the promises of the Scripture to meet personal, family and ministerial needs. As a result his faith was taken entirely out of the realm of the theoretical, and he was convinced beyond the shadow of a doubt that there was a living God who answered prayer. This conviction underlay what must surely be considered as one of the most astonishing statements ever made about prayer. Prayer can do anything that God can do, and as God can do anything, prayer is omnipotent."53

In summary and evaluation, let it be observed that Dr. Reuben Archer Torrey knew what he believed

and why he believed it. His faith was born in a crisis moment, but his acceptance of the Scripture and its teachings came slowly and often with great difficulty. Providentially God used these circumstances to mould him into a choice servant and defender of the faith. It is to be hoped that his experiences and convictions may be an inspiration and example to those who are floundering in a generation tinged with agnosticism and move them from doubt to faith as well.

R.A. Torrey, Great Pulpit Masters, Vol. III (New York: Revell, 1920), p. 53.

<sup>&</sup>lt;sup>52</sup> R.A. Torrey, *How God Answered Prayer* (Chicago: Bible Colportage Association, n.d.), pp. 3-8.

 $<sup>^{\</sup>rm 83}$   $\,$  R.A. Torrey, The Power of Prayer (Grand Rapids: Zondervan, 1955), p. 17.

### REASON & IMAGINATION: G.K. CHESTERTON'S CASE FOR CHRISTIANITY WITH A CHESTERTON BIBLIOGRAPHY

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#### REASON & IMAGINATION: G.K. CHESTERTON'S CASE FOR CHRISTIANITY WITH A CHESTERTON BIBLIOGRAPHY

Only occasionally in the course of the history of ideas do there appear men of great intellect whose mental dexterity is matched by their rhetorical felicity. The correlation of these two virtues, in the person of any thinker, not only increases the force of his ideas, but multiplies it. Of the exponents of the Christian faith in the twentieth century, there are few men who have displayed this quality in such rare proportion as G.K. Chesterton.

It is Chesterton's peculiar fate, however, that he lives on primarily through his least consequential works — his mystery novels, and even the popularity of these fails to match the least popular works of C.S. Lewis. A writer's popularity, however, is not necessarily equivalent to his influence, and it is in this latter respect that Chesterton compares most favorably with Christian thinkers such as Lewis.

Although he has been characterized as "historically invisible" within our own generation, Chesterton's writings influenced an entire earlier generation of thinkers, and who he did not influence, he affected. The list of those who, in one way or another, owe him an intellectual debt is a long one, and includes W.H. Auden, George Orwell, Marshall McLuhan,

Alzina Stone Dale, The Outline of Sanity: A Life of G.K. Chesterton (Grand Rapids: William B. Eerdmans Publishing Co., 1982), p. vx.

Christopher Dawson and J.R.R. Tolkein.<sup>2</sup> Lewis, the greatest and most obvious beneficiary of Chesterton's influence, was once asked what Christian writers had helped him, to which he responded that the book that had helped him the most was Chesterton's The Everlasting Man.<sup>3</sup> Even his antagonists sang his praises: George Bernard Shaw described him as "a man of colossal genius."<sup>4</sup> That he is known primarily not through his own writings but through his inspiration on the writings of others is a fate that would not have caused Chesterton a great deal of consternation, since he has attained what he considered to be the greatest possible achievement for a thinker: to become superfluous.

Given Chesterton's relative obscurity, and in order to place him in a historical context, we will begin this analysis of Chesterton's case for Christianity with a brief biographical sketch. Secondly, we will explain Chesterton's general world view. Thirdly, we will examine the first part of Chesterton's defense of Christianity: his negative apologetic. An examination of his positive apologetic will follow, and finally we will offer a critique of his apologetic approach.

### **Biographical Sketch**

Chesterton was born on May 29, 1874 to middle class parents at Campden Hill in Kensington, a London suburb. He was baptized into the Church of England in a small church opposite the Waterworks Tower. The close proximity of the two buildings prompted him later to deny that it took the entire water-power of West London to turn him into a Christian.<sup>5</sup> His childhood has been called "one of the happiest in literature." He had a sister who died when he was very young, and a brother, Cecil, whose birth he welcomed by saying, "Now I shall always have an audience."7 He was an undistinguished student, and his very comfortable position at the bottom of his form was disturbed only once, when he received the Milton prize for poetry at St. Paul's School. During the autumn of that year, he entered art school at the University of London, and, after graduation, began working for publishers, first writing reviews of art books and later editing works of broader interest.

In the mid 1890s, Chesterton met Frances Bloggs, whom he courted for several years, who made numerous and quite valiant but unsuccessful attempts to improve his "untidy" appearance, and who finally married him in June of 1901.8 It was she on whom he was almost entirely dependent for the organization of his daily life, once telegraphing her on a bleak

More recent examples of writers influenced by Chesterton would include Michael Aeschliman, William F. Buckley, Christopher Derrick, High Kenner, Malcolm Muggeridge, Michael Novak and Joseph Sobran.

C.S. Lewis, God in the Dock: Essays on Theology and Ethics (Grand Rapids: William B. Eerdmans Publishing Co., 1970), p. 260.

William B. Furlong, Shaw and Chesterton: The Metaphysical Jesters (University Park and London: The Pennsylvania State University Press, 1970), p. 9.

<sup>6</sup> G.K. Chesterton, The Autobiography of G.K. Chesterton (New York: Sheed and Ward, 1936), p. 1.

Masie Ward, Gilbert Keith Chesterton (New York: Sheed and Ward, 1943), p. 9.

<sup>7</sup> Ibid., p. 8.

Ibid., p. 151.

Sunday morning: "Am in Manchester. Where should I be?"

In 1900 his first work was published, a book of nonsense poetry, and by 1901, Chesterton was writing regular articles for several newspapers. By 1902. he had made a name for himself in the field of journalism. This new stature was signified by the invitation extended to him to write the biography of Robert Browning for the "English Men of Letters" series, a work which displayed his characteristically sloppy scholarship and prolific use of quotation (usually misquotation) from memory. He became a very visible figure on Fleet Street, partly as a result of the fact that his intellectual stature was met, some say exceeded, by his physical stature. George Bernard Shaw introduced him to an audience on one occasion as. "a man of infinite vest." He was six feet, two inches tall and at one point weighed close to 400 pounds, and during a debate between Chesterton and Shaw, conducted to settle the question, "Do we agree?" Shaw, a socialist, challenged Chesterton to view the condition of coal miners first-hand by actually going down a mine. Chesterton responded that he had no difficulty whatsoever in imagining himself sinking in such a fashion in any geological deposit.11

He continued, during this period, to write articles and books on every conceivable subject. In 1905, he published Heretics, a book which contained a chapter each on several modern thinkers whom he considered to be deviants from true philosophy. In 1908, in response to calls by some for Chesterton to clarify what it was from which these thinkers deviated, he published one of his greatest works, Orthodoxy.

