

The Presumption of Innocence

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Part II

In part I, we explored the background of the jurisprudence of Presumption of Innocence in the United States Constitution, particularly in the Fifth Amendment. The origins of this principle appear to be rooted within the Hebrew system and Talmudic law. The first example of this principle in action within the Old Testament scriptures appears to be in the Investigative Judgment in Genesis chapter 3, where God as Judge is asking fact-finding questions in the context of Presumption of Innocence even though He knows the facts already. Now we will explore the application of this principle within the biblical truths of Justification by Faith.

Presumption of Innocence and Justification by Faith.

It was interesting to survey “Presumption of Innocence” as it relates to Martin Luther and Justification by Faith. Luther’s *Sitz im leben* was clearly continental law where ‘presumption of guilt’ was the jurisprudence in a church/state amalgam. Indeed Luther did not see the far-reaching implications of his stance when he nailed the 95 theses in Wittenberg—he did not anticipate a departure from Romanism. Sigve Tonstad in his article “Reading Paul in a New Paradigm,” although dealing with a seemingly unrelated subject, shows that Luther arrived at theological conclusions “as much on the strength of an overarching theological vision as on the basis of strict exegesis.”¹ This is probably the case in his translation of Rom 3:19:

¹ Sigve Tonstad, Reading Paul in a New Paradigm. AUSS p.39.

(German Luther) Romans 3:19: Wir wissen aber, daß, was das Gesetz sagt, das sagt es denen, die unter dem Gesetz sind, auf daß aller Mund verstopft werde und alle Welt Gott schuldig sei;

Translation: But we know that what the law says it says to those who are under the law that every mouth may be stopped/closed and the whole world be **guilty**.

The Elbervelder translation, one closer to the original, is translated thus:

(German Elber) Romans 3:19: Wir wissen aber, daß alles, was das Gesetz sagt, es denen sagt, die unter dem Gesetz sind, auf daß jeder Mund verstopft werde und die ganze Welt dem Gericht Gottes verfallen sei.

Translation: But we know that what the law says it says to those who are under the law that every mouth may be stopped/closed and the whole world **falls under the Judgment (of God)**.

All of this hinges on the translation of the Greek word **υἰπο/δικοβ**.

υἰπο/δικοβ, on: pertaining to being subject to justifying behavior before a court of justice — ‘answerable to, liable to judgment.’ *i°na paδn sto/ma fraghvØ kai« υἰπο/δικοβ γε÷nhtai paδβ oJ ko/smoβ twδ^ qewδ^* ‘to silence everyone and make the whole world answerable to God’ Romans 3:19.²

The above translation “to silence everyone and make the whole world answerable to God” (ASV Rom. 3:19) is most in keeping with the Hebrew (or Greek?) intent. It also would make sense if we acknowledge the accusatorial evidence of “the right against self-incrimination.” Could it be that Paul is here prompting his readers to consider the world under the Judgment of God, which by inference is “presumption of innocence”—the exact opposite of what we have interpreted this verse to mean? If Paul meant guilty he could have used **εἰῃnocob**. (Pertaining to being guilty and thus deserving some particular

² **υἰπο/δικοβ**, Louw and Nida *Greek-English Lexicon of the New Testament*. United Bible Society

penalty — ‘guilty and deserving, guilty and punishable by.’)³ The phrase “to God” is implied since it is not directly in the text.

Could it be that the Sanctuary teaching is languishing in Adventism due to our cleaving to the Evangelical view of Justification by Faith, where at the point of faith the believer receives the standing of “no condemnation?” It was on the steps of the Sancta Scala that that marvelous verse “The just shall live by faith” broke the dark dungeon walls by which Martin Luther was entrapped. Luther could not see the Faith of Jesus, but rather only the “faith in Jesus.” Could it be that this was just the beginning of a series of moats and mountains that God was starting to strip away in our understanding of His principles of judgment?

