

# Presumption of Innocence

## Part 1

I remember the event as though it was yesterday. I can't remember the impetus for the cordial verbal sparring between my greatly admired grandfather and myself, nor do I remember the blow by blow account—all I remember is the abject cry of hopelessness verbalized to an equally helpless mentor, "THE THIRD ANGEL'S MESSAGE JUST DOES NOT DO ANYTHING FOR ME." My startled grandfather managed to utter, "Pray, my boy, pray." That was then; this is now.

Someone's prayer has been answered—probably my grandfather's—because the Third Angel's Message is now forming the fulcrum of my Christian journey. What about the Cross?, someone would ask. The Cross of Christ is my science and song, now that I am gaining a greater understanding of the meaning of the verses found in Revelation 14—the nexus of Adventism.

The dilemma of not being motivated by the very reason one has been called into existence is the height of meaninglessness—I was there, and the feeling is not a pleasant one. I hope this story will result in renewed vigor and vim to declare the marvelous Good News about God.

In Revelation 14:12 we have the interesting verse, "Here is the patience of the saints. Here are they that keep the commandments of God and the faith of Jesus."

For the longest time, I had tried to draw spiritual identity from arguing fellow Christians into accepting the commandments as a vital aspect of the Christian experience while totally neglecting "the faith of Jesus." The law and the gospel did not go hand in hand for me, which inevitably led to frustration. Don't get me wrong—I knew Jesus. My experience was like the young boy who has to spend a week with his mom (the law) and the weekends with his dad (the gospel)—I hope neither of them is reading this.

This was the experience I have had:

*The soul-saving message, the third angel's message, is the message to be given to the world. The commandments of God and the faith of Jesus are both important, immensely important, and must be given with equal force and power. The first part of the message has been dwelt upon mostly, the last part casually. The faith of Jesus is not comprehended. We must talk it, we must live it, we must pray it, and educate the people to bring this part of the message into their home life. "Let this mind be in you, which was also in Christ Jesus." Phil. 2:5. Selected Messages, vol. 3, p. 184.*

The quotation says that 'the faith of Jesus is not comprehended.' This is my problem. Yes! Present tense. This realization has led me to have my ears and eyes open to whatever I can learn about this mystery phrase—faith of Jesus.

Coming to America from South Africa opened a new perspective to the gospel. I discovered and experienced something called 'the presumption of innocence' as a legal system. No! I was not found on the wrong side of the law—although I need to acknowledge that I am the chief of sinners. Notwithstanding all the gainsayers, the American legal system is an object lesson both in history and experience. This discovery has revolutionized my Christian experience.

Everyone is a Bible-worker; everyone should be working their Bibles to expect truth to explode from its covers. This is what is happening to this writer. Where in scripture do you remember the "faith of Jesus" being quoted? Almost universally the response is Revelation 14:12. What is the context of the chapter where you remember it occurs? In the case of Revelation 14:12 it is judgment, which verse seven "the hour of His judgment" clearly spells out. This is the Judgment hour message.

In studying judgment in scripture an interesting pattern emerges. In John 5:22 we discover that the Father has handed judgment over to the Son. Romans 14:10 and 2 Corinthians 5:10 confirm that we must all appear before the

judgment seat of Christ, not God—not that there is a significant difference, since Christ said that if we have seen Him we have seen the Father.

It is not only disturbing but alarming that we Christians have ascribed an entirely false balance to God's judgment. The judgment hour message is an announcement of not only the fact that God will start to judge the world in Christ, but it also outlines a distinctly unique kind of judgment. It is not the Roman model of judgment, but the Hebrew system that this judgment is all about.

The Roman model separates the Father from the Son. The Son is the advocate and the Father is the hesitant Judge. We read “we have an advocate with the Father” (1 John 2:1) in an adversarial setting as if they are competing entities.

The subject of “presumption of innocence” has held both fascination and intrigue for me” since I came to the United States of America fifteen years ago. On the one hand it was fascinating in that its application in the United States contrasted so sharply with my understanding of its application in South Africa, my home country. In addition it was intriguing to me in that its origin was a mystery not only to lawyers, but even to teachers of constitutional law whom I occasionally had opportunity to prod. Most of them relegated the occurrence of “presumption of innocence” to a “custom of law inherited from the English system of common law.” The combination of intrigue and fascination led me, at numerous times, to search “presumption of innocence” on the World Wide Web. Many bookmarks were made, but none found that offered a concise explanation of its origin.

