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The Evolution of Creationism in Public Schools

Stephen B. Thomas

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Early in American history, it was not uncommon for the school day to begin with a reading from the Bible and a prayer. Christmas and Easter vacations were routine in the schools as were related assemblies, plays, and musicals. Released-time programs for religious instruction on school grounds, Gideon Bible distribution, and the posting of the Ten Commandments were common practices. When questions would arise regarding the origin of man and the universe, more often than not, the biblical creation was imparted as fact in both science and nonscience classes. Each of these practices has been successfully challenged in the courts beginning in the early 1960s. One of the more recent of these controversies deals with the discussion of related theories on the origin of man and is the topic of this article. Both anti-evolution and anti-creation cases will be discussed.

Anti-evolution Case Law

Unlike recent litigation, early case law dealing with disputes in public schools over the origin of man did not examine whether it was permissible for public school teachers to discuss the creation as described in Genesis; rather the controversy was whether any position other than that provided in the Bible, scientific or religious, also could be discussed.[1] Perhaps the most widely publicized of all related cases was the infamous Monkey Trial, **Scopes v. State,** with Clarence Darrow, among others, representing the plaintiff, and William Jennings Bryan, Jr., among others, representing the state.[2]

The Tennessee Anti-evolution Act of 1925 prohibited the teaching of evolution in the public schools and universities within the state. Any teacher found in violation of the act was to be fined between $100 and $500. The act was intended to restrict the curriculum to the creationist interpretation of the origin of man and the universe. The law was considered necessary by the legislature, which argued that the "public welfare required it." Similarly, the Supreme Court of Tennessee declared the law constitutional as within the authority of the state legislature. The court concluded that "by reason of popular prejudice, the cause of education and the study of science generally will be promoted by forbidding the teaching of evolution .... We are not able to see how the prohibition of teaching the theory that man has descended from a lower order of animals gives preference to any religious establishment or mode of worship."[3]

It was not until 1968, in **Epperson v. Arkansas,** that the United States Supreme Court ruled on a case that involved a similar forty-year-old anti-evolution statute.[4] However, violators of the Arkansas statute were to be dismissed, rather than merely fined. Ms. Epperson was employed by a public school in 1964 to teach high school biology. The textbook selected by the school administration included a chapter on Darwinian theory. Although Ms. Epperson was obliged to teach the class and to use the new text, "to do so would be a criminal offense and subject her to dismissal."[5] Accordingly, she filed suit seeking to enjoin the state from dismissing her when she fulfilled her contractual responsibility to teach the class using prescribed methods and materials. The United States Supreme Court ruled that the state law was in violation of the first amendment because it proscribed a particular body of knowledge for the sole reason that it conflicted with a particular religious doctrine. The Court restated its position that "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."[6] It further observed that "the state had no legitimate interest in protecting any or all religions from views distasteful to them. . . ."[7]

Two years after *Epperson* a statute similar to those passed in Tennessee and Arkansas was declared unconstitutional by the Mississippi Supreme Court.[8] The rationale of the court relied heavily on the earlier Supreme Court decision and held that the law violated the first amendment. The court acknolwedged the state's right to prescribe the public school curriculum, but limited such freedom to actions that do not compromise rights identified in the federal Constitution. The Court stated that "[i]t is much too late to argue that the [s]tate may impose upon the teachers in its schools any conditions that it chooses, however . . . restrictive they may be of constitutional guarantees."[9]

With the Mississippi and Arkansas anti-evolution statutes declared unconstitutional and laws in Tennesee and Oklahoma repealed, case law took on new directions. Local, rather than state, practices now were challenged. Although many districts had included evolution, natural selection, and related scientific theories in their science curriculums prior to the *Epperson* decision, other districts were reluctant to do so because of local political pressures.