The shortcoming of Calvinism and Armenianism is that they both subscribe to an inadequate jurisprudence. The logical deadlock that they face is not solved by Abelard's Moral Influence Theory. He points to their inadequacies and totally does away with the forensic aspects of judgment within the salvation story.

It is my belief that the jurisprudence of the presumption of innocence takes the strengths of all these views and harmonizes them in the Sanctuary truth.

Presumption of Innocence and the Church Fathers.

It seems clear that Luther then built his view of judgment upon the Roman judicial model in which he lived. Where did Luther gain his dark view of the nature of man? Which well did he drink from? It was not from the original well of the Hebrew thought. If there is one disservice we have been dealt, it has been at the hand of the Church

³ Ibid [enocob](#), on: pertaining to being guilty and thus deserving some particular penalty — ‘guilty and deserving, guilty and punishable by.’

Fathers. What can be said of the Roman Church fathers like Tertulian, Cyprian, Augustine, and Gregory the Great? It needs to be noted that they were trained Roman lawyers.⁴ Thomas M. Lindsay, in the classic *A History of the Reformation* states:

The great men who built up the Western Church were almost all trained Roman lawyers. Tertullian, Cyprian, Augustine, and Gregory the Great ... were all men whose early training had been that of a Roman lawyer—a training which molded and shaped all their thinking, whether theological or ecclesiastical. They instinctively regarded all questions as [would] a great Roman lawyer. They had the lawyer's cravings for exact definitions. They had the lawyer's idea that the primary duty laid upon them was to enforce obedience to authority, whether that authority expressed itself in external institutions or in the precise definitions of the correct ways of thinking about spiritual truths. **No branch of Western Christianity has been able to free itself from the spell cast upon it by these Roman lawyers of the early centuries of the Christian church.**

Roman law tended to presumption of guilt, which they summarily imposed on their interpretation of the Old Testament. Could it be his inability to understand “presumption of innocence” as Hebrew jurisprudence that led Marcion, although not a Roman lawyer, to drive a wedge between his understanding of the God of the Old Testament, who he saw as arbitrary and capricious, and the New Testament rendering of the God/Man in the form of Jesus Christ? What of the nature of man?

Verses Versus Verses—Presumption of Innocence and the “Difficult Texts”

It would be remiss of me to avoid dealing with the ‘difficult texts’ that automatically spring to mind in refuting the proposed position of “presumption of innocence.” We have already looked at Romans 3:19 and have seen that the Greek does not support a decided ‘presumption of guilt’. Let us first deal with the overall doctrine of

⁴ Lindsay, Thomas M. International Theological Library : A History of the German Reformation. New York: Charles Scribner's Sons, 1906. p 168

original sin before we look at Romans 3:23, which is undoubtedly the next text that comes to mind.

If there is one aspect in which the above-mentioned Roman Lawyers dealt the *coup de grace* to the Hebrew view of man it was in the teaching of "Original Sin". Gerald Pfandl notes the following.

The doctrine of original sin is nowhere developed in any systematic fashion in Scripture. It is based on isolated scriptural texts scattered all through the Bible. Theologians throughout history have pulled these texts together to establish this doctrine.

One of the key texts used for this doctrine is Genesis 3, the story of the fall. However upon closer examination we find that Genesis 3 refers to a number of results from Adam's sin— guilt (3:8), enmity (3:15), pain in child-birth (3:16), hard work (3:19), death (3:19), etc.—but human depravity is not specifically mentioned. This may explain why, apart from possible references to Genesis 3 in Isaiah 43:27 and Hosea 6:7, the Old Testament nowhere explicitly connects the fall with the universal sinfulness of man.⁵

It is interesting to note that in Genesis 3 the assessment of guilt is of a self-imposed character—Adam and Eve hid. To those who tenaciously hold to the view of original sin, which Gerald Pfandl suggests we call “original corruption,” a fresh vista of ‘presumption of innocence’ is virtually impossible. This author (who – Richard or Gerard?) believes in ‘the original sin’ in keeping with the Hebrew meaning of Adam’s sin. This differs greatly with ‘original sin’ (without the article) as taught by Catholicism, which has affected most of Protestantism. Many of us harbor a latent schizophrenic view of God that is not warranted should we realize the “presumption of innocence” as a legal theme of the Old and New Testaments. Not all sayings "hard to understand" in the Old Testament will be explained under this paradigm, but it may relieve us of the harsh view

