

A New Approach to the Apologetic for Christ's Resurrection by Way of Wigmore's Juridical Analysis of Evidence

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Précis:

Philosophical and theological arguments for Christ's deity based on his miracles have not always had the convincing force expected of them. As epistemological efforts in general move more and more in a juridical direction, we apply for the first time the most sophisticated of these—Wigmorean analysis—to the central apologetic for the resurrection of Jesus from the dead.

In my books, *Human Rights and Human Dignity* and *Tractatus Logico-Theologicus*,¹ I emphasised the shift on the part of distinguished philosophers such as Mortimer Adler and Stephen Toulmin toward a juridical approach to the solving of epistemological problems. At a recent conference at the Institute of Advanced Legal Studies at the University of London, Professor David Schum of George Mason University, who instructs at the U.S. Joint Military Intelligence College, pointed to the same phenomenon in the field of military strategy: juridical argument, particularly Wigmorean argument construction, is now being employed in the analysis of potential insurgency operations and analogous tactical themes.²

The prime reason for the move toward juridical thinking in these fields is the sophistication with which lawyers must deal with evidence questions. Decisions of law can only be made once facts have been established, so lawyers and legal scholars must employ the

most effective techniques possible in arriving at factual conclusions on which life or death may depend—and these must be sufficiently persuasive to convince the “triers of fact” (juries and judges) to arrive at just verdicts.

Moreover, the factual decisions to be reached in the courts are seldom of a single-issue character; they generally involve a great number of factual particulars and the interlacing of numerous sub-arguments. Even Toulmin, who argued so eloquently in his classic, *The Uses of Argument*, for replacing the epistemological models of “psychology, sociology, technology and mathematics” with “the discipline of jurisprudence,”³ when he produced his highly useful text, *An Introduction to Reasoning*, never went beyond two levels of analysis.⁴

In diametric contrast, John Henry Wigmore (1863-1943), the greatest common-law specialist on the law of evidence after Harvard’s Simon Greenleaf,⁵ endeavoured to treat what he termed “the ultimate and most difficult aspect of the principles of Proof; namely, the method of solving a complex mass of evidence in contentious litigation.”

Nobody yet seems to have ventured to offer a method. . . . The logicians have furnished us in plenty with canons of reasoning for specific single inferences; but for a total mass of contentious evidence, they have offered no system. . . .

The problem of collating a mass of evidence, so as to determine the net effect which it should have on one’s belief, is an everyday problem in courts of justice. Nevertheless, no one hitherto seems to have published any logical scheme on a scale large enough to aid this purpose.⁶

Wigmore produced what is still the most comprehensive work in the field of legal evidence, his *Evidence in Trials at Common Law*; the fourth edition (1985) runs to eleven volumes,⁷ plus a massive 1999 supplementary volume.⁸ Even Wigmore’s sharpest critic, one Edmund Morgan, called it “the best work ever produced on any comparable division of American Law.”⁹

We therefore have every good reason to examine Wigmore's method of proof, and, having done so, to discover its relevance to the question of the facticity of the resurrection of Jesus Christ.

Wigmorean Chart Analysis

In his biographical sketch of Wigmore, Professor William Twining comments that Wigmore's *Principles of Judicial Proof* "remains largely forgotten, perhaps because it placed too much emphasis on an ingenious system of analysing masses of evidence through elaborate charts that involved resort to unfamiliar symbols."¹⁰ Yet Twining himself, in his own publications in the field of reasoning and legal evidence, has seen the tremendous value of this complex analytical technique and has endeavoured to explain it to the *non cognoscenti*.¹¹ In the explanations to follow, we rely heavily on Twining's materials, developed largely to present the Wigmorean method to law students unacquainted with it.

One begins with an overall analysis of the problem. Here is Twining's seven-step summary of the methodology:

1. Clarification of standpoint, purpose, and role;
2. Formulation of potential ultimate *probandum* [that which is to be proven] or *probanda* [those things which are to be proven];
3. Formulation of potential penultimate *probanda*;¹²
4. Formulation of theory and themes of the case: choice of strategic ultimate, penultimate, and intermediate *probanda*;¹³
5. Compilation of a key-list;
6. Preparation of the chart(s); and
7. Completion of the analysis.

