

Objection Overruled! Let's Hear the Case for the Resurrection of Jesus

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Abstract: *In a 2013 article, Matthew Ferguson asserted that the legal paradigm is an inappropriate analogy to apply to the resurrection of Jesus. That simply is not so. The reason for the legal apologetic method's ongoing significance can be related to humanity's ongoing search for truth and meaning and their appreciation of the role of law, testimony, and evidence in any such quest. The legal paradigm is one of common usage. As well, the central tenet of the Christian truth claim, i.e., the resurrection of Jesus, is one that is often presented factually in the New Testament. Contrary to Ferguson's assertion, the legal analogy is not a "case-closed mentality" but rather an "open-to-investigation mentality." This is not cramming "religion down everyone's throat," but it is treating the reader with human dignity and respect by taking the resurrection of Jesus seriously.*

Recently, a popular current affairs program in Australia featured a panel of leading journalists and politicians. A Christian, Peter Hitchens, brother of deceased atheist Christopher Hitchens, was under attack by the other panel members for his "conservative" views. A final question was posed by the host about dangerous ideas. Peter Hitchens responded that the most dangerous idea is that Jesus actually conquered the grave and literally rose from the dead. The host asked why, and Hitchens explained that if this is so it changes everything, it transforms all things.

The resurrection of Jesus is truly a dangerous idea and therefore should not be entertained lightly. Indeed, if it is not true the Apostle Paul asserts the Christian faith is futile (1 Corinthians 15:17). In a recent article Matthew Ferguson¹ asserted that the legal paradigm is an inappropriate analogy for such a truth claim. In fact he goes further. He uses the most colourful language to describe the writings of Christian apologists who "hijack whatever credible discipline they can," referring to their "shameful" undermining of the "integrity" of the law. Particularly targeted by such polemical utterances are John Warwick Montgomery and Simon Greenleaf. However, it should be acknowledged that legal apologists are not just American; they are found across the

globe. For example, Caribbean lawyer, Sir Lionel Luckhoo, was knighted twice by Queen Elizabeth, and it has been stated by the *Guinness Book of Records* that he is the world's most "successful" lawyer. At the age of 63 he was confronted with the claims of Christ:

I have spent more than forty-two years as a defence trial lawyer appearing in many parts of the world and am still in active practice. I have been fortunate to secure a number of successes in jury trials and I say unequivocally the evidence for the resurrection of Jesus Christ is so overwhelming that it compels acceptance by proof which leaves absolutely not room for doubt.²

Well let's look at Ferguson's arguments remembering such a "dangerous idea" should be examined with intellectual rigour — firstly, that the legal paradigm is an absurd discipline or "field" for assessing the truthfulness of the resurrection. The assertion is that the historical method is the only credible discipline for such an enquiry.

There are a number of significant rejoinders to this plea. The primary one is that the New Testament itself advocates the legal analogy. This paradigm is not contrary to Scripture. The etymology of the concept to "give an answer" in 1 Peter 3:15 is the legal system. Montgomery himself rightly asserts, "The apostle consciously employed a technical term (*apologia*) of ancient Greek law, having reference to the answer given by a defendant before a tribunal."³

Then there is the significant work of Allison Trites. Trites stresses the witness motif in the New Testament as being a very lively metaphor. Specifically he argues that Luke's Gospel conceptually draws on the legal paradigm. He observes, "Luke has taken the original notion of bearing witness before a court of law and adapted it to the condition of the Messianic Age."⁴ Further, with respect to the Book of Acts, Trites draws attention to the actual judicial character of the testimony.⁵ It is twofold: proof from prophecy and proof from eyewitness testimony. The Jewish rules of evidence laid down in Deuteronomy 19:15 called for double testimony. From the first speech at Pentecost this pattern is apparent in the speeches in Acts 2:29-32:

Fellow Israelites, I may say to you confidently of our ancestor David that he both died and was buried, and his tomb is with us to this day. ³⁰Since he was a prophet, he knew that God had sworn with an oath to him that he would put one of his descendants on his throne. ³¹Foreseeing this, David spoke of the resurrection of the Messiah, saying,

‘He was not abandoned to Hades, nor did his flesh experience corruption.’

This Jesus God raised up, and of that all of us are witnesses. (NRSV)

Clearly Luke’s argument for the case of Christ has a judicial character.