⁵ <http://biblicalresearch.gc.adventist.org/documents/sinoriginal.htm>

of the Judge and judgment that seems to emerge under the Roman gavel. The wielding of this gavel by the Roman church fathers continues today. They have a strong hold of our view of the Old Testament, but break their grasp we must. How *do* we break out of their grasp? *Sola scriptura* must be our foundation.

Romans 3:23

On asking a prominent evangelist to give me the stalwart text to show that God treats all humans as guilty I was given Romans 3:23. I remember first encountering this verse many years ago as a teenager. It was while browsing through my grandfather's bookshelf in search of something spiritually wholesome that I came upon a "Bible Readings" like book. In reflection, I remember the jarring reality that I am a sinner in need of a Savior. Romans 3:23 figured prominently in that study and I recall giving my life to Christ. In some places it is called the "sinner's prayer," but an interesting name sometimes given to it is the "Roman prayer."

Romans 3:23 is routinely used in Christian evangelistic literature to underscore the guilty situation of man and his subsequent need of a Savior. On further study I have come to see that the verse has been taken out of its context to arrive as such a conclusion.

First the verse starts with the conjunction 'for.' This means that the verse "for all have sinned, and come short of the glory of God," is not a sentence and therefore not a complete thought. Used out of its context it would be the most blatant example of the proof text method. So what does a preposition do? It joins two thoughts. This means that we need to understand the previous verse in order to fully grasp Paul's reasoning. Verse 22 begins with "even" which points us back to verse 21 of Romans 3. Therefore to rightly understand verse 23 we need to start at verse 21.

Romans 3:21—But now the righteousness of God without the law is manifested, being witnessed by the law and the prophets;
Verse 22—Even the righteousness of God which is by faith of Jesus Christ unto all and upon all them that believe: for there is no difference:
Verse 23—For all have sinned, and come short of the glory of God;

Every mouth has been stopped and the whole world is accountable to God in verse nineteen. Verse twenty shows that by the law is knowledge of sin. Verse 21 starts a new thought and a glorious one at that: The righteousness of God is manifested and witnessed by the law and the prophets. Verse twenty-two shows that it is the righteousness of God that is by faith OF Jesus unto all and upon those who believe. The significant phrase which is the center of this text is “*by faith of Jesus.*” I believe that the truth expressed in this phrase is deeper and more far-reaching than most realize and informs the meaning for the rest of the passage.

While studying Greek at the seminary I was introduced to various laws of translation. I vaguely remember the discussion of the *Genitive*. I trustfully accepted the idea that dogmatism in translating the genitive, either subjective or objective, is unwise since leading scholars are unable to resolve this apparent quandary. The question here is whether the Greek should be translated “by faith *in* Jesus” or “by faith *of* Jesus.” I have reasoned that if the experts cannot agree then we are better served to leave it in their hands—until now. It currently seems that the preponderant tendency of modern translators to translate the genitive objectively (*faith in Jesus*) is informed by a faulty jurisprudence of presumption of guilt.

When the rest of Christianity, except for a few,⁶ seems to translate this as “faith in Jesus” they run into a conundrum, as does the American Standard Version which renders

⁶ Hay, Richard B. *The Faith of Jesus Christ—Narrative Substructure of Gal 2*. W.B. Eerdmans ; Dearborn, Michigan 2002

verse 22: “even the righteousness of God through faith in Jesus Christ unto all them that believe; for there is no distinction;” The question one must of necessity ask is “no distinction in what or who?” The meaning of the verse is lost because the translators have become paraphrasers. This totally does away with the “and upon” whose omission leaves the verse meaningless.