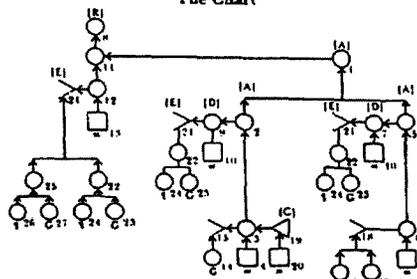
Twining illustrates by way of simple criminal case. The *ultimate probandum* is that "X murdered Y," or, stated more formally, that "(A) Y is dead; (B) Y died as a result of an unlawful act; (C) it was X who committed the unlawful act that caused Y's death; and (D) X intended

(i) to commit the act and (ii) thereby to cause Y's death." The coroner's report and observations at the scene satisfy all concerned that "Y died at approximately 4:45 p.m. on 1 January in his house as the result of an unlawful act committed by another." We thus develop a key-list and corresponding chart involving some five testimonial assertions and related inferences that appear relevant to the *penultimate probandum* (C) that "It was X who committed the unlawful act that caused Y's death."

The Key-List

1. X was in Y's house at 4:45 p.m. on January 1.
2. X entered Y's house at 4:30 p.m. on January 1.
3. W₁ saw X enter Y's house at 4:30 p.m. on January 1.
4. W₁: I saw X enter Y's house at 4:30 p.m. on January 1 as I was walking on the sidewalk across the street.
5. X left Y's house at 5:00 p.m. on January 1.
6. W₂ saw X leave Y's house at 5:00 p.m. on January 1.
7. W₂: I saw X leave Y's house at 5:00 p.m. on January 1.
8. X was not at Y's house on January 1.
9. X did not enter or leave Y's house on January 1.
10. X: I never went to Y's house on January 1.
11. X was at her office at 4:45 p.m. on January 1.
12. X was working at her office from 9:00 a.m. to 5:00 p.m. on January 1.
13. X: I was working at my office from 9:00 a.m. to 5:00 p.m. on January 1.
14. A claimed eyewitness identification by a pedestrian walking on the other side of the street is doubtful.
15. It may be someone other than X whom W₁ saw enter Y's house.
16. The sun had set before 5:00 p.m. on January 1.
17. A claimed eyewitness identification made after the sun has set is doubtful.
18. It may have been someone other than X whom W₂ saw leave Y's house.
19. W₂ saw X enter Y's house at 4:30 p.m. on January 1.
20. W₂: I saw X enter Y's house at 4:30 p.m. on January 1.
21. X's testimony should not be accepted.
22. X is lying about her actions and whereabouts on January 1.
23. A person accused of a crime has a strong motive to fabricate testimony that might exonerate her.
24. X is the accused in this case.
25. X was probably not in her office on January 1.
26. January 1 is New Year's Day and a legal holiday in this jurisdiction.
27. Few people go to their office and work all day on New Year's Day in this area.

The Chart



A = assertion; E = explanation; R = rival; and D = denial. Note that a defendant becomes a "proponent" of rival and denial assertions, and thus the prosecutor may see the process of "opponent's" explanation to undermine these assertions.

We do not need to go into the details of this illustration. Just a few basic points require clarification.

The chart symbols vary somewhat from one Wigmorean analysis to another. In general, a *circle* represents evidence; more explicitly (and not used in this chart), a *filled-in circle* is used to depict factual, empirical data—what Sherlock Holmes called the “trifles” which are capable ultimately of deciding issues—as contrasted with *unfilled-in circles*, representing circumstantial evidence or mere inferences; a *square* depicts testimonial assertions (it does not have to be used when the entire case is a matter of testimony or conflicting testimony); a *triangle* identifies an argument that corroborates a fact or inference to which it is related; an *open angle* represents an alternative explanation for an argument given by the other side; *arrows* show the direction of an inferential relationship between one fact or fact to be proven and another; and the letter G is used for generalisations which are taken (correctly or incorrectly) as not requiring proof because they are accepted as such and would supposedly be received by a tribunal as worthy of judicial notice.

It will be noted that in the illustration one single chart has been used to show both the “prosecution” and the “defense” arguments (thus, for example, items 1 and 8 are mutually contradictory and cannot both be true). A clearer picture and a more effective analysis is usually possible by separating the pro- and the con- streams of argument by the use of separate, parallel charts. Either way, it is vital to chart the strongest arguments both *for* and *against* the ultimate *probandum*.

Below, in an unpublished chart which avoids the use of symbols, Twining separates pro- and con-lines of argumentation, designating the opposition case with the term “infirmative”:

Inference upon inference (source: Twining, unpublished)

F fact established by evidence or not disputed
I inference

G generalization
RT relevant time

F1 Y was murdered in his house at 4.30 pm on 1/1/81 [RT]

- Infirmative*
- 1 Y is not dead.
 - 2 The victim was not Y.
 - 3 It was not murder.
 - 4 Location incorrect.
 - 5 Time incorrect.
 - 6 Date incorrect.