In a 1972 case from Houston, Texas, a group of students sought to enjoin the teaching of evolution and the adoption of textbooks presenting related theories.[10] Plaintiffs contended that such instruction inhibited their free exercise of religion and established the religion of secularism. The federal district court disagreed with plaintiffs' arguments and ruled that the complaint failed to state a claim upon which relief could be granted and that neither the first nor fourteenth amendments were violated. The court observed that "[t]eachers of science in the public schools should not be expected to avoid the discussion of

Stephen B. Thomas is professor of school law, School of Education, St. John's University, Jamaica, New York.

every scientific issue on which some religion claims expertise."[11]

Another anti-evolution case came from Gaston County, North Carolina, in 1973 where a student teacher was discharged without warning by a "hostile **ad hoc** committee" for responding to student questions regarding evolution.[12] The student teacher personally supported principles of evolution, professed to be an agnostic, and questioned the literal interpretation of the Bible. However, he did not initiate the controversial discussion regarding evolution and creation and responded only to specific questions asked of him. The district court argued that although academic freedom is not a fundamental right, the right to teach, to inquire, to evaluate, and to study are of fundamental importance to a democratic society.[13] However, such rights are not absolute; the state has a vital interest in protecting young, impressionable minds from extreme propagandism. Nevertheless, standards directing teacher behavior may not be vague, nor may they "be allowed to become euphemisms for 'infringement upon' and 'deprivation of' constitutional rights."[14] A teacher should not be forced to speculate as to what conduct is proscribed, because creating such uncertainty would make the teacher more reluctant to "investigate and experiment with new and different ideas." Such a relationship was ruled to be "anathema to the entire concept of academic freedom."[15] In peroration, the court observed that "[i]f a teacher has to answer searching, honest questions only in terms of the lowest common demoninator of the professed beliefs of those parents who complain the loudest, . . . the state . . . is impressing the particular religious orthodoxy of those parents upon the religious and scientific education of the children by force of law."[16]

In 1975, another challenge came to a Tennessee statute. However, the case of **Daniel v. Waters**[17] did not deal with an anti-evolution law or challenge the right of educators to teach evolution. Rather, it was specifically concerned with the contents of biology textbooks. The Tennessee law required all biology textbooks used in the public schools to . . . identify each scientific theory of the origin of "man and his world" as "theory" and not fact. However, since the Bible was not defined as a textbook under the law, a disclaimer was not required for the Genesis accounting of creation. Also, the law required an equal emphasis between scientific theories with disclaimer provisions and "other theories," including but not limited to the Bible, but exluding occult and satanical beliefs. The Sixth Circuit Court of Appeals ruled that the statute violated the federal Constitution.[18]

A rather unique evolution-related case was filed in the District of Columbia Circuit Court of Appeals in 1980.[19] This case did not involve the teaching of evolution in the public schools but, rather, involved a museum exhibit. The plaintiffs in this case alleged that current and proposed exhibits in the Smithsonian Institution's Museum of Natural History violated religious neutrality by supporting secular humanism in violation of the first amendment. They sought either an injunction prohibiting the exhibits and the federal support of them **or** an order requiring equal funding of an exhibit explaining the biblical account of creation. In ruling on behalf of the Smithsonian, the court reasoned that a solid secular purpose is apparent from the exhibits, that the exhibits did not materially advance the religion of secular humanism, and that the display did not sufficiently impinge on plaintiff's religious practices. Further, no government entanglement with religion was identified.

Anti-creation Case Law

Recent cases involving the origin of man and the universe have not challenged the presence of evolution in the public school classroom but, rather, have attempted to limit or eliminate the inclusion of the biblical creation in the science curriculum. For example, in a 1982 case a teacher was fired for overemphasizing creationism.[20] In this case, the plaintiff taught biology and other science classes for the Lemmon, South Dakota School District. Between 1974 and 1980, the board received numerous complaints regarding plaintiff's failure to cover basic biology principles due to his prolonged discussions on the origin of man, evolution, and creation, with particular emphasis on the latter.