In 1914 he suffered a near fatal illness from which, however, he recovered, and during the next ten years, he continued writing essays and novels as well as editing The New Witness, a magazine devoted to his, his brother's and Hilaire Belloc's political and economic theory of distributism. In 1922, he was received into the Catholic Church, and in 1923 he published his book on St. Francis of Assisi. In 1925 he founded another magazine on somewhat the same foundation as The New Witness. And in September of that year, he published The Everlasting Man, his great defense of the uniqueness of man and the diety of Christ.

He began work in the early 1930s on one of his last works, a biography of St. Thomas Aquinas, following his usual pattern of research and writing, which consisted of dictating about half the book, aimlessly flipping through the pages of several relevant works, tossing them down in a pile on the floor and proceeding to dictate. In the case of the biography of St. Thomas — which was apparently published in 1933 from the almost untouched dictation of his secretary — he produced what the great Thomist philosopher Etienne Gilson called, "without possible comparison the best book ever written on St. Thomas." His Autobiography was published in November of 1936, five months after his death at the age of sixty-three.

William B. Furlong, Shaw and Chesterton, p. 8.

<sup>10</sup> Ibid., p. 106.

Do We Agree; A Debate Between G.K. Chesterton and Bernard Shaw with Hilaire Belloc in the Chair (Hartford: Edwin Valentine Mitchell, 1928), p. 44.

Garry Wills, Chesterton: Man and Mask (New York: Sheed and Ward, 1943), p. 216.

#### Chesterton's World View

Chesterton was born and raised during the late reign of Queen Victoria, a time of great change in the way men saw themselves in relation to nature, themselves and God. It was a transitional age in which the foundation of traditional beliefs concerning religion and morality were eroding by the force of the rising tide of secularism. The advances made in the field of science were being translated into an assault on orthodox religious attitudes by philosophical materialists, usually not themselves scientists, but "whose philosophical beliefs and practical attitudes had nevertheless been mistakenly derived from the popularity, apparent simplicity, and evident power of the natural sciences."13 Generally speaking, men, not realizing that there is no intrinsic affinity between the physical sciences and philosophical materialism,14 either succumbed to materialism, or, if the pessimism brought on by having to view their universe as a machine was too overwhelming, escaped into one of the multitude of unitarian-style religious belief systems prevalent at the time.

His parents' generation, said Chesterton, was "the first generation that ever asked its children to worship the earth without the altar." 15 It was a time when the transcendent religious underpinning of

traditional moral values and religious belief in general, was coming more and more into disrepute and

doubt, though the values and beliefs themselves were being desperately hung on to by the majority of Englishmen. It was only slowly that the realization dawned on them that these traditional beliefs could not stand without a rational religious foundation.18 This produced two reactions. On the one hand, there was a minority of men, such as Bernard Shaw and some of the atheistic materialists, that demanded on the basis of this new thought that people give up the pretention that they believed in God and traditional morality. Chesterton, on the other hand, demanded that people rediscover their reasons for belief, "or else," he said, "our race is lost."17

The choice, then, for the men of Chesterton's time, was among one of three alternatives. First, they could accept the conclusions of secularism, and deny the rationality and objectivity of traditional moral and religious beliefs. Secondly, they could accept the conclusions of secularism, deny the rationality and objectivity these beliefs, take a radical, existential leap of faith and believe them anyway. Or, thirdly, they could reject secularism altogether. The first alternative, thought Chesterton, led inevitably to philosophical pessimism, and the second to an irrational and tenuous optimism. It was the reaction of some popular scientific writers to take the first alternative, and it was the reaction of the New Theology to take the second. Chesterton called on his readers to take the third.

Michael Aeschliman, The Restitution of Man: C.S. Lewis and the Case Against Scientism (Grand Rapids: William B. Eerdmans Publishing Co., 1983), p. 18.

John Herman Randall, Jr. and Justus Buchler, Philosophy: An Introduction (1942; New York: Barnes and Noble, 1970), p. 194-5.

G.K. Chesterton, Autobiography, p. 20.

This is a point made in many of the cultural histories of the Victorian age. See esp. Walter E. Houghton, The Victorian Frame of Mind (New Haven: Yale University Press, 1963), passim. See also the various works of Gertrude Himmelfarb.

Masie Ward, Chesterton, p. 224.

The human mind, thought Chesterton, works on two distinct planes — that of reason and that of imagination. He saw the relationship between them in terms of an objective balance. Reason and imagination are the two halves of the mind working, not in conjunction, but in tension; they work together in a dialectic. Chesterton did not go to the extreme of placing inordinate emphasis on reason and fact to the detriment of meaning and value, nor did he attempt to emphasize imagination to the detriment of the rational and empirical. They both exist in a balance with one another. They are diverse things which lay side by side with one another in a tense but healthy unity.

On the side of reason, we might accurately describe Chesterton's position by calling it the philosophy of rational common sense. On the one hand, he upheld the principles of logic, as set forth by Aristotle and as recognized by even the most modern of philosophers. On the other hand (and more significantly), he upheld the principles of common sense, as illustrated, for instance, by the episode in which Samuel Johnson, in attempting to refute George Berkeley's position that all objective reality is really only an idea in the mind of the Creator:

I observed, [said James Boswell] that though we are satisfied his doctrine is not true, it is impossible to refute it. I never shall forget the alacrity with which Johnson answered, striking his foot with mighty force against a large stone, till he rebounded from it, "I refute it thus." <sup>18</sup>

Chesterton said about St. Thomas Aquinas, as he might well have said about himself, "by the time it

came, not only to being taught, but to being taught wrong, there was something in him that said sharply, 'Oh, this has got to stop!' "19 In short, Chesterton was ready, "whenever he felt that reality was being violated, to desert abstruse for empirical methods, direct observation and actual experience becoming his court of final appeal."20

On the side of imagination, Chesterton is said to have had a "sacramental sense of physical reality." The idea that displays itself in virtually all of Chesterton's writing is what he called the idea of the 'mystical minimum'. It is here that the influence of St. Thomas Aquinas is most noticeable. Aquinas had, as had Aristotle, distinguished between essence and existence, but, to a degree greater than Aristotle, Aquinas emphasized existence.22 Essence, said Thomas, had to do with a thing's 'whatness', and existence with a thing's 'thatness'. What a thing is involves its essence; that a thing is involves its existence. Chesterton shared Thomas' existentialist emphasis. The 'mystical minimum' involves the idea of Creation: that a thing is valuable because it is. If a thing is nothing else that is good," said Garry Wills, "it is; and that is good."23 Any finite thing has worth, value, meaning, merely because it participates in

James Boswell, The Life of Johnson, ed. Mowbray Morris (1893; London: Macmillan and Co., Ltd., 1922), p. 162.