After finding no cohesive reason for the origin of “presumption of innocence” it was placed on my mental “shelf” until time would permit for further research. Other pressing commitments forced me to leave it unexamined—until I began taking a class on the Sanctuary from Dr. Richard Davidson at Andrews University.

The class was arranged in such a way that a variety of teachers, each with areas of specialty, presented facets of this valuable doctrine. One of the teachers graphically showed how the various offerings were available and how the cleansing of the Sanctuary on the Day of Atonement was the reversal of that of the daily ministry of the priest. When asked if the sinner bringing the sacrifice was considered guilty or innocent he referred to John 3:18. None of his evidence seemed to be based on the Sanctuary service itself. Another presenter, when asked the same question as to the sinner's legal standing, gave the same answer of “guilty”—in keeping with Romans 3:23. “For all have sinned and come short of the Glory of God.”—once again a reference outside of the Sanctuary itself. To be fair I, too, have considered the one bringing her sacrifice guilty until it was offered, so the insight that the Sanctuary operated under the legal idea of presumption of innocence is a fresh one to the author as well.

The reading required for this class included a paper by Dr. Richard Davidson on the Cosmic Metanarrative.<sup>1</sup> In it he challenged us to more study in relating the Sanctuary doctrine to the Great Controversy theme—both of which Adventists hold dear. What could be the link between the two? One needs to be honest in admitting that there is not much connection between these two vital themes as we have traditionally presented them. This seems to be the Adventist “Holy Grail.” This article is an attempt to bridge that divide.

Almost unrelated to Dr Davidson's challenge to find a closer relationship between the Sanctuary and the Great Controversy theme, I one day came across a rather significant online document where I learned more of the “presumption of innocence.” It dealt with *silence*.<sup>2</sup> In the document on “silence” I was introduced to *John Udall*—one whom King James called “the greatest Scholar in England.” In researching, I discovered that he was a Hebrew scholar who had written “*Key to the Hebrew Language*” as well as tracts.

These were not just any tracts. They were tracts protesting against the Episcopal clergy in England.<sup>3</sup> He was summoned to appear before the “Star Tribunal”—an Episcopal/English church-state amalgam that existed to root out heresy. This brave Puritan invoked what would later come to be known as “the right against self-incrimination.” I am not sure if this is what it was called in England, but it did become the basis of English common law.

What is known is that this was a major swing from “guilty until proven innocent”—the Continental basis of law—to the opposite, “innocent until proven guilty.” It was not John Udall alone who established this, but a string of devout men and women who would not depart from this principle.<sup>4</sup>

It was most interesting that he was a Hebrew scholar. This led me to think that perhaps his stance was biblically

based. Could it be that the Old Testament offered the grounds for his firm stance? Later we will look at some biblical evidence.

*Presumption of Innocence  
And the U.S. Constitution*

It came as a total surprise to me that the phrase “presumption of innocence” is nowhere found in the Constitution of the United States. One can look as carefully as possible, but will not find this phrase. At first I was dismayed, but closer study revealed this principle clearly present in this great document. It is to be found primarily in the Fifth Amendment.

## Amendment V

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself**, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

The Fifth Amendment phrase “nor shall be compelled in any criminal case to be a witness against himself” has come to be known as the right against self-incrimination. Colloquially it is known as “taking the fifth.” The thought behind it is that the one accused enjoys the jurisprudence of “presumption of innocence,” which is defined as:

### **INNOCENCE, PRESUMPTION OF—**

*The indictment or formal charge against any person is not evidence of guilt. Indeed, the person is presumed by the law to be innocent. The law does not require a person to prove his innocence or produce any evidence at all. The Government has the burden of proving a person guilty beyond a reasonable doubt, and if it fails to do so the person is (so far as the law is concerned) not guilty.*<sup>5</sup>

It is important to note the difference between the inquisitional and accusatorial systems of jurisprudence. The Anglo-American system is accusatorial<sup>6</sup>, which means that accusers are obligated to prove their claim true as opposed to the accused needing to prove her innocence. The inquisitional<sup>7</sup> system, on the other hand, is just that—having the accused prove their innocence.