The forensic nature of Luke-Acts is also most evident in Paul’s Roman apologetic. In Acts 24-26 Paul not only appeals to Roman rules of evidence (24:19-20), but Bruce Winter and others maintain his apologetic here is based in the Roman legal custom of speeches which contained four or five standard components, with the defence answering specific objections.⁶

One could go on and document different lawsuit models in John’s Gospel, 1 Corinthians 15, 1 Peter, and Galatians, but suffice to say the New Testament itself adopts a legal analogy and apologetic. The Christian legal apologists are not absurd but adapting a paradigm that has biblical warrant!

Briefly let me document other rejoinders to the plea of absurdity. One rejoinder is that the claim of Jesus’ resurrection is factual and found in documents (1 Corinthians 15:3-5). Law works with documents, including ancient documents, and has developed its own hermeneutical methodology in this regard. Also, as law works with facts, a legal apologetic is most appropriate to a fact-based religion.⁷

Ferguson also makes a false dichotomy between law and history. Law is a craft that tackles the past. New South Wales (Australia) Supreme Court Justice, K.R. Handley, notes that in 1974 the Australian High Court, in a significant case, had to decide what happened in Port Moresby in 1886, and in the process the judges did not hesitate to rely on historical evidence. He stated,

The tools of trade of the judge in such a case, and of the historian in every case, are historical evidence — what people wrote about the events, the evidence from archaeology, and circumstantial evidence...The Christian approach to the evidence for the resurrection is no different.⁸

Then there is the rejoinder of common usage. People daily encounter the judicial paradigm. For example, legal fiction dominates the best seller lists. As a consequence Wharton argues, “What jurisprudence declares to be a true mode of proof, the community is apt to accept as such; what jurisprudence declares to be an incompetent instrument of proof, the community is apt to regard as incompetent.”⁹ The legal apologetic undeniably meets Pauls’ injunction to be all things to all people.

John Warwick Montgomery and Simon Greenleaf are justified in using the legal analogy. Montgomery concluded, “Legal standards of evidence develop an essential means of resolving the most intractable disputes in society...thus one cannot very well throw out legal reasoning merely because its application to Christianity results in a verdict for the Christian faith and its approach to human rights!”¹⁰

What is also interesting to note is that Ferguson in his article relies primarily on the critique of Richard Packham. Packham begins his critique by “wholeheartedly” agreeing that “Christian claims can be tested as to their truth by the very reasoning employed in the law to determine questions of fact.” He concurs that legal rules are open to many as “reflections of natural reason.”¹¹ Sceptic Thomas Huxley himself adopted the legal analogy in his consideration of the resurrection of Jesus.¹²

Ferguson concedes the legal apologetic for the resurrection of Jesus is a “longstanding trend.” I have already documented its roots in the New Testament and its line continues from early church apologists such as Tertullian until today.¹³ Its pedigree includes legal greats such as Hugo Grotius, Lord Hailsham (former Lord Chancellor of England), and Sir Norman Anderson.

For the reasons outlined, Montgomery and Greenleaf are more than justified in using the legal analogy in their apologetic. It's an analogy only those prepared to submit their truth claims to the most rigorous of testing would adopt.

Ferguson's second assertion is that a supernatural event like the resurrection is beyond the scope of the legal paradigm. In support he quotes from the *Summary of American Law*, that where testimony is on its face incredible, contrary to physical facts, settled scientific principles, or law of nature etc., it "may properly be disregarded..."¹⁴

In rejoinder there are a number of matters to highlight. Simon Greenleaf, former Royall Professor of Law in the Harvard Law School and a leading authority on evidence in his day (who is still highly respected), was well aware of the questions of the relationship between law and "astonishing events." Greenleaf points out that the evidence for the miracles of Jesus was of the kind that was "plain and simple in nature," easily seen and fully comprehended by persons of common capacity and observation.¹⁵ So it can also be properly pleaded that one can investigate the evidence surrounding the resurrection without addressing its supernatural agency. In this regard Beckwith states that even opponents of such miracles are unlikely to give up the possibility of disproving the historicity of a miracle.¹⁶ As Montgomery argues in his apologetic, the resurrection of Jesus stands or falls simply on whether he is dead at point A, beyond resuscitation, and alive at point B. This can be established by general observation. The only probable interpretation of such events is resurrection. Its truthfulness is based on ordinary everyday facts.