G.K. Chesterton, St. Thomas Aquinas: The 'Dumb Ox' (1933; Garden City: Image Books, 1956), p. 70.

C.H. Conley, ed., The Reader's Johnson: A Representative Selection from His Writings (New York: American Book Company, 1940), p. 6.

<sup>21</sup> Glen Cavaliero, Charles Williams: Poet of Theology (Grand Rapids: William B. Eerdmans Publishing Co., 1983), p. 3.

Frederick C. Copleston, Aquinas (1955; Baltimore: Penguin Books, Inc., 1957), p. 79.

<sup>23</sup> Ibid., p. 101.

being, which proceeds from God, and which manifests itself by an act of existence. This is an idea that has been called a "metaphysical intuition of being . . . . akin to seeing something familiar 'for the first time' or 'in a new light'.''<sup>24</sup> It is this irreducible minimum of objectivity, beheld by this almost mystical intuition that Chesterton saw as the light of all poetry.

In these two things, then — in reason and in imagination — we see Chesterton's concern with objectivity. The view which we should take toward each is that they do in fact operate — reason on one side, imagination on the other. And they operate in a dialectical balance.

Now in regard to these two things, Chesterton's position was twofold. First, modern thought has violated the balance; it has torn rationality from its litigious but cognate partner, imagination; it has destroyed a healthy fraternity. Modern thought has unmade the unified view of the world by fragmenting and then vandalizing the Christian coherence that once held the two things in a sane balance. Modern thinkers have plundered Christianity's riches: they have taken the once unified Christian virtues and made off with them, each thinker founding his own unbalanced philosophy on a fragment of the once unified Christian world view. Modern philosophers are not new thinkers, they are old thinkers. They are heretics. Secondly, thought Chesterton, Christianity is the only thing that can recover this balance; it is the only thing that ever had it.

# **Chesterton's Negative Apologetic**

Modern thought, Chesterton maintained, has disintegrated into a riot of philosophical enthusiasms. Each one, as we have pointed out, is unbalanced, as a madman is unbalanced. "All modern thoughts and theories may be judged," he said, "by whether they tend to make a man lose his wits." 25 He points up this characteristic of modern thinking in what may be called the 'argument from insanity'. His contention was, first, that if one analyzes madness, one comes to certain conclusions, the primary one of which is that madness is not caused by an imagination out of control, but by an excessively rational mind out of control — in other words, by a lack of imagination. "It is reason used without root, reason in the void." 26 The madman is not the man who has lost his reason; the madman is the man who has lost everything except his reason. He is the man who locks himself in "the clean and well lit prison of one idea." 27

Secondly, if one examines the thinking behind modern rationalist philosophies, one notes the same qualities as those found in the madman:

[Just] as I am affected by the maniac, so I am affected by most modern thinkers. That unmistakable mood or note that I hear from Hanwell [an insane asylum outside of London], I hear also from half the chairs of science and seats of learning today. <sup>28</sup>

Insanity is the result of reason operating on a mind without the counterbalance of imagination. Modern

<sup>&</sup>lt;sup>24</sup> Garry Wills, Man and Mask, p. 25.

G.K. Chesterton, Orthodoxy (New York: John Lane Co., 1908), p. 215.

<sup>28</sup> Ibid., p. 48.

<sup>27</sup> Ibid., p. 38.

<sup>28</sup> Ibid., p. 38.

philosophies, such as materialism and its sister philosophy evolutionism attempt to exclude from the mind imaginative thinking in favor of purely rational thinking. The so-called 'New Theology' chooses the same futile route when it accepts the dichotomy which rationalism sets up, and chooses to pursue, on the basis of rationalism, an irrational existentialistic optimism. These philosophies all share the characteristics of the madman. In the name of free thought, they impose rationalistic restrictions on what one can think. Modern skeptical philosophies, thought Chesterton, are mad.

Chesterton's case against modern thought is well illustrated in his response to the rationalists' case against miracles. It is one very obvious case of the modern inclination to restrict freedom of thought in the very name of free thought. Lewis pointed out that what we learn from experience depends on what kind of philosophy we bring to experience,<sup>29</sup> and the modern skeptic brings a philosophy to experience that disallows the miraculous. Chesterton isolates the two thrusts of the argument against miracles. First, there is the philosophical argument:

The philosophical case against miracles is somewhat easily dealt with. There is no philosophical case against miracles. There are such things as the laws of Nature rationally speaking. What everybody knows is this only. That there is repetition in nature. What everybody knows is that pumpkins produce pumpkins. What nobody knows is why they should not produce elephants and giraffes. <sup>30</sup>

There was, secondly, the historical argument against miracles, which was only the philosophical argument in disguise. In the historical argument, the evidence for the veracity of miracles is never really considered:

The historic case against miracles is also rather simple. It consists in calling miracles impossible, then saying that no one but a fool believes in impossibilities: then declaring that there is no wise evidence on behalf of the miraculous. The whole trick is done by means of leaning alternately on the philosophical and historical objection. If we say miracles are theoretically possible, they say, objection. If we say miracles are theoretically possible, they say, we will there is no evidence for them. When we take all the records of the human race and say, "Here is your evidence," they say, "But these people were superstitious, they believed in impossible things." 31

The Christian, he said, believes in miracles, rightly or wrongly, because he has evidence for them. The skeptic disbelieves in miracles, rightly or wrongly, because he has a doctrine against them. <sup>32</sup> It is the suffocating ideology of rationalism clothed in empirical rhetoric.

In making his case against the skeptics, Chesterton called attention to the materialists' attempt to put science to uses it was not meant to be put to. Implicit in Chesterton's writing is the threefold view of man propounded by Aristotle. Man, thought Aristotle, is a doer, a knower and maker — three roles which correspond with the good, the true and the beautiful, respectively. The modern thinker calls all three of these roles into question, effectively resulting in what C.S. Lewis has called, "the abolition of man," and what Chesterton terms, "the suicide of thought."

<sup>&</sup>lt;sup>29</sup> C.S. Lewis, Miracles: A Preliminary Study (1947; New York: Macmillan Publishing Co., Inc., 1960), p. 3.

G.K. Chesterton, "Miracles and Modern Civilization," in The Religious Doubts of Democracy, ed. George Haw (London: Macmillan and Co., Limited, 1904), p. 88.

<sup>31</sup> Ibid., p. 88.

G.K. Chesterton, Orthodoxy, pp. 278-9.

