

“This is a clear and thoughtful judicial study of the event that lies at the heart of the Christian faith. It should appeal to a wide readership. It both poses a fair challenge to the interested enquirer and also provides real encouragement to the believer that there is a solidly rational basis to the faith in which we live and which we seek to commend to others.”

Mark Hedley, Hon. Professor of Law at Liverpool Hope University and former High Court Judge

“What a great idea to have a lawyer look at the evidence for Jesus’ resurrection, much as he would if presiding at a trial! Thoroughly researched, easy to read but not lightweight, with summaries at each chapter’s end, this book will arm believer and doubter alike with the evidence necessary to make a decision about a potentially life-changing story.”

Revd Rob White

“In these days we are familiar with the comment that science is based on evidence whereas religion is based on blind faith and not on evidence. The fundamental tenets of the Christian faith include the statement that Jesus Christ rose from the dead. This is a statement that a particularly basic assertion is true.

“Graeme Smith has had a considerable career as a District Judge and in this well-written book he has approached the evidence for this assertion as a judge would do, inviting the reader to follow him. He requires that the reader should approach the question with an open mind. He marshals the evidence in an even-handed way, with no technicalities and without excessive detail. He then sums up and invites the reader to reach his or her own conclusion.

“I found his approach very refreshing. It is obvious that he writes with a wide knowledge of the relevant literature but the reader is not burdened with this except in so far as is necessary for an appreciation of the central issue. While science develops by the formulation of hypotheses to explain and connect observations, and further evidence may require the hypotheses to be modified, this is not true so far as this tenet of Christianity is concerned. Hence the importance of this book.”

The Rt Hon. the Lord Mackay of Clashfern, former Lord Chancellor

Was the Tomb Empty?

A lawyer weighs the evidence
for the resurrection

GRAEME SMITH

MONARCH
BOOKS

Oxford, UK & Grand Rapids, Michigan, USA

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Published by Monarch Books
an imprint of

Lion Hudson plc

Wilkinson House, Jordan Hill Road,
Oxford OX2 8DR, England

Email: monarch@lionhudson.com

www.lionhudson.com/monarch

ISBN 978 0 85721 528 4

e-ISBN 978 0 85721 529 1

First edition 2014

Acknowledgements

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A catalogue record for this book is available from the British Library

Printed and bound in the UK, January 2014, LH26

Contents

Acknowledgements	7
Verdict!	8
How to Handle the Evidence	10
Part 1 – Opening Submissions	
1 Jesus	18
2 History	24
3 Proof	32
4 Evidence	39
5 The Judge	47
Part 2 – The Evidence	
6 Starting Point	54
7 Paul	60
8 James	69
9 Peter	73
10 No Body	79
11 The Early Church	85
12 Evidence Outside the New Testament	94
13 The Gospels	106
14 The Gospels’ Resurrection Accounts	119
15 Expert Evidence	129
16 Other Explanations	139
17 More Explanations	149
18 The Testimony of Jesus	157
Part 3 – Reaching a Verdict	
19 Summing Up	166
20 Jesus – So What?	174

Appendices

1	<i>The Da Vinci Code</i> and Other Modern Gnostic Myths	181
2	The Talpiot Tomb	187
3	Some Other (Bestselling) Theories	190
4	Easter Enigma	213
5	The Ending of Mark	216
	Bibliography	218
	Notes	221

Acknowledgements

The idea of this book has been in my mind for many years, but without the help and support of several people it would have stayed there! Above all, I am very grateful to my long-suffering family and in particular my wife Helen, for her encouragement at each step of the process as she has put up with the whole process of getting the ideas out of my head and into a finished product.

Additionally, I am very grateful to Robin Croxon, who first encouraged me to sit down and begin writing; to Richard Herkes, who has enabled me to produce a complete, coherent text; to Gordon Tubbs, Alan Charlesworth, and Roy Pitcher, who have read and commented on the draft text; and to Tony Collins and his colleagues at Monarch who have made the publishing process so easy for me.

Although several people have commented on the text, I of course remain fully responsible for any errors which have survived this scrutiny.

Verdict!

The room falls silent as the door opens. Every eye focuses on the procession that enters. First comes a solemn figure robed in black; then twelve people – men, women, old, young, black, and white, from every walk of life. All are anonymous to the watchers, chosen at random. For days they have sat silently, watching and listening. For hours they have deliberated in secret, forbidden from ever revealing the content of their discussions. But now for a few moments they have become the sole focus of attention and their simple answer to a single question will determine the future of one person.