With respect to legal precedent and the laws of evidence, it is true that the law allows for a reasonable scepticism towards "inherently incredible" evidence. However, as argued by Greenleaf, the evidence here is not "inherently incredible." Having said that, one cannot avoid

the perspective of international jurist, Justice Dixon, in *Briginshaw v Briginshaw*. He stated, “The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.”¹⁷

What Justice Dixon is addressing here is the amount (weight) of evidence required to establish the occurrence of a resurrection. In law, the nature of the issues to be decided has a bearing on the rules that govern the factual evidence required. So the sceptic is entitled to have more confidence in testimony, and to expect more evidence in support of an event like the resurrection. As Coady puts it, “The point is that the lack of a suitable explanation of [astonishing] reports, other than their truth, is a consideration against rejecting them, but it is only one consideration and is defensible in various ways.”¹⁸ The legal apologists respect this, and their case is built upon substantial documentary evidence, direct testimony therein, and circumstantial evidence that Ferguson doesn’t even refer to. The case is substantial.

The plain testimonial evidence is that the resurrection occurred. This evidence does not require a prior commitment to a supernatural agency.

The third negative assertion is that the New Testament books would not count as “authentic” legal documents. Ferguson questions their provenance. He is suggesting the Gospels don’t have a “good root of title.” This pleading has no weight. One can refer to New Testament documents from the early partial papyrus manuscripts (from 130-150 A.D.) to later complete manuscripts (Sinaiticus and 5000 extant Greek manuscripts). One can compare the dates and large numbers of copies of the surviving early manuscripts for the New Testament with those of Greece and Rome (Caesar’s Gallic Wars, Herodotus, and Arrian on Alexander the Great). The

large number of manuscripts is important as it allows one to determine the accuracy of the copying of the manuscripts. Still having available a number of variant copies aids scholars in reconstructing the original document. Based on this evidence, Justice Handley finds Christians are entitled to have real confidence in the Gospels.¹⁹ This kind of rigour Montgomery and the legal apologists as a whole apply to the New Testament documents. New Testament authority Stephen Neill sums it up. “We have a far better and more reliable text of the New Testament than of any other ancient work whatsoever, and the measure of uncertainty is really rather small.”²⁰

As to Ferguson’s concern that the documents are copies, all ancient documents are copies and no others have the provenance set out above! Wigmore is also helpful here in citing *Dickson v Smith* where an ancient copy of a map was admitted as it came from the register’s custody.²¹ So the principle is that one must establish a probable chain of evidence to the originals. This principle, as set out above, has well and truly been met in the legal apologetic for the resurrection.

Then Ferguson states that Montgomery uses the “ancient documents” rule as an “escape hatch.” The truth is that courts have admitted “ancient” documents without even relying on the “ancient documents” rule if good provenance is proven. In *Dallas County v Commercial Union Assurance Co.*, a newspaper article of more than 50 years was admitted. The appellate court stated, “...it is admissible because it is trustworthy, relevant and material, and its admission is within the trial judge’s exercise of discretion, in holding the hearing within reasonable bounds.”²²

In the case of *Administration of Papua and New Guinea v Daera Guba*, Chief Justice Barwick wrote: “Having read and reread the official documents to which reference has been made in the case, I see no reason to doubt both their general accuracy and the veracity of those

who compiled them. Indeed, the more I have read them, the better opinion I have formed of the capacity of those who prepared them and the more convinced I am that they speak of events which actually took place as they are related in the reports and despatches.”²³ Likewise, the New Testament Gospels are simply good evidence.

However, Montgomery, Greenleaf, and others do refer to the “ancient documents” rule not as an “escape hatch” but to further the case. The rule again shows that courts are not adverse to admitting ancient documents. If authenticity can be established the document is simply the best evidence available and the objection that such documents are hearsay is accounted for, under the rule, by the criteria of good provenance, “fair on the face,” and reasonable custody. We have already proved good provenance. The speculation that the Gospels were faked or forgeries, not “fair on the face,” is well answered by the former Lord Chancellor of Great Britain, Lord Hailsham. Hailsham refers to one of his own cases on the nature of fakes where material was gathered which found that forgeries of a later age cannot fail to include stylistic or other material from the forger’s own age or culture, which invariably leads to the forger’s work being detected for what it is. The implication is that if the Gospels were fakes, or of a later forgery, they would reveal intrinsic evidence, which they do not, of forgery. The Gospels offer no internal evidence of tampering.²⁴

As to the Gospel custody, one would expect the New Testament to be found in the custody of the church, and it is. The “ancient documents” rule, if needed to be relied on, speaks strongly to the admissibility of the New Testament records.