*Presumption of Innocence  
And the Hebrew System of Law*

We have tried to establish that the inquisitional system of jurisprudence is the antithesis of the accusatorial system. It comes as a surprise to many that the accusatorial appears to be the legal economy of the Hebrew system, although we have largely applied the inquisitional model to much of our reading of the Old Testament (OT). Since the “presumption of innocence” is only inferred in the right against self-incrimination, the question arises as to whether this is present in the OT.

Verses like Exodus 22:9: “*The judge shall declare him guilty*”—imply that innocence was the stance before the sentence. Another is Micah 7:9: “*I will bear the indignation of the LORD, because I have sinned against him, until he plead my cause, and execute judgment for me: he will bring me forth to the light, and I shall behold his righteousness.*” These verses at least lend themselves to the view of the accused enjoying innocence before being declared guilty.

In Deuteronomy 19 we have strong evidence for the accusatory system as opposed to the inquisitional:

**Deuteronomy 19:15:** *One **witness** shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established.*

**Deuteronomy 19:16:** *If a false **witness** rise up against any man to testify against him that which is wrong;*

**Deuteronomy 19:17:** *Then both the men, between whom the controversy is, shall stand before the LORD, before the priests and the judges, which shall be in those days;*

**Deuteronomy 19:18:** *And the judges shall make diligent inquisition: and, behold, if the **witness** be a false **witness**, and hath testified falsely against his brother;*

**Deuteronomy 19:19:** *Then shall ye do unto him, as he had thought to have done unto his brother: so shalt thou put the evil away from among you.*

Verse 18 does mention inquisition, but it seems to be inquiring of the accuser.

Many scholars acknowledge that Job is the oldest book in the Bible, written before any other—including Genesis. If this is so, then our premise that the great controversy between two jurisprudences is quickly born out. In the first and eighth verses of the first chapter we have the Word of God stating God’s view—“*that man was perfect and upright, and one that feared God, and eschewed evil.*” On the other hand we have Satan’s assessment in verse nine “*Doth Job fear God for nought?*” God’s view of Job is presumption of innocence while Satan’s is presumption of guilt. If this theme is followed we see that the great battle in this fight is for Job to decide which assessment he believes to be true. As Michael Card poignantly states of Job’s friends, “The problem is, Lord, they are all wrong about You.”

The New Testament is not totally silent on this matter either. Nicodemus states in John 7:51 “*Doth our law judge a man, except it first hear from himself and know what he doeth?*” He is appealing to his own colleagues in the law and reminding them that their law judges a man *only* after it hears from him. Sadly, they ignore this admonition and later reply to the question of Caiaphas the high priest, “What think ye?” with “He is guilty of death.” This is after he had himself interrogated the accused Jesus—contrary to the accusatorial system that he was to be upholding.

In Matthew 26:66 Pilate, in keeping with Roman law, hears the accusation against Jesus from the chief priests, attempts to interrogate him, finds him innocent, but still hands him over to the people. It appears that the abrogation of the principle of innocent until proved guilty by the Jews essentially led to an unholy marriage between church and state. Lewis Walton has done a marvelous work of contrasting the Hebrew system with the Roman system of law in his audio-series, “*A Lawyers Perspective*,” dealing with the trial of Jesus.

### *Church/State And Presumption of Innocence*

It is interesting that where Church and State are united this principle of “presumption of innocence” seems to be absent. In reality its counterpart “guilty until proven innocent” not only flourishes within this context, but also seems to feed the marriage of church and state.

Babylon comes to mind in the OT case study. King Nebuchadnezzar had been the recipient of a heavenly message in the form of a dream and its interpretation. He builds a statue of himself and has his subjects bow to it. There are three young men who would rather remain true to God than break His Law and violate their own consciences. Daniel 3:8 interestingly states “*Wherefore at that time certain Chaldeans came near, and accused the Jews.*” It is a church/state setting as evidenced in verse 12 by “*these men O king, have not regarded thee: they serve not thy gods, nor worship the golden image which thou hast set up.*” The result of this church/state combination inevitably leads to persecution.