They move purposefully to their seats as those watching try to discern the slightest hint of the decision from their faces, their body language, whether they make or avoid eye contact. Once they are seated, another black-robed figure stands and begins reading words that have been read out every day for generations in courts across the land:

“Members of the jury, have you reached a verdict on which you are all agreed?”

“Yes.”

“Do you find the defendant guilty, or not guilty?”

The delivery of the verdict by a jury is without doubt one of the most dramatic scenes in our legal system. There may be other tense moments as advocates try to undermine the evidence of

witnesses, although these are rarely as exciting as portrayed in TV courtroom dramas! But the tension surrounding the delivery of the verdict is unequalled. Following days of evidence and legal submission, the judge, witnesses, advocates, members of the public and sometimes the press, and most importantly the defendant and the victim, will have been waiting for hours or even days with absolutely no indication of what is happening in the jury room. Suddenly a message is received that the jury is ready. Everyone returns to the courtroom to await their arrival; the defendant returns to discover his or her fate.

Dramatic though the delivery of a verdict is, it is in fact the conclusion of a painstaking and detailed consideration of the evidence. This is usually completely lacking from films and TV dramas, which tend to imply that court cases are dealt with in minutes rather than hours or days. In the real world, however, precisely because the decision of the jury can have such dramatic implications for the future of the defendant, it is essential that the evidence be considered and challenged thoroughly.

This book is just such a consideration of the evidence concerning Jesus' resurrection, and so it is deliberately painstaking and detailed. However, I hope that at its conclusion readers will feel something of the drama of a jury verdict as they reach their own conclusions.

And remember that, however complex a trial may be, its jury is always made up of twelve ordinary people – they could include me or you. Our legal system depends on the ability and commitment of such people, and only very rarely does a jury let down the system. The trial process essentially helps the jury to make the right decision. This book is intended to help readers to make the right decision, and there is no reason why any reader of this book cannot consider carefully the evidence and arrive at a fair, and safe, verdict.

How to Handle the Evidence

Recently I was struck by two very different articles in a magazine. One was by Christian writer and speaker Jeff Lucas and the other by self-described “militant atheist” Ralph Jones. The first examined the doubts that assail believers from time to time and concluded, “Doubt is just part of the normal Christian journey – an unwelcome companion, perhaps, but one that we need not fear.”¹ The second explained the reasons why he found the Christian faith unreasonable and unbelievable.

Two kinds of doubt

This book is written for people who can identify with either of these positions – the doubts of a believer or the scepticism of one who does not believe.

I am a judge by profession, so it is perhaps not surprising that I wish to examine the evidence for Christian faith – and especially its pivotal event, the resurrection of Jesus of Nazareth from the dead – from a legal perspective. I was particularly challenged to do this when I read about a case brought in Italy by Luigi Cascioli against his local parish priest Enrico Righi for “abusing popular credulity” by teaching the historical existence of Jesus. Father Righi was ordered to appear in court to prove that Jesus did exist. (See, for example, Richard Owen’s article posted on *The Times* online on 3 January 2006, which perversely appears in the European football section.)

Presumably he succeeded in making his case, as Mr Cascioli's claim was dismissed!

So I decided to attempt an analysis of the evidence as a court would do.

Christians are often portrayed as dogmatic, fully convinced that their views are right. Yet in my experience most Christians wrestle with doubts. Although some well-publicized figures make free and easy pronouncements at times, the vast majority of Christians are more circumspect. So while some may interpret the latest tragic disaster – say, an earthquake – as a judgment from God, most would be asking themselves questions. How does God's sovereignty interact with human free will? And if a natural disaster really were an "act of God" as the insurance companies like to tell us, how might this be consistent with God's love?

And doubt is not the only assailant facing a believer today. As "Western" society moves away from its Judeo-Christian foundations, it is no longer socially beneficial to profess Christian faith. In fact it can be positively disadvantageous to do so. Although talk of persecution would be a huge exaggeration at the present time, Christians do face criticism and ridicule for holding onto their faith in the modern world.

So why do so many people cling to belief? There may be several reasons, but my own experience is that the Christian faith provides the only satisfying explanation of a number of puzzles. These include questions about the origin and nature of the universe, moral challenges, and the riddle of Jesus' resurrection.

Why is there something rather than nothing? Who or what created the universe? Why is the universe so ideally suited to the emergence of life?

Why do people across the world have a sense of right and wrong, even though the content of moral codes may vary

between societies? Why do people have a propensity to believe in something beyond this world?

And what are we to make of the staggering claim – ridiculous to some – that Jesus rose from the dead?