F2 Witness (W¹) stated he saw a person with features a.b.c.d. entering Y's house at 4.15 on 1/1/81. [=RT - 15]

- Corroborative*
- 1 Another witness (W²) stated F².
 - 2 W¹ an honest witness.
 - 3 W¹ had a good opportunity to see event.
 - 4 Circumstances of W²'s witnessing were favourable.
 - 5 Circumstances of W²'s reporting were favourable.
 - 6 W¹ a competent observer.

- Infirmative*
- 1 W is lying.
 - 2 W¹ misperceived
eg a. features
b. location (Z's house)
c. action.
 - 3 W's memory faulty.
 - 4 W's description suggested to him.
 - 5 W's description of person vague or ambiguous.
 - 6 W's description badly expressed.
 - 7 W's description misrecorded.
 - 8 W's description misrepresented (eg photofit does not fit description).
 - 9 Features of type a often confused with features of type m (G).

I¹ A person with features a.b.c.d. entered Y's house at RT - 15.
F3 X has features a.b.c.d.

- Infirmative*
- 1 X's features not identical to description.
 - 2 Many people have such features (G).
 - 3 Z is X's double.
 - 4 X has alibi for RT - 15.
 - 5 X denies entering Y's house.

I² X entered Y's house at RT - 15.

- Corroborative*
- 1 X often went to Y's house.
 - 2 X had motive to go to Y's house.
 - 3 X had been invited to go to Y's house at RT.
 - 4 W¹ 'identified' X at identification parade.
 - 5 X admitted to being near Y's house at the RT.

- Infirmative*
- 1 X left Y's house at RT - 10.

I³ X was in Y's house at RT.

- Corroborative*
- 1 X was seen leaving Y's house at RT + 30.
 - 2 X's fingerprints in Y's house.

- Infirmative*
- 1 Murderer was not in the house at the time of the killing.
 - 2 Y was inaccessible to X within the house (eg locked in his room).
 - 3 X had no weapon.

I⁴ X had opportunity to murder Y.
F4 No one else was in Y's house at the time.

I⁵ X had exclusive opportunity to murder Y.
I⁶ It was X who murdered Y.

Note that the "RT" (relevant time) category would be employed only when the issue in question turned on a matter of chronology.

Application to the Claim That Jesus Christ Was Resurrected

We are now in a position to use the foregoing style of analysis to evaluate the evidence for Christ's resurrection.

Before we do, however, it may be well to observe the desirability of employing this approach rather than the Bayesian probability calculus. Bayes' theorem, in essence, asserts that the probability of an event can be calculated by multiplying posterior odds by prior odds to obtain a likelihood ratio. But as Earman (the secular author of a devastating critique of Hume's argument against the miraculous) observes:

Attempts to objectify priors run into notorious difficulties. . . . The anomalous advance of the perihelion of Mercury was known to astronomers long before Einstein formulated his general theory of relativity. A naïve application of Bayes's theorem would seem to imply that no incremental confirmation takes place, despite the fact that physicists uniformly claim that general relativity receives strong confirmation from the explanation of the perihelion advance.

True, the Bayesian approach has been usefully employed by Richard Swinburne in his book, *The Resurrection of God Incarnate*.¹ But a particular problem with using it in arguing for the resurrection of Christ (or any miracle, for that matter) is the number of prior events which do not have a miraculous character. Wigmore's approach, based solidly in historical and testimonial evidence for events themselves rather than in philosophical speculation or probabilistic calculation involving prior events, bypasses this problem.

In arguing for the resurrection of Christ, our terms are as follow:

Ultimate probandum [UP]: "God raised Jesus from the dead as Saviour of the world."

Penultimate probandum [PP]: "Jesus rose from the dead."

Stated more formally:

[PP(A)]: “Jesus died on the Cross”;

[PP(B)]: “On and after the first Easter morning, Jesus was physically alive.”

[PP(C)]: “Jesus’ transition from death to life occurred miraculously—without third-party human agency.”