Before the persecution of the three young men it is fascinating to note their response to the king when thus threatened. All three answered in verse 16 and said, “*O Nebuchadnezzar, we have no need to answer thee in this*

*matter.*” Was this rude of them to answer in this way? Could they have been so angry that this was their response? Unlikely. What these young men were saying is, “Dear King! We have the right against self-incrimination. The onus is on you to show us our folly. We would rather be true to God, so we speak only as a witness to you. Submit to this God, O King.” Some argue that the “presumption of innocence” is necessary only in the human sphere where man judges man. But when looking at the four kingdoms of Babylon, Medo-Persia, Greece and Rome one finds the jurisprudence of “presumption of innocence” largely absent. We will now look at its application when God deals with man.

### *Presumption of Innocence And the Investigative Judgment*

It seems that the construct of the inquisitional (Roman) paradigm is used to understand much of the Old Testament and it has been imported into our understanding of the Investigative Judgment. Some have mentioned to me that the title “Investigative Judgment” itself is to blame for its apparent inquisitional character, to which I tentatively would agree. To acknowledge ‘innocent until proven guilty’ as the biblical jurisprudence will clear many misunderstandings and misconceptions that we have about the judgment. It has been widely credited to the Old Testament record that the Judge is firmly on the side of the one accused. Going to the Bible, one clearly sees this.

Genesis chapter three is said to be the first Investigative Judgment in the Bible. We have a court setting in that there are the accused (Adam and Eve), an accuser (the serpent), and the Judge (God). The Judge comes to the court with the questions, “*Where are you?*” ... “*Who told you that you were naked?*” ... “*Hast thou eaten of the tree, whereof I commanded thee that thou shouldest not eat?*”—and to Eve, “*Why have you done this?*” It would appear as though this is interrogation of the accused. These questions can also be seen in the light of “presumption of innocence.” Coming to the court the Judge, knowing all this already, enters these questions for record. His fact-finding is based on the presumption of innocence. This does not mean that they are innocent of the crime, but the Judge weighs all the evidence and then pronounces judgment.

It is most remarkable that He turns to the *accuser* and utters sentence on *him*. It is the most damnable sentence for the accuser, yet the most glorious promise for the accused. What is noteworthy is that the judgment is pronounced on the one who is found to be wanting. The accuser’s head will be crushed, while the accused are promised a way of restitution. Adam and Eve must have been most surprised “to look into their Judge’s face and see a Savior there.”<sup>8</sup> As soon as there was sin there was a Savior.<sup>9</sup>

The investigation before judgment (sentence) always needs to be seen in the light of “presumption of innocence” where the Judge is on the defendant’s side—in no way clearing the guilty, but marrying justice and truth perfectly. Psalm 85:10. Cain and Abel, the Tower of Babel, and Sodom and Gomorrah could all be viewed in this paradigm of “presumption of innocence.” Our next installment will deal with the “presumption of innocence” and justification by faith. •

<sup>1</sup> Richard Davidson, *The Cosmic Metanarrative* Sanctuary Class handout.

<sup>2</sup> *Silence: The Ultimate protector of the Individual*. <http://www.neo-tech.com/silence/intro.html>

<sup>3</sup> Tract alleged to be written by John Udall. <http://www.anglicanlibrary.org/marprelate/Tract10.html>

<sup>4</sup> Leonard W. Levy, *The Origins of the Fifth Amendment*, New York Oxford University Press, 1968, p. viii. Levy’s work, for which he received the Pulitzer Prize, is the first historical treatment of the right against self-incrimination—a necessary book for anyone who loves freedom and flees from injustice.

<sup>5</sup> Definition: Presumption of innocence. <http://www.lectlaw.com/def/i047.html>

<sup>6</sup> Justice Felix Frankfurter in *Watts v. Indiana*, 338 U.S. 49, at 54 (1949).

<sup>7</sup> *Ibid*.

<sup>8</sup> Michael Card, song *Jubilee*.

<sup>9</sup> Ellen G. White, *The Faith I Live By*. Pacific Press p.75.