I am not a cosmologist, physicist, philosopher, or anthropologist, and so it is not for me to present a detailed response to the first two groups of questions. In any event, although I believe that answers to those questions indicate the existence of a divine being, even a personal one, they do not point unequivocally to the God portrayed by Christians. However, having spent twenty-seven years dealing with the assembling, presenting, and evaluating of evidence, I do feel qualified to analyse the historical data surrounding Jesus' resurrection.

I referred earlier to atheist Ralph Jones's explanation why he could not believe the Christian faith. He asserted that "there is not, first and foremost, a shred of truth in any of the extraordinary claims it makes. There is no way one can go from reading about a high-profile Bronze Age preacher in Israel to believing that he was born of a virgin, that he was resurrected, and that he is therefore the Son of God." He elaborated:

The argument seems to me rather circular: why do Christians believe Jesus rose from the dead? Because he is the Son of God. Why do Christians believe Jesus is the Son of God? Because he rose from the dead. To believe Jesus was resurrected on the basis of historical evidence would require a staggering level of credulity, and I don't know how many Christians would argue that the case could be made. Why, therefore, does there exist this desperate urge to draw gargantuan claims from pitiful evidence? Why not concede to a very obvious defeat? It is this wishful thinking, this need to have comforting and childish explanations that defy logic, that informs my rejection of religion.²

To meet this objection I can say emphatically that my belief that Jesus is the Son of God plays no part at all in my conclusion (from the evidence) that he rose from the dead. On the other hand, my conclusion that he rose from the dead is a fundamental foundation of my belief that he is the Son of God.

When Christians argue sloppily

In fact I sympathize with much of what Ralph Jones says about the way many Christians try to justify their belief in Jesus' resurrection. Circular arguments will not do. Nor will an approach that urges us simply to "have faith" and not to question what the Bible says.

Historically speaking, many books on the resurrection have taken the reliability of the four Gospels as read – they have "taken them as gospel" as the saying goes – and their arguments both start and end with these accounts. Such an approach may have been acceptable to previous generations, but the historical reliability of the Gospels is no longer something we can take for granted. A number of serious issues arise when we rely on the Gospels by themselves as proof of the resurrection. Of course they are vital evidence, but they are not the only evidence.

There is another approach adopted by some Christians, and that is to rely on quotations from eminent Christian lawyers. The one used most frequently is that attributed to Lord Chief Justice Darling:

in its favour as a living truth there exists such overwhelming evidence, positive and negative, factual and circumstantial, that no intelligent jury in the world could fail to bring in a verdict that the resurrection story is true.

While the quotation is superficially impressive, it suffers from two overwhelming objections: (1) Lord Darling was never Lord Chief Justice and (2) there seems to be no actual record of Lord Darling (who was a judge) ever saying this! Even worse, I have seen examples of the same quotation being attributed to other lawyers, most notably Lord Denning. Although Lord Denning was a Christian, it is clear that he never used these words, which seem to have been put in his mouth by a process similar to Chinese whispers. In an age where information is immediately available at the click of a mouse, problems like this can quickly be exposed, and then they inevitably undermine the whole argument in favour of the resurrection. Is it any wonder that people like Ralph Jones describe the evidence as pitiful?

This is not to say that quotations cannot be useful if used appropriately. In my view, we should apply rules that are similar to those used by the courts when previous case law (“precedent”) is relied upon. Comments by judges need to be properly sourced, authoritative and read in context.

A good example of the need to read in context is the use of the phrase, used in several motor accident cases, that a car is potentially a “lethal weapon” (for example *Goundry -v- Hepworth* [2005] EWCA Civ 1738 – see the end of this chapter for an explanation of this kind of reference). These words are relied upon regularly by lawyers acting for pedestrians injured by motorists, to support their claim that the motorist is at fault. I have seen a barrister try to rely on these words without reading on to what followed. If he had, it would have been clear that, if a pedestrian stepped into the path of a car without any warning, in circumstances where the driver was driving with reasonable care, the driver would not be at fault. Since that was precisely what was alleged to have happened in the case which his client was pursuing, the quotation in fact assisted the defendant motorist!

In view of all this, I have endeavoured to abide by certain principles throughout this book: to trace appropriate quotations to their source, check that they are authoritative, and respect their original context.

Sceptics do it too

Having made these criticisms of some of the “evidence” offered by some Christians, I feel the same can be said about those who seek to disprove the resurrection. Quite simply, some critics do not seem to realize they are adopting double standards. In their eagerness to find evidence which will disprove the resurrection, they are quick to accept theories which have little if any reliable evidential basis. We will see examples of this approach in Chapters 1, 10, and 17.