The Positive Key-list:

1. All events related to Christ’s death and resurrection were reported by eyewitnesses or associates of eyewitnesses.
2. Jesus is said by these witnesses to have been born miraculously and performed numerous impressive miracles, including the raising of Lazarus, during his public ministry.
3. On several occasions, Jesus predicted his resurrection.
4. Jesus was tried publicly by Jewish and by Roman leaders, given a death sentence, and executed by crucifixion.
5. On the cross, a sword was driven into his side to assure the soldiers in charge that he was indeed dead.
6. Jesus’ crucifixion occurred publicly in Jerusalem at the high season of the Jewish religious year.
7. Jesus’ body was then placed in a well-known tomb belonging to a prominent Jewish religious personality.
8. Efforts were made by the Jewish religious leaders to prevent a stealing of Jesus’ body and to suppress any rumours of resurrection.
9. On the first Easter morning, Jesus’ disciples encountered a Jesus who was alive.
10. Jesus appeared subsequently to his followers over a 40-day period, followed by his public ascension into heaven.
11. Jesus’ disciples did not believe that he would rise prior to the event having occurred—as evidenced, for example, by “doubting Thomas.”

12. Jesus' resurrection appearances were physical in nature (Jesus eating fish, Thomas able to touch wounds in Jesus' hands and side).
13. Paul testified to having seen and spoken to the risen Christ on the Damascus road.
14. Paul provided a list of named witnesses to the risen Christ and claimed that over 500 were still alive to testify to it in A.D. 56 (1 Cor. 15)—as well as claiming when on trial before the Roman governor that Christ's death and resurrection were "not done in a corner" (Acts 26:26).
15. Absence of motive to steal Jesus' body on the part of the Romans or the Jewish religious leaders, and every reason on their part not to do so.
16. Irrationalism of any argument that Jesus' disciples or followers would have stolen his body and then claimed he rose from the dead—thus inviting persecution and death.
17. Irrationality of any unnamed third parties stealing the body or inventing such a story.
18. No contemporary refutations or attempted refutations of the fact of the resurrection by those with means, motive, and opportunity to do so.
19. Explanations of the event other than that by Jesus and the firsthand witnesses have no cogency and should be rejected.
20. Jesus claimed to be God incarnate, raised up by his Father, and the unique Saviour through his death and resurrection.

F-2 [PP(B)] On and after the first Easter morning, Jesus was physically alive



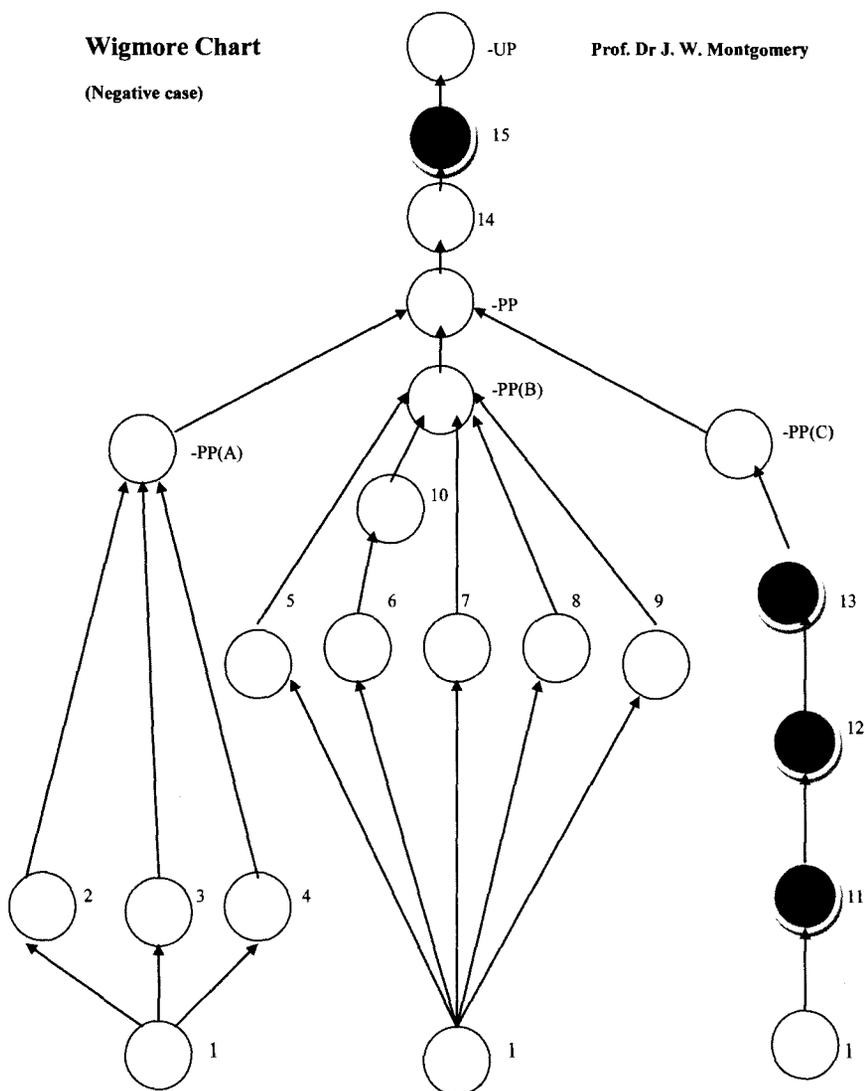
1. Disciples mistook someone else for Jesus (5)
2. Disciples had a mystical vision (6)
3. Disciples suffered from a collective hallucination (7)
4. Disciples stole the body (8)
5. Unnamed persons stole the body (9)
6. Jesus rose “spiritually” but not physically (10)
7. One cannot trust the documents/witnesses (1)