In regard to man's role as maker and doer — that is. in the moral and aesthetic spheres — Chesterton held, as did C.S. Lewis, to what Clyde Kilby has called "the doctrine of objective value," 33 which consists in the belief that "of necessity any predication assumes a standard, a norm of some sort, a yardstick."34 At birth, said Chesterton, of the definite impressions we receive, one is delight, and the other fear. "One tells us," he said, "that the praise of the Lord is the beginning of art; the other that the fear of the Lord is the beginning of wisdom." 35 In the first instance, man as maker is a creator, not in the unlimited sense in which God is a creator, but in a more limited sense: "God is that which can make something out of nothing. Man (it may truly be said) is that which can make something out of anything." 36 In the second instance, man as doer is a moral creature who recognizes, implicitly or explicitly, the existence of standards of good and evil which transcend his own experience. The modern skeptic, however, has called these two things into question. He has separated religious from rational authority. Art and morality have been orphaned.

In regard to man's role as knower, Chesterton pointed out that the philosophy of the rationalist is

self-defeating. He commits what Arther Koestler has called, the "ratomorphic fallacy," which, in Chesterton's words, "treats man as a monkey." 37 This fallacy is committed when the rationalistic reductionist creates a "scientific theory of man." It occurs when man, the investigator and subject, treats man, the object of his scientific inquiry, as necessarily lower than himself. The object is assumed to be lower than the subject, but the subject and the object are the same. "His own working assumptions," says Michael Aeschliman, "involve free will, deliberation, and evaluation as aspects of himself, but those qualities and capacities are stripped away from and denied to the human 'object' or 'thing' that he is inspecting." 38 The working assumptions of the subject, man, cannot be denied the object, if the object is man himself.

Chesterton saw this futile philosophy for what it was: "the doomed fortress of rationalism." 39 The modern skeptic sees himself in revolt against the classical Christian conception of man and his world, but his philosophy threatens Christianity less than it threatens itself:

He has no loyalty; therefore he can never be really a revolutionist. And the fact that he doubts everything really gets in his way when he wants to denounce anything. For all denunciation implies a moral doctrine of some kind; and the modern revolutionist doubts not only the institution he denounces, but the doctrine by which he denounces it.... The man of this school goes first to a political meeting, where he complains that savages are treated as if they were beasts; then he takes his hat and umbrella and goes on to a scientific meeting, where he proves that they practically are beasts. In short, the modern revolutionist, being an infinite skeptic, is always engaged in undermining his own mines. In his book on

C.S. Lewis, The Abolition of Man (1947; New York: Macmillan Publishing Co., Inc., 1955), p. 13.

Clyde Kilby, "The Creative Logician Speaking," in C.S. Lewis: Speaker and Teacher, ed. Carolyn Keefe (Grand Rapids: Zondervan Publishing House, 1971), p. 30.

G.K. Chesterton, "Two Great Tories," in The Man Who Was Orthodox: A Selection from the Uncollected Writings of G.K. Chesterton, ed. A.L. Maycock (London: Dennis Dobson, 1963), p. 117.

G.K. Chesterton, The Collected Works of G.K. Chesterton, with introduction by James V. Schall, S.J., vol. 4: What's Wrong with the World, The Superstition of Divorce, Eugenics and Other Evils, Divorce versus Democracy and Social Reform versus Birth Control (San Francisco: The Ignatius Press, 1987), p. 65.

The ratomorphic fallacy is discussed and Chesterton is quoted in Aeschliman, p. 55.

<sup>38</sup> Ibid., p. 55.

G.K. Chesterton, Orthodoxy, p. 68.

politics he attacks men for trampling on morality; in his book on ethics he attacks morality for trampling on men. Therefore the modern man in revolt has become practically useless for all purposes of revolt. By rebelling against everything he has lost his right to rebel against anything. 40

The skeptic, in effect, undermines the idea that man is distinguishable from the beast by undermining the three pillars upon which this idea is supported: the aesthetic idea that man is uniquely a subcreator, the moral idea that man is a creature responsible for his actions because he is uniquely aware of transcendent standards of good and evil, and the rational idea that man can conform his mind to reality in the search for truth because he has a mind that is distinct from the objects which the mind apprehends and can treat these objects with the supra-material concept of rational validity. Modern man has abolished these concepts from his world view by rejecting the historic Christian beliefs upon which they are best established, and in doing so has abolished himself.

### **Chesterton's Positive Apologetic**

We have seen how he believed modern philosophies have fallen short, but Chesterton set forth a powerful positive argument for the Christian faith as well. Christianity, Chesterton held, does meet man's need for a religious philosophy — that is, a philosophy which recognizes man's double need for rational and imaginative satisfaction.

We saw previously that Chesterton, like St. Thomas. saw in contingent factual reality a doorway to the eternal. At the same time, he held, as did John Henry Newman, that we reach conclusions in matters of concrete factual reality — whether it be religious or not - by an accumulation of independent and diverse probabilities. Reasoning about such things is never certain, in the apodictic sense, yet it can possess such a high degree of probability that it warrants our assent. Therefore, thought Chesterton, it is by an accumulation of independent probabilities that we come to conclusions in regard to religious truth. "[A] man," he said, "may well be less convinced of a philosophy from four books, than from one book, one battle, one landscape, and one old friend." 41

Chesterton's position was that Christianity was the point at which the accumulated probabilities converge. This is true, he thought, in both the rational and the imaginative spheres. These two aspects of his positive apologetic take on different appearances, but they have the same general thrust. In the rational sphere, Christianity conforms to objective fact, and, in the imaginative sphere, it satisfies man's subjective search.

In his objective argument he employs a form of the cosmological argument. Chesterton's Orthodoxy contains a chapter entitled "The Ethics of Elfland," a chapter that has been called by Stanley Jaki "a classic in modern philosophy of science."42 It was partially reprinted, along with essays by Darwin, Eddington, Fermi and Einstein, in Great Essays in Science by the book's editor, Martin Gardner, the

Ibid., pp. 73-4.

Stanley Jaki, "Chesterton's Landmark Year: The Blatchford-Chesterton Debate of 1903-1904," in The Chesterton Review, 10 (November, 1984), p. 418.

former editor of Scientific American. <sup>43</sup> This chapter contains one of the great refutations of scientific materialism, and is one of the most incisive passages in all of Chesterton's writings. In it he makes the distinction between necessary and contingent truth — necessary truth being true by definition, and contingent truth being something found to be true by observation.