A more accurate rough paraphrase would read: But now the way God sets right with no law keeping as condition is revealed, being spoken of by both Moses’ and the prophets’ writings. The way God sets right is by the faith of Jesus towards all and upon those who believe, for there is no difference between these two groups. They have had and now have this need, for all have sinned in the past and continue not to see God’s glory. Verse 24 is part of this section and makes the wonderful declaration ‘Being justified freely by his grace through the redemption that is in Christ Jesus.’”

It is freely acknowledged that this is a paraphrase but the casual reading of the passage (verses 21-23) will clearly show that the use of verse 23 is necessary in its context and can NEVER be used to justify that God considers all men to be guilty. Verse 24 goes on to say that those in verse 23 have been justified freely by His grace. Richard B. Hays comments, “The redemption is accomplished by God’s grace. The faith of God and the Righteousness of God are demonstrated through Jesus’ faithfulness.”⁷ Is this just a modern philosophical shift or do we have another witness of this principle within prophecy? This we will explore in Part III of this three-part series.

Part III

Prophecy and the presumption of Innocence.

⁷ Ibid p.160

Seventh Day Adventists have an intricate and intriguing view of prophecy. We have been birthed from a prophecy in Daniel. The very meaning of Daniel falls into the grand metanarrative of judgment—‘My God Judges’ or ‘Judge My God’.

For those who are serious about the judgment Daniel 7 has always been a fruitful field. We have a description of four beasts and judgment in the time of the fourth. This fourth beast is not only dreadful, terrible and exceedingly strong, but it is ‘different from all the beast before it’. (7:7). In verse 8 we are told that It had ‘a mouth speaking great things’.

In verse 19 Daniel presses to know not only what the ‘truth about the fourth beast, which was different from the others, exceedingly dreadful.’ but also who the ten horns were. From verse 23 onward we get an explanation.

What is significant is that the vision stretches over four kingdoms to the last of them from which there are ten horns emerging. Finally we are confronted by the little horn, which does not only speak great things but does it ‘against the MOST HIGH’.

Daniel 7:25.

Moreover he ‘shall wear out the saints of the most High, and think to change times and laws: and they shall be given into his hand until a time and times and the dividing of time.’

Here is a possible link to the presumption of innocence.

1. Who is the 'they' to be given into his hands?

For the longest time we have thought that it was the saints, but

it could very well be the 'times and laws' since they

are the precedents in this verse?

2. If it is the times and laws then what are their significance in the prophecy?

Well! What is interesting is that this time-period is book-ended by two significant legal events. Leroy Froom references that the beginning is marked with the passage of the Justinian Code.

In my brief glance at it I find it to be predominantly 'presumption of guilt' which results in wearing out the saints. Try running a home on the 'presumption of guilt'. Little saints will soon turn in to inquisitorial little hooligans.

What of the end of the 1260 year period in 1798? We find that with the removal of the pope by General Berthier we also find the subsequent replacement of the Justinian Code with the Napoleonic Code. Granted that the Napoleonic code is not presumption of innocence, it did ensure many more rights than its predecessor.

What is more phenomenal is that Rev 13 describes the decline of the first beast (Sea beast) by the replacement by a 'lamb-like' beast. Most intriguing is that this beast (land beast or America) makes an image to the first beast (sea).

What could this image be other than the 'presumption of guilt'? Further study needs to include the significance of 1798 in the American context. What did she do legally that links her with the first beast? The answer could possibly be the passing of the Sedition Act of 1798.

We do not have to throw out the Sabbath Sunday showdown, but we as Adventist can now proclaim why these days are so significant.

One declares a utter dependence and trust in the Creators salvation, while the other signifies something else. We are concentrating our energies on showing how the time was changed. Now we can show how the law of 'presumption of innocence' was altered to 'presumption of guilt' which defiled the Sanctuary! I believe that this is the crux of the Sanctuary message the more I ponder it. It is withstanding any objections marshaled at it and bringing paradigm shifts for many!