There is one other pleading of Ferguson that needs a brief rejoinder. That is that the testimony in the New Testament for Jesus’ resurrection is “minimal.” This is well answered by Montgomery and Greenleaf who put the New Testament witnesses on the stand. They apply five

tests that are just as appropriate today in any court of law. They ask about “firstly, their honesty; secondly, their ability; thirdly, their number and the consistency of their testimony; fourthly, the conformity of their testimony with experience; and fifthly, the coincidence of their testimony with collateral circumstances.”²⁵

Greenleaf, Montgomery, and other legal apologists evaluate the New Testament eyewitnesses to the resurrection by these five criteria to determine what weight should be given to their testimony. Montgomery actually takes the evaluating of the witnesses further and creatively uses the fourfold criterion of McCloskey and Schoenberg for exposing perjury. The tests are the internal and external defects in the witnesses themselves on the one hand and in the testimony itself on the other.²⁶

Montgomery and Greenleaf, and other legal apologists, are subjecting the witness to the resurrection to a thorough examination. This use of the legal paradigm is apologetics at its best! The doubter can review the character and evidence of the witness, and make up his or her own mind.

The paper then proceeds to attack the writings of Paul to the extent of seeking to psychoanalyse the apostle. This is an extraordinary personal attack, but not unexpected. Sceptics hate Paul and in particular 1 Corinthians 15. No one doubts it was Paul’s authorship and that 1 Corinthians is written early, perhaps the first written New Testament document. In 1 Corinthians 15 verses 3-6, Paul recounts a very early creed. Dr. Don Baker, Macquarie University, states it appears that “the creed had been composed two or three years after the events which it mentions.” Here is documentary, eyewitness testimony of the highest order. The creed states,

For I handed on to you as of first importance, what I in turn had received; that Christ died for our sins in accordance with the Scriptures, and that he was buried, and that he was raised on the third day in accordance with the Scriptures, and that he appeared to Cephas (Peter), then to the Twelve. Then he appeared to more than five hundred brothers and

sisters at one time, most of whom are still alive, though some have died. (1 Cor. 15:3-6, NRSV)

Paul goes on to state that the resurrected Jesus also appeared to him (1 Cor.15:8).

Ferguson then claims that the Gospels are hearsay. And of course this is technically so as the witnesses can't be cross-examined. However, there are exceptions to the hearsay rule and the "ancient documents" rule is such an exception. And as indicated, courts must accept documents with good provenance as they are the best available evidence. This does not mean they are second-rate evidence. As Brown notes, although documents cannot be cross-examined, they are at a considerable advantage as they possess over oral evidence the fact that their contents do not alter once in evidence. He concludes, "This certainty of evidence is often a real benefit in the shifting sands of forensic evidence."²⁷ Also some jurisdictions prefer documentary evidence. McEwan states, "Like historians, continental jurisdictions prefer documentary sources."²⁸

Apart from Paul, Mark, Matthew, John, and James (James 1:1, 2:1) write of their first-hand observations of the resurrection of Jesus. This is good evidence.

In conclusion, Ferguson's main objection to the legal analogy being applied to the resurrection of Jesus is that it is inappropriate. That simply is not so. The reason for the legal apologetic method's ongoing significance can be related to humanity's ongoing search for truth and meaning and their appreciation of the role of law, testimony, and evidence in any such quest. The legal paradigm is one of common usage. As well, the central tenet of the Christian truth claim, i.e., the resurrection of Jesus, is one that is often presented factually in the New Testament. Material facts are what legal evidence is all about.

The resurrection of Jesus is a "dangerous idea." Montgomery and Greenleaf have tested it via the legal analogy. They found it to be true. All they ask is that their readers approach this "dangerous idea" with the same rigour! Contrary to Ferguson's assertion, this is not a "case-

closed mentality” but rather an “open-to-investigation mentality.” This is not cramming “religion down everyone’s throat,” but it is treating the reader with human dignity and respect by taking the resurrection of Jesus seriously.

Ferguson, your objection is overruled!

Notes:

- ¹Matthew Ferguson, "Objection! The Resurrection of Jesus is Not a Court Case," <<http://adversusapologetica.wordpress.com/2013/02/03/objection-the-resurrection-of-jesus-is-not-a-court-case>>
- ²Sir Lionel Luckhoo, *What is Your Verdict?* (Fellowship Press, 1980), 19.
- ³Montgomery, "Neglected Apologetic Styles: The Juridical and the Literary" in *Evangelical Apologetics*, Michael Bauman, David Hall, and Robert Newman, eds. (Camp Hill, Pennsylvania: Christian Publication, 1996), 119-133.
- ⁴Allison Trites, *The New Testament Concept of Witness* (Cambridge: Cambridge University Press), 133.
- ⁵*Ibid.*, 129. Cf. Allison A. Trites, "The Importance of Legal Scenes and Language in the Book of Acts," *Novum Testamentum*, 16 (1974): 278-284. Trites concluded, "In other words, the frequent use of legal language in connection with real courts of law is germane to Luke's presentation and part of his theological intention. The claims of Christ are being debated, and Luke intends by the use of law court scenes and legal language to draw attention to this fact...An important part of his task is the presentation of the courtroom evidence in such a way that it will bear witness to Christ" (284).
- ⁶Bruce W. Winter, "Official Proceedings and the Forensic Speeches in Acts 24-26," in *The Book of Acts in its Ancient Literary Settings*, vol. 1, Bruce W. Winter and Andrew D. Clarke, eds. (Grand Rapids: William B. Eerdmans, 1994), 333-336. See also C. Clifton Black, *The Rhetoric of the Gospel: Theological Artistry in the Gospels and Acts* (St. Louis: Chalice, 2001), 115-133.
- ⁷Robert Anderson, *A Doubter's Doubts about Science and Religion*, 3rd ed. (Glasgow: Pickering & Inglis, 1924), 154-155.
- ⁸Ken Handley, "A Lawyer Looks at the Resurrection," *Kategoria*, 15 (1999): 11-21.
- ⁹Wharton, "Recent Changes in Jurisprudence and Apologetics," *The Princeton Review* 2, 1 (July-December 1878), 149. See also Montgomery, *Tractatus Logico-Theologicus* (Bonn: Verlag für Kultur und Wissenschaft, Culture and Science, 2002), 3.
- ¹⁰John Warwick Montgomery, *Human Rights and Human Dignity* (Grand Rapids: Zondervan, 1986), 134-135.
- ¹¹Richard Packham, "Critique of John Warwick Montgomery's Arguments for the Legal Evidence for Christianity," <<http://www.infidels.org/library/modern/richardpackham/montgomery.html>>, 5.
- ¹²Adrian Desmond, *Huxley: Evolution's High Priest* (London: Michael Joseph, 1997), 83-85.
- ¹³Mark S. Burrows, "Christianity in the Roman Forum: Tertullian and the Apologetic Use of History," *Viglae Christianae* 42, 3 (September 1988): 214.
- ¹⁴Ferguson questions whether the statute of limitations might not apply with respect to the resurrection of Jesus. The answer is no. The statute is intended to encourage legal actions within a reasonable length of time. As we have seen, the New Testament itself uses legal testimony from the beginning. Also it doesn't apply in all jurisdictions, is there to protest the defendant's rights (no defendant here), and rarely applies to serious crimes like murder and genocide (Jesus' execution was unlawful).
- ¹⁵Simon Greenleaf, *The Testimony of the Evangelists* (Grand Rapids: Baker, 1984), 36.
- ¹⁶Francis J. Beckwith, "History and Miracles," in *In Defence of Miracles*, R. Douglas Geivett and Gary R. Habermas, eds. (Downers Grove: InterVarsity, 1997), 87-88.
- ¹⁷*Briginshaw v Briginshaw* (1938) CLR 60 at 361-362.
- ¹⁸C.A.J. Coady, *Testimony: A Philosophical Study* (Oxford: Clarendon Press, 2000), 198.
- ¹⁹Handley, "A Lawyer," 14-17.
- ²⁰Stephen Neill, *The Interpretation of the New Testament* (Oxford: Oxford University Press, 1964), 78.
- ²¹John Henry Wigmore, *Evidence in Trials at Common Law*, vol. 4, James H. Chadbourn, rev. (Boston: Little, Brown, 1972), 7: 595. See *Carter v Wood* 103 Va 68, 48 S.E. at 553; *Dickson v Smith* 134 Wis. 6, 114 N.W. at 133.
- ²²*Dallas County v Commercial Union Assurance Co.* 286 F.2d 388 (5th Cir. 1961) at 398.
- ²³*Administration of Papua and New Guinea v Daera Guba* (1972-1974) 130 CLR 353 at 378-379.
- ²⁴Lord Hailsham, *The Door Wherin I Went* (London: Collins, 1975), 29-47.
- ²⁵Greenleaf, *The Testimony*, 28.
- ²⁶Montgomery, *Tractatus Logico-Theologicus*. 3.44-3.446. Patrick L. McCloskey and Richard L. Schoenberg, *Criminal Law Advocacy*, vol. 5 (New York: Matthew Bender, 1984), 5: s. 12.

²⁷ R.A. Brown, *Documentary Evidence in Australia*, 2nd ed. (North Ryde, NSW: LBC, 1996), 2.

²⁸ Jenny McEwan, *Evidence and the Adversarial Process* (Oxford: Blackwell Business, 1992), 212-218.