The relevance of this distinction is difficult at first to grasp. His reason for explaining it, however, is to make the point that what scientists call the "laws of nature" are not necessary truths, as the scientific materialists seem to assume, but contingent ones. They are not true by definition, but could conceivably be otherwise. He does not stop at the laws of nature, however, and goes on to remark on other facts of everyday life, such as the fact that grass is green and the sky is blue. Existentialist philosopher Jean Paul Sartre said that the most significant question in philosophy is, Why does something exist rather than nothing? Similarly, the questions Chesterton attempts to address are: Why do these laws operate as they do, and not in some other way? Why are things the way they are and not some other way? Why are there things at all? The scientist explains physical phenomena by appealing to natural law, and the scientific materialist, says Chesterton, thinks that natural law somehow explains itself, when in fact it does not. What, asks Chesterton, explains natural law? It is a question that, in Chesterton's mind, requires an explanation outside of the natural world.

43 Ibid., n., p. 422.

The fact that pumpkins produce pumpkins is to Chesterton no necessary thing, it is a weird repetition which cannot be explained by an appeal to anything within nature. Whereas the scientific materialist looks upon the repetition that is natural law and sees it as sterile and mechanical as clockwork, Chesterton saw something else:

Now the mere repetition made the things to me rather more weird than more rational. It was as if, having seen a curiously shaped nose in the street and dismissed it as an accident, I had then seen six other noses of the same astonishing shape. I should have fancied that it must be some local secret society. So one elephant having a trunk was odd; but all elephants having trunks looked like a plot. 44

He had always felt facts to be miracles in the sense that they were wonderful, he came then to feel that they were miracles in the sense that they were willful.

In addition to feeling that the world was miraculous, he felt that it was limited and conditioned. To the modern mind, the universe is infinite, natural law unbreakable; it was, in effect, one huge prison, vast but not free. The cosmos was one thing, because it had one unbroken rule, and it was the only thing there is. To Chesterton the world was finite — it was a created thing, and therefore not the only thing. It was conditioned, because it might have been something else. The cosmos is like the island on which Robinson Crusoe was marooned, and we are like Crusoe. We are on our island, survivors of the primordial wreck, and we might not have made it. "[Any]

G.K. Chesterton, Orthodoxy, p. 106.

man on the street," said Chesterton (echoing St. Thomas), "is a Great Might-Not-Have-Been." 45

In short, facts must have meaning, and meaning must have someone to mean it. "There was something personal in the world," he said, "as in a work of art; whatever it meant, it meant violently." Despite its defects ("such as dragons"), it is beautiful in its old design, to such an extent that we owe it — whatever it is — thanks. "We owed, also," he said, "obedience to whatever made us." And lastly, in some way, all good was a remnant, "to be stored and held sacred." 46

These strange features of the world Chesterton saw as resembling the strange intricacies of a lock. He then began to notice the strange features of Christian theology, features resembling a key. And then he noticed that the features of the key matched those of the lock. His feeling that our world might not have been was confirmed: God might have chosen not to create it. His feeling that grass might have been another color than green was confirmed: it was a matter of divine choice. The feeling that the world was small and cozy, not vast and void, was confirmed: the work of art is small in the sight of the artist. The feeling that we were survivors of a wreck was confirmed: we were fallen from grace; we were the crew of a golden ship that had gone down before the beginning of the world. Christianity provides the necessary rational explanation which the contingent world requires.

On the subjective side, thought Chesterton, Christianity meets another criterion. Not only should an

intellectually satisfying religious position be amenable to philosophical truth, but the truths that he accepts are most palatable to the whole man if they take the form of a story. The pagan myths he saw as expressions of this innate desideratum. Myths, he held, were an imaginative search for something of which pagan man was confusedly aware. Mythology, which pagan man was confusedly aware. Mythology, he said, "belongs to the poetical part of man"; it is the attempt to reach the divine reality through the use of imagination alone. 47

Chesterton held three things in regard to the relationship between Christianity and pagan mythology. First Christianity is not a search, and therefore is not itself a mythology. Secondly, Christianity is not merely a story, and is, again, not therefore merely mythology. Thirdly, the reasons for Christianity being neither merely a search nor merely an exercise in imagination are precisely the reasons that it is the only answer to man's imaginative search — that is, because it is philosophically true.

He saw this illustrated in the Christmas story, where there were, visiting the manger, the shepherds, who lived off myth, and the Magi, who lived off philosophy. On the one hand, "The shepherds had found their shepherd," and on the other, the Magi's search for truth "was itself a thirst for God: they also have had their reward." 48 Christianity met man's imaginative search because it was a story, and his philosophical search because it was a true story. As Tolkein so eloquently put it:

<sup>45</sup> Ibid., p. 116.

<sup>46</sup> Ibid., pp. 117-8.

<sup>47</sup> G.K. Chesterton, The Everlasting Man (1925; Garden City: Image Books, 1955), p. 103.

<sup>48</sup> Ibid., pp. 178-9.

The Christian joy, the Gloria, . . . is pre-eminently high and joyous. Because this story is supreme; and it is true. Art has been verified. God is the Lord, of angels, and of men — and of elves. Legend and History have met and fused.  $^{\bf 49}$ 

### A Critique of Chesterton's Christian Apologetic

There are various methods by which a religion can be defended. The first method is the rational method: it stresses the internal consistency of a given religious position. The second is called the objective empirical method; it appeals to objective fact as the primary criterion for religious truth. The third method is called the subjective empirical method; it stresses subjective, psychological experience as the primary criterion. 50 Chesterton, at various times, uses all three apologetic methods: the rational method, the objective empirical method, which appeals to objective fact as the primary criterion for religious truth, and the subjective empirical method, which appeals to subjective religious experience as the primary criterion. In using them, however, Chesterton utilizes the strengths and avoids the weaknesses. He was a brutal logician who compared the consistency of non-Christian positions with that of Christianity, and in doing so appealed to criteria which both Christian and non-Christian recognize. He appealed to man's subjective needs expressed throughout literary history, but shows that their only fulfillment is in objectivity. Finally, he appeals to common sense objective reality as the determinative consideration.

The weakness in Chesterton's apologetic method concerns his compromised view of Scripture. Chesterton, particularly after his conversion to Catholicism, began to consider scriptural authority subordinate to Church authority, a view that is inherently inimicable to the idea that the historical documents which make up the New Testament can be appealed to to provide sufficient proof for the truth of the Christian religion. His apologetic, in other words, is weakened by his refusal to recognize the basic self-interpreting nature of the Bible.

It has been remarked by many Christian apologists that Christianity makes a unique religious claim, a claim that is historical in nature; and in so far as it is historical it is verifiable. In such circumstances, what is needed primarily is evidence to which empirical appeal can be made and to which the scientific method (in the general sense, the sense in which Chesterton approvingly spoke of it) can be applied. Such a thing can only be found, in the case for Christian truth, in historical documents which attest to events which satisfy man's religious search; documents which stand up under the scrutiny of the recognized procedures of historical investigation; documents which by such methods can be shown to be, by vast preponderence of evidence, authoritative in their content and true in their claims. The only documents which stand up under such scrutiny are those found in the Christian scriptures.