Latin Lex Salica, the code of the Salian **Franks** who conquered Gaul in the 5th century and the most important, although not the oldest, of all Teutonic laws (*leges barbarorum*). The code was issued late (c. 507–511) in the reign of Clovis, the founder of Merovingian power in western Europe. It was twice reissued under the descendants of Clovis, and under the Carolingians (Charlemagne and his successors)

Presumption of Innocence and the Sanctuary.

The introduction of the Sanctuary is in Exodus 25:8 “And let them make me a **sanctuary**; that I may dwell among them”. The setting is soon after coming out of Egypt. According to bible reckoning this happened around 1450 B.C. It is safe to say the Sanctuary service of offerings operated until the time of Christ’s death (AD 31), which is when the veil was torn in two—signifying the end of sacrifices.

Where does one turn to view the Sanctuary in operation? Do we have more than just a description of how the Sanctuary was intended to operate? The answer is in the New testament.

In the legal field there is the need to always refer back to the precedent. Do we have a precedent for the presumption of innocence in the New Testament? Not only this, but it has to be seen in the Sanctuary. The evidence is in John 8—Scribes and Pharisees vs. Woman caught in adultery.

First, it happens in the temple. It is unmistakable that the Temple was the center of the Jewish life. Jesus was teaching the people in the temple. This was what the temple was for. “Thy way O Lord is in the Sanctuary”.

It is noteworthy that verse 2 says that ‘early in the morning’ He came *again* into the temple. This reference to again can be seen in the light that the priest did something for the people every morning and every evening—he offered an animal for the sin of the entire camp. They were not to contribute to it. All they were to do were to ‘look and live’.

Intriguing is that the scribes and Pharisees are the ones to drag a woman in. The keepers of the law are seemingly doing their job—or are they? The accusation is that ‘this woman was caught in adultery, in the very act’. For authority they appeal to Moses—‘now Moses commanded that such should be stoned, but what sayest Thou?’

Moses said that ‘such should be stoned’? Does it not take two to commit adultery. Yes! If the two are caught there was provision to stone them, but Moses has been used too long to maroon the sinner for the love of God.

Here we have the evidence that the keepers of the law had given up the presumption of innocence and had harkened to a system of inquisition-presumption of guilt. The showdown is taking place on the Sanctuary floor. John does not want us to miss the point so he emphasizes ‘this they said so that they might have opportunity to

accuse Him.’ The case is really — Scribes and Pharisees vs. Jesus. Jesus proceeds not quote Moses but to demonstrate his writings; He ‘took the fifth’ and knelt and wrote on the Sanctuary floor. Jesus is reading and following the script from Numbers 5

In Numbers 5 we have the setting that if a man suspects his wife of unfaithfulness he is not to take matters into his own hands, but he is to bring her to the Sanctuary with an offering. It is to be a jealousy offering and one wonders for who? The priest would then take some dust from the floor of the Sanctuary and mix it with water. The accused woman is to drink the water which would have two outcomes--swollen leg and belly leading to spontaneous abortion or nothing more than gritty aftertaste. The ancient near East equivalent will give perspective.

In some cultures this same event was treated rather differently. If a wife or woman were suspected of infidelity she would have a rock tied to her waist and be thrown into the Jordan river. If she never came up she was guilty and if she miraculously defied gravity and started to float with the intended tombstone she was innocent. Unlike the surrounding nations Jewish law was clearly for the preservation of life and this is what Jesus was for.

These inquisitors of the woman and Jesus ‘continued asking Him’ which forced Him to stop following the script of Moses and ask them a question. He ‘lifted up Himself’ and asked ‘He that is without sin among you, let him first cast a stone at her’. He ‘again stooped down and wrote on the ground’.