I-1 [PP(C)] Jesus’ transition from death to life occurred miraculously—without third-party human agency



1. Miracles simply do not happen: people who die stay dead (11)
2. To prove an extraordinary event, you would need extraordinary evidence—which we don’t have (12)
3. Any natural explanation is preferable to a supernatural, miraculous explanation (13)

Notes: In the positive Chart (across), filled-in circles (facts) and unfilled-in circles (circumstantial evidence or inferences) need to be distinguished, and it is important also to observe the difference between the circles and the triangles (=corroborations). In the Chart of the negative case (pg. 24), numbers correspond to the italicised figures in parentheses which appear at the end of each Infirmative in the corresponding Key-list. Filled-in circles with white outlines represent generalisations (G)—items which the proponent assumes to be universally accepted without requiring proof.



Conclusion: What This Evidential Approach Reveals

It would be inappropriate here to present the data underlying each of the items in the Key-lists. Such data can readily be obtained elsewhere, and I myself have devoted a fair number of my writings to this very purpose.¹⁹ What we wish to do instead is note how the Wigmorean method assists in revealing the core issues at stake in

reaching a proper decision on a vital factual issue—here, the central epistemological question of Jesus’ resurrection and divine claims.

First, as we compare the negative with the positive Key-lists by way of the Charts, we observe that the objector to the facticity of the resurrection relies entirely, not on factual data, but on conjecture, inference, and supposed universal generalisations. This in itself places the negative case in the worst possible light.

Secondly, it is plain that in the final analysis the issue of the truth of the resurrection and of Christ’s claims depends squarely on the reliability of the New Testament records—not on philosophical, presuppositional, or sociological argument. It follows that the apologetic task is best carried on in an evidential context, and that any and all dehistoricising and higher critical dismembering of the New Testament documents must be shown as fundamentally erroneous methodologically—as bad scholarship—rather than being somehow baptised as theologically legitimate.

Finally, the Wigmorean approach keeps the resurrection question focused on those considerations which are truly determinative: a genuine death, a subsequent living, physical presence, the absence of human third-party agency, and the Subject’s explanation as to the divine source of this miraculous event. The charting offers a systematic justification for the juridical argument which I have presented elsewhere that the case for Christ’s resurrection fulfils precisely the conditions of legal proof by the principle of *Res ipsa loquitur*:

1. Dead bodies do not leave tombs in the absence of some agency effecting the removal.
2. The tomb was under God’s exclusive control, for it had been sealed, and Jesus, the sole occupant of it, was dead.
3. The Romans and the Jewish religious leaders did not contribute to the removal of the body (they had been responsible for sealing and guarding the tomb to prevent anyone from stealing the body), and the disciples would not have stolen it, then prevaricated, and finally died for what they knew to be untrue.

Therefore, only God was in a position to empty the tomb, which he did, as Jesus himself had predicted, by raising him from the dead: “the event speaks for itself.”²⁰