Here is an example. In 2012 a small scrap of papyrus was discovered. Written in ancient Egyptian Coptic script in the fourth century, it was believed to be a copy of a “gospel” originally written in Greek late in the second century. Controversially, it included a reference by Jesus to “my wife”. While serious academics were guarded in their response (and indeed some considered it not to be an authentic document), others rushed to confirm that it established Jesus’ married status. But this would be like the discovery of a single document written 150 years after the death of Cliff Richard, saying that he had been married (at the time of writing he is not). Not only would this not be good evidence, it would not be evidence at all, as it refers to no source and it would be produced long after Cliff’s contemporaries had died.

So if you do not believe that Jesus rose from the dead, or if you struggle with doubts, I invite you to consider the evidence with an open mind. In this book the evidence will be presented in a way that avoids both circular reasoning and the need for startling levels of credulity.

References

References to the Bible text are given in the conventional format of the name of the book followed by the chapter and verse numbers separated by a colon. Thus John 20:25–29 refers to verses 25 to 29 of chapter 20 of the Gospel of John.

Judgments in cases are generally reported in this format: [2005] EWCA Civ 1738. The date in square brackets is the date of the report. The letters identify the source of the report (e.g. EWCA means England & Wales Court of Appeal; WLR means Weekly Law Reports). The concluding number is the page number in the report. For anyone who wishes to do what I have recommended, and go back to the source, the best starting point is the website www.bailii.org (the British and Irish Legal Information Institute), which provides free access to a wide range of case reports.

Notes have been kept to a reasonable minimum, and these appear at the end of the book. Books are sourced in the main text for quick and easy reference by citing the author and date of publication – full details appear in the Bibliography. I am grateful to all those copyright holders who have granted permission for me to reproduce extracts.

PART 1

OPENING
SUBMISSIONS

CHAPTER ONE

Jesus

Who?

In a London school a teenager with no church connections hears the Christmas story for the first time. His teacher tells it well and he is fascinated by this amazing story. Risking his friends' mockery, after the lesson he thanks her for the story. One thing had disturbed him, so he asks: "Why did they give the baby a swear word for his name?"

Stuart Murray (2004)

For many people today, the only time they hear or use the names "Jesus" or "Christ" is as swear words. This is surprising, given the extent to which the story of Jesus has influenced society. Our two main public holidays originated as celebrations of Jesus' birth (Christmas) and his death and resurrection (Easter), although they are probably now better known for Father Christmas and chocolate eggs. History itself is reckoned in our society by reference to the year when Jesus is supposed to have been born, so we have BC (before Christ) and AD (Anno Domini – in the year of the Lord).

More subtly than this, our language is full of expressions taken from the life and teaching of Jesus: a "good Samaritan" is someone who goes out of his way to help a stranger; FT5K is a sandwich shop named from an abbreviation of "feed the

five thousand”; “Judas” is a term used for someone who betrays; “carrying my cross” is a description of having to bear some great trouble or burden; “walking on water” describes someone who has been remarkably successful; and so on. It is unlikely that most people know the origins of such phrases, but they show the extent to which the story of Jesus is ingrained in our society.

A spectrum

A large proportion of society may know little or nothing about Jesus, but even among those who do recognize the historical Jesus there is a huge spectrum of views. At one end is the orthodox Christian view, set out centuries ago in the Nicene creed. Here is the section on Jesus:

We believe in one Lord, Jesus Christ,
the only Son of God,
eternally begotten of the Father,
God from God, Light from Light,
true God from true God,
begotten, not made,
of one Being with the Father.
Through him all things were made.
For us and for our salvation
he came down from heaven:
by the power of the Holy Spirit
he became incarnate from the Virgin Mary,
and was made man.
For our sake he was crucified under Pontius Pilate;
he suffered death and was buried.
On the third day he rose again
in accordance with the Scriptures;
he ascended into heaven
and is seated at the right hand of the Father.

He will come again in glory to judge the living
and the dead,
and his kingdom will have no end.³

Although an ancient formula, it is still repeated regularly by Christians throughout the world, and it contains statements of belief which are both theological and historical.

At the other end of the spectrum is the view that the story of Jesus is nothing more than a work of fiction – albeit perhaps a very profound and influential work of fiction. According to this view, Jesus was no more a historical figure than Hercules or Mary Poppins.

Between these two views of Jesus lies a vast array of others. Some people see him as a great teacher or holy man; some see him as a martyr; some see him as a prophet. The last of those views is that of Islam, which accepts Jesus as one of the great prophets, born of the Virgin Mary, and a performer of miracles. However, Islam emphatically denies that Jesus was in any way divine, or that he rose from the dead, or even that he was crucified and died.⁴

Everyone loves a conspiracy

Conspiracy theories abound in every area of life. Many people seem very receptive to claims that the “official” version of events is a conspiracy to conceal the truth, whether the subject is history (the sinking of the *Titanic*, the holocaust), death (Elvis, John F. Kennedy, Princess Diana), health (MMR), politics (9/11 and the ensuing “war against terror”), or the universe (UFOs and alien abduction).