#### Conclusion

That Chesterton's apologetic has room for improvement should never overshadow his tremendous

J.R.R. Tolkein, "On Fairy Stories," in Essays Presented to Charles Williams, ed. C.S. Lewis (1947; Grand Rapids: William B. Eerdmans Publishing Co., 1966), p. 84.

John Warwick Montgomery, Faith Founded on Fact: Essays in Evidential Apologetics (New York: Thomas Nelson Publishers, 1978), p. 92.

achievement. There are few men of any religious or intellectual persuasion who could boast of more consistency and determination in propagating their world view. It is, in fact, this amazing and, to his opponents, exasperating tendency to insert his Christian world view into every controversy, whether it concerned art or politics or economics or metaphysics, that makes the study of his case for Christianity so witheringly difficult — and so enormously gratifying.

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### **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.

# THE CHIEF JUSTICE DESCRIBES HIS COURT

William H. Rehnquist, The Supreme Court: How It Was, How It Is (New York: William Morros and Company, Inc., 1987). 338 pp. \$10.95.

Chief Justice Rehnquist's stated objective for this work is to enlarge the layman's understanding of the Supreme Court, "the least understood of the three branches" of our government. There is no attempt at a comprehensive summary of constitutional doctrine or even an "up-to-date" analysis of the more controversial subjects (privacy, religious freedom, abortion, etc.), issues which not only divide the present court but render the previously dignified and perfunctory supreme court selection process into a bitter ideological war zone. This book offers a conversational and informal personal biography of Justice Rehnquist's experiences on the court, a summary of the lives and decisions of certain justices which Rehnquist believes

shaped the court, and a description of how the court today "goes about its business of deciding cases."

Rehnquist reviews the historic decisions which "established the judicial branch as the full partner in the tripartite system of federal government ordained by the constitution" without revealing much about his judicial predispositions (understandable considering his continuing role as Chief Justice). Rehnquist recites his experience as a law clerk to Supreme Court Justice Robert Jackson during the episode when Truman seized the steel mills during the Korean conflict (the court held this act to be unconstitutional).

This case and Brown v. Board of Education are examples, he explains, of instances where the Supreme Court has demonstrated itself as a co-equal in our government. But on the other side, Rehnquist sees a danger of the court expanding the provisions of the Constitution which restrict governmental authority "beyond their fair meaning" and thereby impairing not individual rights but the principle of majority rule. Rehnquist makes the point that just because a law is unjust, silly or vindictive does not make it unconstitutional and judges should fight the visceral reactions to so hold. The Supreme Court then is not the "conscience of the country" unless by that it is meant that it upholds the principles of the Constitution. The balance between liberty and authority and the state and the individual, for Rehnquist, must be found in the Constitution itself and not in the individual values of the several justices. The role of the Supreme Court is not "to uphold the claims of the individual" any more than it is to "exclusively uphold the claims of government." Where the scales are evenly balanced between these two interests, then

the laws enacted by Congress or a state or local government is entitled to a "presumption of constitutionality."

The strengths and weaknesses of Rehnquist's theory of constitutional interpretation can be illustrated by examining his analysis of the infamous Dred Scott decision; Rehnquist concludes this decision violated two canons of sensible constitutional interpretation. First, it decided a question of constitutional law which was not essential to the disposition of the case before the court. Second, the case fell short of that "minimum degree of plausibility" required before a court declares any act of Congress unconstitutional. The infamous Taney court decision, which overruled the Missouri Compromise, rested on no provision in the Constitution but upon a sense of "unfairness" to southerners in discriminating against the use of their property. Rehnquist argues that this sense of unfairness, however deeply felt, ought not be grounds for declaring an act of Congress void. Rehnquist finds agreement with former Chief Justice Marshall's opinion in Marbury v. Madison — holding that the "powers of the Supreme Court in declaring an act of the legislature unconstitutional is the linchpin of American constitutional law." He fears this fundamental principle will be undone if the subjective notions of justice override the original document.

One can sympathize with Rehnquist's desire not to subject every constitutional question to the moral principles found in each of the individual consciences of the nine justices, but isn't the legal positivism of Justice Oliver Wendell Holmes, although persuasive to Rehnquist, too narrow a basis for any overriding, justifiable standard for human dignity? Rehnquist

might have learned this lesson from his mentor Justice Robert Jackson who presided over the Nuremberg trials where the laws violated by the Hitler regime were not derived from any system of positive law (indeed the Nazis actions were legal in Germany) but from the conscience of all civilized men. While Rehnquist's "presumption of constitutionality" standard (the person who seeks to have a law held unconstitutional must carry the burden of proof in demonstrating that the right is well founded in the Constitution) lends itself to the flaws inherent in legal realism, it perhaps is the best we can do in a fallen world given the present trend of exalting subjective notions of individual liberties at the expense of societal coherence founded in the dignity of all persons. Rehnquist is right in warning those who see the Supreme Court only in terms of being the ultimate protector of individual liberties. The role of the court should not exclusively uphold the claims of the individual any more than it should exclusively uphold the claims of the government. With the increasing willingness of members of our society to express their individual notions of freedom at the expense of the common good (distributing obscene material, ending unborn life, etc.) Rehnquist's insistence upon only upholding freedoms that are "well founded in the Constitution," although an old doctrine, is of increasing importance in slowing the disintegration of our Republic.

> Marc D. Allmeroth B.A., J.D. Assistant Dean of the Law Program, Simon Greenleaf School of Law

## A CHRISTIAN CONSTITUTION?

John E. Eidsmoe, Christianity and the Constitution (Grand Rapids: Baker Book House, 1987), 415 pages. Price: \$19.95.

A discussion of the religious beliefs of thirteen of the most influential of the Founders of the American Republic and how those religious beliefs influenced their political philosophies and the institutions they created.

Eidsmoe effectively exposes the fallacy of characterizing the spirit of the Revolutionary epoch as predominantly deistic and rationalistic by showing that many of the leading Founders were not merely great patriots, but also heroes of the Christian faith. Especially for those unfamiliar with their private writings, the patriots' piety is a revelation. Moreover, the connections between their religious faith and their political philosophies are firmly established: transcendent law led to transcendent human rights; and human depravity led to the separation of powers. Also demonstrated is the fact that the central principles of the Founders' theory of government are now rejected by a modern orthodoxy of legal positivism and evolutionary constitutional interpretation.