John tells us that the One who wrote the Ten Commandments with this same finger now wrote ‘on the ground’. One can see these scribes and Pharisees gather around this scribbler who now resembles so much a Lamb. He is in the way so some of them lean on

Him to compensate for their myopia and look straight into their life record. Every sin that they ever had committed is on the Sanctuary floor. How did He know? Well! He is the priest. This is not like the other sanctuaries where the gods must be placated into accepting your offering and then grant you pardon. No! This Sanctuary speaks the truth about God that when we were enemies we were reconciled to God by the death of His Son. Rom 5:10. God was screaming from the dust “I will die for every sin you have committed and will commit. Be reconciled to this truth and I will be able to send you forth joyfully—Forgiveness comes before confession”. This is a hard truth to accept now as then ‘being convicted by their own conscience, went out one by one.’ And Jesus was left alone and the woman standing in the midst.

This is the most poignant part of the narrative for it points us forward and it harkens us to the past—all at once. Daniel describes a judgment scene where the One named Michael is to preside. Just as Michael will do in the future the kneeling Judge does in her present and presence ‘when Jesus lifted up himself’. He now asks her two questions. ‘Woman where are those, thine accusers? Hath no one condemned thee?’ Jesus is showing that He operates under the accusatorial system—presumption of innocence. “I am here to continue with this case but I need accusers. I don’t accuse you as Judge—that is not my role. I am here to defend you against accusers.” She answers “no man Lord”.

There is no man with condemnation towards her. For all her life the Sanctuary had operated under this strange system of presumption of guilty but now she is coming to realize that “God did not send His Son into the World to condemn the World that that the World through Him might be saved” John 3:19 . What rejoicing must have arisen from her heart as she now heard what she first experience for the first time in her life “Neither

do I condemn thee”—what a glorious truth. Forgiveness of sin in the God’s Sanctuary evidently precedes confession.

Conclusion.

“Historically, Adventists have understood ‘progressive revelation’ to mean an ever increasing unfolding or expansion of what was previously revealed.”⁸ The presumption of innocence has clearly been evident in the Old Testament, although hidden by various entities. There has been a change in jurisprudence that is not very apparent at first. Evidence of the presumption of innocence in the US constitution is the right against self-incrimination, which has its origin in the legal system of England. The same evidence, although stronger, is in Talmudic law where it is further established on the high requirements of witnesses to be of one accord before the judgment of ‘guilty’ would be handed down to the accused. Progressive revelation or present truth is acknowledged by the thesis of this paper of presumption of innocence.

The Sanctuary teaching, languishing under the Roman system of ‘presumption of guilt’, gains a rich depth of meaning if one acknowledges the ‘presumption of innocence’—the Hebrew underpinning. It is the doing and dying of Christ on Calvary that is the basis of this phenomenon of presumption of innocence in the Sanctuary service and investigative judgment. The “continual” or “daily” sacrifice offered every morning and evening provided this all-embracing legal setting. Its’ meaning has been marred by trying to foist on it a legal framework of ‘presumption of guilt’—an unconscious presupposition of continental law which strongly influenced theological thought traceable back to the Church Fathers. The Sanctuary doctrine could not have arisen in Europe due

⁸ Pippim, Samuel. *Receiving the Word*. Berean Press Chicago IL 1996

to this inquisitional construction of law. Luther's' view of justification by faith was the impetus for a movement which would birth a restoration of the accusatorial system. The Hebrew Scriptures need to be understood in this light and failing to do so leads to unfortunate twisting of the scriptures and the missed understanding of its intent. This may be especially true as time draws to a close and could be Satan's studied purpose to blind us to the distinction. It might very well inform our understanding of "for the hour of His Judgment is come." Rev 14:7.

And I saw another angel fly in the midst of heaven, having the everlasting gospel to preach unto them that dwell on the earth, and to every nation, and kindred, and tongue, and people,
Rev. 14:7 Saying with a loud voice, Fear God, and give glory to him; for the **hour of his judgment** is come: and worship him that made heaven, and earth, and the sea, and the fountains of waters.

No study has been this rewarding to the present author. Giving up the world-view that I inhabited was hard, especially when the alternative demanded a fresh look at everything again. The new paradigms implications are far-reaching and offer continual hope. We may have touched on just the surface of a gold reef that runs deep—offering us a new glimpse into the another wonderful characteristic of our heavenly Father.