The courts are not immune to this approach. Not infrequently a claim is brought by someone who is convinced they are the victim of a conspiracy. I remember well as a young

articled clerk (the old term for a trainee solicitor) meeting a new client who claimed to have been knocked down by a Rolls Royce. Initially her claim sounded genuine, but as the interview proceeded she claimed that this was a weekly occurrence, engineered by Nazis! As I showed her out, she said in a loud voice across a crowded waiting room, “You’ll be hearing from the Pope about this!” I’m still waiting.

This is an extreme example; many are much more sophisticated and believable, at least superficially. While occasionally such claims have some basis in fact, more usually they are based on no evidence at all, or on supposed evidence taken totally out of context. Indeed, the lack of evidence is sometimes relied on as proof of the conspiracy – the evidence does not exist because it has been destroyed by the conspirators, and lawyers and judges who reach negative conclusions are often simply added to the list of those conspirators.

Many people have a similar view of the traditional Christian story. The statement “Everyone loves a conspiracy” is made by two different characters in Dan Brown’s book *The Da Vinci Code* (pages 232, 500). It seems that these words were prophetic, as the book became an international bestseller, telling of a conspiracy by the church to suppress the fact that Jesus was married to Mary Magdalene and that they had a child. This book was a popular restatement of ideas that have appeared before, for example in the bestselling *The Holy Blood and the Holy Grail*, which was described in a judgment by Mr Justice Peter Smith as being “at the far end of conjecture”⁵ (For a closer look into the *Da Vinci Code* phenomenon see Appendix 1, and for comments on *The Holy Blood and the Holy Grail* see Appendix 3.)

Invariably such books challenge the “orthodox” story of Jesus, positioning it as less than faithful to what really happened. This is unparalleled in any other religion. (Although there are

a few such books, for example in relation to the Jewish ark of the covenant, these pale into insignificance beside the sheer volume of books challenging the orthodox Christian story.) It seems that there are huge numbers of people receptive to the idea that the church has manipulated and concealed the true story of Jesus.

Know the truth

Jesus is recorded as saying that “the truth will set you free” (John 8:32). The purpose of this book is to look at the evidence to see if the truth about Jesus can be established. I believe that it can, but this is a question which you will need to answer for yourself. As to whether this truth can then lead on to freedom, that can only be established by experience. The answer of millions of Christians throughout history and across the world is a resounding “yes”, but this will carry little if any weight with someone unconvinced that the basic story is true. However, it may provide a small but tantalizing incentive to embark upon the journey in the first place.

Rather than attempting to analyse evidence about the whole of Jesus’ life, we will focus principally on that relating to his resurrection. This is because, in the words of the eminent lawyer Professor Sir Norman Anderson (1969, page 84):

the belief that Christ rose from the dead is not an optional extra, superimposed on his life and death to give a happy ending to what might otherwise be regarded as a tragedy of infinite beauty overshadowed by doubts as to whether it was not, after all, a supreme example of magnificent defeat. On the contrary, it is the linchpin.

Put simply, the resurrection of Jesus is at the very heart of the Christian faith. As Paul said bluntly, “if Christ has not been raised, our preaching is useless and so is your faith” (1 Corinthians 15:14). If the evidence for the resurrection is lacking, then there is little point looking any further, except for selecting parts of Jesus’ teaching which may help us in our daily living. However, if the evidence for the resurrection is compelling, this will throw a very different light on Jesus’ life and teaching, and will lead us to much more profound questions. As one Christian writer puts it, “The resurrection of Jesus Christ is one of the *most wicked, vicious, heartless hoaxes ever foisted upon the minds of men*, or it is the most fantastic fact of history” (McDowell 1981, 1998, page 179). Let us weigh carefully the evidence to ascertain which it is.

Before we journey into the evidence, we need to establish some ground rules, and this is the purpose of the next few chapters. We shall start by considering the nature of history itself because if, as stated by the character Leigh Teabing in *The Da Vinci Code*, “history is always written by the winners ... always a one-sided account” (Brown 2003, page 343), then we must ask whether there is any basis on which we could ever accept that the story of Jesus is historical?

S U M M A R Y

- There is a wide spectrum of views about Jesus.
- Many believe that the church has conspired to hide the truth about Jesus.
- We will focus on the central Christian claim about Jesus – that he rose from the dead.