Yet Eidsmoe is either unaware of the non-biblical influences on the Founders' ideology, or he carefully avoids discussing them. Nor does he mention the significance of the differences in the political land-scape between their time and our own. As the work is intended partly as a call to heightened Christian activism, these are significant omissions.

The faith of the Framers was the reigning orthodoxy, practically by definition. Their frank discussions of the political implications of their faith in the Federalist Papers, in their Inaugural Addresses and in other public pronouncements were received with great respect. The influence of the Enlightenment was very important, but those rationalist ideas which had gained currency were not considered heretical. Consequently, though the most important features of the Founders' political philosophies were either based on the Bible or consistent with it, they did not as strenuously apply the biblical measure to all things as many today believe Christians ought to.

Moreover, the relationship between religious faith and temporal power was much different from what Christians face today. The religious establishment of their day had been answered with the First Amendment, so the Founders neither perceived established religion as an immediate threat to the republic, nor identified their political adversaries with such a threat. Modern secularism, on the other hand, evades the First Amendment by denying its religious nature, and the church's answer has been mostly an unimaginative, unprincipled and unproductive belligerance.

Restoring the transcendent basis for human rights is quite improbable until we learn to communicate with the rest of our civic community as equals — that is, as Americans to Americans, rather than as the righteous to the ungodly. Without a call to repentance from the pride and self-righteousness of socially active church people in the last two decades, and with an oversimplified view of the faith of the Found-

ers, Eidsmoe's call to still greater involvement risks continued excess.

Thomas O. Alderman B.S., J.D., M.A. (Simon Greenleaf) Member of the Oregon Bar

### LAW AND LITERATURE

Brook Thomas, Cross-examinations of Law and Literature (Cambridge: Cambridge University Press, 1987), xii, 300 pp. Price: 27.50 Pounds sterling.

Unique among law schools in the United States, the Simon Greenleaf School of Law requires its students to take a one-semester course in Legal Literature, thereby exposing them to the great authors who have given literary life to man's search for and encounter with justice across the centuries. For us, legal education is (or ought to be) a genuinely "liberal" study, in the original sense of the term: liberating us from narrowness of perspective and opening us up to our true nature coram Deo.

When, therefore, a book like the one under review comes along (and it is very rare that this occurs!), our interest is instantly piqued. Thomas, a member of the English Department at the University of Massachusetts, focuses on James Fenimore Cooper, Nathaniel Hawthorne, Harriet Beecher Stowe, and Herman Melville. He nicely interweaves literary interpretation with the realities of legal practice, employing the career of Chancellor Kent (author of the Commentaries on American Law — the "American

Blackstone") to illuminate Cooper, the activity of Simon Greenleaf's friend Joseph Story to assist in understanding Hawthorne, and the career of Lemuel Shaw, Chief Justice of Massachusetts and author of the classic judgment on circumstantial evidence in the celebrated Parkman murder trial, Commonwealth v. Webster, 59 Mass. (5 Cush.) 295, 52 Am. Dec. 711 (1850), to examine Shaw's son-in-law Melville.

In spite of the author's scholarly meticulousness and thorough grasp of the sources, his book often fails to bring the writer or lawyer he treats to life. Perhaps this is because, not being a Christian, Thomas is often unaware of the sacral junctures in their activity — the times when one must remove one's shoes as holy ground appears. No mention is made of Chancellor Kent's conversion to Christ at the end of his life. Melville's Billy Budd — a Christ-figure if ever one appeared in literature — is merely said to "keep open a space in which an alternative to our present condition can be imagined" (p. 250).

In his "Closing Statement," Thomas writes: "The dilemma for many today is how to restore a ground for criticizing the present system without lapsing into a nostalgic longing for a transcendental world. For me, this ground must be found in historical analysis" (p. 253). What a window on literature would open up to him were he to apply rigorous "historical analysis" to the case for Jesus Christ! For there the transcendental world intersected history and became the proper object not of nostalgia but of veridical encounter. In the words of J.R.R. Tolkien (Essays Presented to Charles Williams): "There is no tale ever told that men would rather find was true, and none which so many skeptical men have accepted as true

on its own merits . . . . To reject it leads either to sadness or to wrath."\*

John Warwick Montgomery

\*Cf. John Warwick Montgomery, ed., Myth, Allegory and Gospel (Minneapolis: Bethany, 1974), pp. 117-118.

## AIDS: THE WORST IS YET TO COME

Gene Antonio, The AIDS Cover-Up? The Real and Alarming Facts about AIDS (San Francisco: Ignatius Press, 1986), pp. 253. Price: \$9.95.

This book will curl one's hair and leave an impression so profound and deep that one may lose sleep over the issue. Perhaps this is due to the fact that the author has brought into play every negative aspect of the AIDS situation. And there are enough statistics and statements about AIDS for anyone to paint a very gloomy and dark picture. But when all is said and done there is little in the AIDS controversy to suggest that the critics have overblown the facts and have threatened us with what is really something not too serious.

The author has graphically described what homosexuals do for kicks but there have been other reports of such activities that are more frightening and disgusting than those in this book. He makes one fact perfectly clear: homosexuals are fighting a life and death struggle to justify their sexual practices. They want the public to believe that their sexual activities fall within the range of normality and should be regarded as good and endorsed as legitimate.

The homosexuals also make clear the fact that they have no intention whatever of doing that which will prevent AIDS from spreading. The call to homosexual celibacy has little chance of working. Taking precautions by drug users whose unclean needles cause AIDS in multitudes of cases does not yet work. Multiple sexual contacts in which a homosexual will have anal or oral sex with many partners is not apt to change now or in the future. Closing down the thousands of homosexual haunts in major and minor cities as well as homosexual bath houses is not taking place in a way that the disease will be overcome. Education is a partial solution to AIDS but the great majority of homosexuals do not respond to such efforts for the simple reason that it requires them to stop practices they have no intention of giving up. Gene Antonio speaks about these unpleasant truths in telling fashion while pro-homosexuals use every opportunity to play down the facts and assure people everywhere that the dangers from AIDS are remote.

The problem is not simply a United States or Western problem. In Africa the AIDS disease is epidemic. And in the West increasing numbers of women and children have this acquired syndrome through no fault of their own. Blood transfusions from tainted blood provided by those with AIDS has added thousands of cases of the disease. Women married to bi-sexual males have been contaminated via their husbands. Babies born to those who have AIDS has added to the dilemma. Asia will soon be decimated by AIDS as well.