Notes

1. John Warwick Montgomery, *Human Rights and Human Dignity* (2d ed.; Edmonton, Alberta, Canada: Canadian Institute for Law, Theology and Public Policy, 1995), pp. 134-36; *Tractatus Logico-Theologicus* (3d. ed; Bonn, Germany: Verlag fuer Kultur und Wissenschaft, 2004), para. 3.126.
2. "Teaching Evidence and Fact Analysis," 9 June 2006.
3. Stephen E. Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 1958, p. 7).
4. Stephen E. Toulmin, Richard Rieke, and Allan Janik, *An Introduction to Reasoning* (New York: Macmillan, 1978). An apparently unchanged "second edition" was issued in 1984 by the same publisher.
5. See Greenleaf's "Testimony of the Evangelists," reprinted in Montgomery, *The Law Above the Law* (Minneapolis: Bethany, 1975), pp. 91 ff.
6. John Henry Wigmore, *The Principles of Judicial Proof: As Given by Logic, Psychology, and General Experience, And Illustrated in Judicial Trials* (Boston: Little, Brown, 1913), pp. 3-4, 747.
7. Published by Little, Brown, with various editors following Wigmore's death.
8. Published by Aspen Law & Business; edited by Professor Arthur Best.
9. Quoted by William L. Twining, "Wigmore, John Henry," in A. W. B. Simpson (ed.), *Biographical Dictionary of the Common Law* (London: Butterworths, 1984), p. 533
10. Twining, op. cit., p. 534.
11. Twining, *Theories of Evidence: Bentham and Wigmore* (London: Weidenfeld & Nicolson, 1985), pp. 125 ff.; *Rethinking Evidence* (2d ed.; Cambridge: Cambridge University Press, 2006), pp. 426-28 *et passim*; Terence Anderson, David Schum, and William Twining, *Analysis of Evidence* (2d ed.; Cambridge: Cambridge University Press, 2005), pp. 123-44 *et passim*.
12. The "penultimate *probanda*" remind one of mathematical philosopher Imre Lakatos' use of the term *proof* for "a thought-experiment—or 'quasi-experiment'—which suggests a decomposition of the original conjecture into subconjectures or lemmas" (Imre Lakatos, *Proofs and Refutations: The Logic of Mathematical Discovery*, ed. John Worrall and Elia Zahar [Cambridge: Cambridge University Press, 1977], pp. 9, 13-14). On Lakatos, see John Worrall's article in the *Concise Routledge Encyclopedia of Philosophy* (London: Routledge, 2000), pp. 449-50.
13. Step 4 is clearly unique to advocacy and persuasion: choosing the strategy most likely to convince the triar of fact and win the case; it would presumably not figure into a straight investigation of a factual issue.
14. "You know my method. It is founded upon the observation of trifles" (*The Boscombe Valley Mystery*). "It is, of course, a trifle, but there is nothing so important as trifles" (*The Man with the Twisted Lip*). Cf. John Warwick

- Montgomery, *The Transcendent Holmes* (Ashcroft, British Columbia, Canada: Calabash Press, 2000), especially pp. 97-139.
15. John Earman, *Hume's Abject Failure: The Argument Against Miracles* (New York: Oxford University Press, 2000).
 16. John Earman, "Bayesiansim," *The Encyclopedia of Philosophy Supplement*, ed. Donald M. Borchert (New York: Macmillan Reference, 1996), p. 52. Cf. Earman's book-length treatment of the problem: *Bayes or Bust? A Critical Examination of Bayesian Confirmation Theory* (Cambridge, Mass.: MIT Press, 1992).
 17. Richard Swinburne, *The Resurrection of God Incarnate* (Oxford: Clarendon Press, 2003), especially pp. 206 ff. I have cited Swinburne's conclusions positively in my *Tractatus Logico-Theologicus* (*op. cit.*), para. 3.8732.
 18. It is worth stressing that (1) he who rises from the dead is in a far better position to explain how this happened than are those who have not (cf. Montgomery, *Tractatus Logico-Theologicus* [*op. cit.*], para. 3.72 – 3.7321), and (2) Jesus' factual claim can be accepted without prior proof of God's existence—*pace* Norman Geisler, R. C. Sproul, William Lane Craig and the so-called "classical" apologists (see Gary R. Habermas, *The Risen Jesus & Future Hope* [Lanham, Maryland: Rowman & Littlefield, 2003], especially chaps 2-3; also Habermas's contribution to *Five Views on Apologetics*, ed. Steven B. Cowan [Grand Rapids, Michigan: Zondervan, 2000], pp. 91 ff.).
 19. Montgomery, *Tractatus Logico-Theologicus* (*op. cit.*); Human Rights and Human Dignity (*op. cit.*): *The Law Above the Law* (*op. cit.*); *History, Law and Christianity* (Edmonton, Alberta, Canada: Canadian Institute for Law, Theology and Public Policy, 2002); *Faith Founded on Fact* (Nashville: Thomas Nelson, 1978); etc.
 20. John Warwick Montgomery, *Law and Gospel: A Study in Jurisprudence* (2d ed.; Edmonton, Alberta, Canada: Canadian Institute for Law, Theology and Public Policy, 1995), p. 35.