AIDS is a contagious disease yet the notion that people with the disease should be separated from society as lepers used to be separated in bygone days

is regarded with horror by many. Moreover in the age of the new paganism the notion that AIDS is the judgment of God is regarded as a modern blasphemy. Since we live in a moral universe no one can discount the fact that God indeed is related to the penalty which flows from the failure to follow the moral laws of the universe. He who jumps from the top of a twenty-story building will find that the law of gravity functions when he plunges to his death. And even in the cases of those who become infected through no fault of their own lies the deeper truth that those, for example, who give tainted blood are responsible for passing on their diseases to others. Since we know how AIDS is contracted, those who engage in any activity which may lead to AIDS makes them accessories before and after the fact when they give blood or have sexual relations or do anything that endangers the lives of others. The innocent suffer along with the guilty and the plight of the innocent lies at the feet of those who harbor the germ that kills so surely.

Another nasty aspect of the AIDS problem which so alarms Gene Antonio in his book has to do with the efforts to discover a cure for the disease. There are two aspects of this endeavor that are scary. The first is that any discovery over the long haul will require greater and greater doses of the medication as the germ becomes resistant. The second and more frightening fact is that the virus mutates easily and hybrid forms of the germ will be immune to the vaccine just developed. It poses a never-ending threat for which there are no permanent solutions.

When Antonio's case has been discounted for overemphasis it leaves a residue that cannot be bypassed or shrugged off as less than serious. AIDS is a modern disaster. It will kill millions of people. And the solution at last will come when people everywhere begin to follow the biblical injunctions having to do with sexual conduct, drug use and the like. Medical miracles can have short-run success but he who breaks the moral laws of the universe will be broken by those laws sooner or later. There is a payday someday and it seems to have come right now!

Harold Lindsell B.S., M.A., Ph.D., D.D.

#### THE SOFT-HEADED GENERATION

Francois-Bernard Huyghe and Pierre Barbes, La Soft-Ideologie (Paris: Robert Laffont, 1987), 214 pp. Price: 85 French francs (FF).

A political scientist and a journalist here team up to indict the yuppie thought-world of the 1980s. Their theme: "Times are tought, ideas are soft."

Ours is a generation of charity-rock, media communication rather than substance, unthinking tolerance, moral relativism, the left and the right indistinguishable in their promotion of essentially the same flaccid goals. Human rights vagaries are seen as a further example of the prevailing soft-headedness.

There is much truth in this analysis of the contemporary "consensus of apathy," and "senility of thought." Doubtless we are in a time of doldrums — like the

intermission between acts in a play. But where can secularism go to find meaning? The ideologies of the 19th century went bankrupt, and the 20th century has substituted only existential despair and the inhumanity of man toward his fellow men.

Historic Christianity offers the only way out of this soft-headed morass. The early Christians were said by their opponents to have out-thought, out-lived, and out-died them. Can we not offer the same vigorous apologetic to our day that Paul offered the Athenians on Mars Hill?

The Simon Greenleaf School of Law is on record as believing in a revelationally informed toughmindedness.

John Warwick Montgomery

# THE CONSEQUENCES OF CONSEQUENTIALISM

L.W. Sumner, The Moral Foundations of Rights (Oxford: Clarendon Press, 1987) vi, 224 pp. Price: 22.50 Pounds sterling.

The author of this herculean effort to justify rights theory by way of a refined consequentialist ethic is professor of philosophy at the University of Toronto. Recognizing the problems with traditional ethical consequentialism (the view that acts are never intrinsically good or bad but should be judged on the basis of their outcomes), Sumner presents a more sophisticated, three-stage model of consequentialist goal-orientation: one must develop "(1) some set of basic, ultimate, objective, agent-neutral goods; (2) some

operation for combining these separate goods into a single global value; and (3) some function which specifies how this value is to be promoted" (p. 172).

The appalling danger to human rights of such question-begging relativism becomes particularly plain in the author's application of consequentialism to the right-to-life issue: "It is not my present purpose to try to show that the best policy will be to treat the acquisition of sentience as the criterion for having a conventional right to life (though I believe that this can be done). It is enough that it could be the best policy, in which case consequentialists will after all be able to support a moderate view of abortion" (p. 208); cf. the author's Abortion and Moral Theory (Princeton University Press, 1981).

Toward the end of his book, Sumner inadvertently points beyond the inadequacies of his own approach to a very different kind of solution to the dilemma of human rights. He sets forth three essential elements in the "profile of the ideal agent for a direct [human rights] strategy": such an agent would have an "unlimited domain of options" and he must be capable of "perfect information-gathering" as well as "perfect information-processing" - in short, the ideal agent will be someone "extremely powerful, highly knowledgeable, exceptionally bright, and rigorously impartial" (p. 187). The absence of such agency in a fallen world is precisely the reason why consequentialist ethics fails, for we can neither formulate our goals impartially nor clearly see the consequences of our actions in attempting to realize them. As Rousseau observed in his Contrat social (Bk. 2, chap. 7), "it would take gods to give men laws" - and it takes

God revealed in Jesus Christ to provide the creative and redemptive basis of human dignity.

John Warwick Montgomery

# A CONVERT SPEAKS OUT ON HUMAN RIGHTS

Andre Froissard, Le crime contre l'humanite (Paris: Robert Laffont, 1987), 90 pp. Price: 52 French francs (FF).

In 1969, a little book of conversion literature electrified the French reading public: Dieu existe, je l'ai recontre ["God exists: I've met him"]. The author: Andre Froissard, distinguished member of the French Academy, prolific writer, journalist (his column, Cavalier Seul — "Lone Rider" — appears daily on the front page of Le Figaro). For a parallel conversion in the English-speaking world, one might think of Malcolm Muggeridge's highly visible entrance into the Kingdom.

Froissard's latest book is a testimony to the profound truth that, just a good tree inevitably bears good fruit, so a genuine belief in Jesus Christ brings with it a passion for social justice. Froissard was one of the chief prosecution witnesses in the celebrated war crime trial of Klaus Barbie ("the butcher of Lyons") in 1986. Now he devotes an entire small volume to "crimes against humanity."

Two points made by Froissard are especially telling. First, he sees the defining mark of a crime against humanity in the fact that "one kills someone on the

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sole pretext that he has come into this world." Illustrations: the Nazi treatment of the Jews, to be sure—but no less the slaughtering of the unborn through abortion-on-demand. Secondly, Froissard correlates the horror of our contemporary crimes against humanity (no century in the world's history has witnessed such slaughters as the 20th century has produced) with the rise of modern secular ideologies. The author holds quite simply that apart from a heart transformed by personal encounter with Jesus Christ, "everyone can become a Klaus Barbie."

John Warwick Montgomery

#### **EDITOR'S NOTE**

Simon Greenleaf School of Law welcomes scholarly contributions to the Law Review which seek to interrelate law, theology, and human rights. Manuscripts, reviews, and communications should be addressed to the co-editors.