The board established a textbook committee to select an appropriate text for the biology classes and promulgated guidelines to be followed in teaching. Essential content was identified and time parameters were set. The guidelines allowed one week for the study of the origin of man and permitted the instructor to compare evolution theory and the creationist viewpoint. Following the identification and development of guidelines and materials, the board notified the teacher that failure to teach as directed would represent grounds for nonrenewal of contract. In spite of this warning, the plaintiff, according to the board, again spent too much time on the origin of man and neglected to teach "basic biology." On appeal, the state supreme court ruled that the lower court decision was not "clearly erroneous" in that the board had not abused its authority in not renewing the teacher's contract.

Perhaps the most important of the creation science cases is **McLean v. Arkansas Board of Education.**[21] In March 1981, the Balanced Treatment for Creation-Science and Evolution-Science Act was signed into law. The law was challenged on three grounds: it constituted an establishment of religion (first amendment); it violated a right to academic freedom (free speech, first amendment); it was impermissibly vague (due process, fourteenth amendment). The court spent little time on the free speech and due process arguments because it declared the act to be in violation of the establishment clause. In reviewing such claims, the court must determine whether the act has a secular legislative purpose; whether the act either advances or inhibits religion; and whether the act requires excessive entanglement with religion.[22]

The Arkansas statute was ruled to have violated each criterion, any one of which would have rendered it unconstitutional. Following a review of legislative history, the court concluded that creation science was inspired by and patterned from the Bible, and it was ruled not to be a true "science."[23] Accordingly, the court concluded that a secular service would not be served by the act, the act's major purpose was to advance religion, and the act would require the monitoring of classroom discussions to insure compliance, thereby necessitating an impermissible level of government entanglement with religion.[24]

In a recent case, Louisiana public schools also were to be required by state law to give a balanced treatment between creation science and evolution science. A federal district court, however, in **Aguillard v. Treen,**[25] declared the law to be in violation of the Louisiana Constitution and enjoined the state from implementing the statute's requirements. However, the court's rationale was different

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from that in Arkansas. The court reasoned that the Board of Elementary and Secondary Education is the ultimate policy-making power over public education in Louisiana and not the state legislature. By requiring a balanced treatment of creation science and evolution science, the legislature infringed upon a function of the board. Accordingly, the act was declared impermissible based on state law rather than the first amendment.

Conclusion

Conflicts between science and religion are not unique to the twentieth century. During the Italian Renaissance, Bruno attempted to defend and advance the teachings of Copernicus. He proponed that the universe is beyond human measurement; that there are worlds other than earth; and that the sun is the center of "our corner of infinity." Although he proclaimed that God created the universe, he was unwilling to repudiate Copernicus' findings and reaffirm Aristotle's views that the sun and the stars revolve around the earth.[26] As a result, he was imprisoned and later burned at the stake for heresy. Galileo was warned by the church that he also would be executed if he continued to share his scientific findings. As a result, he recanted Copernican notions and publicly claimed such findings to be lies. Kepler also was pressured and censored in his work which advanced the findings of Copernicus. He is reported to have sarcastically stated that since the sun-centered theory of the solar system was not acceptable to the church, and since the church's theory that the sun and the stars revolve around the earth was no longer acceptable to reason, the heavenly bodies would have to arrange themselves according to some third order. Accordingly, he argued that even the stars are not beyond orthodoxy.[27] Today, the topics of debate have changed, but the basis to the conflict remains the same—science versus religion.

In cases involving evolution and creation, the courts have made every effort to ensure that the wall of separation between church and state remains high and impregnable. To accomplish this objective, they have ruled that the study of evolution and related theories is "science" andd not a "religion of secular humanism." Correspondingly, they have ruled that creation science is "religion" and not science. Therefore, it has no valid place in the science curriculum.[28]

Notes

1. For a general discussion of the evolution controversy and related first amendment cases, see Michael M. Greenburg, "The Constitutional Issues Surrounding The Science-Religion Conflict in Public Schools: The Anti-evolution Controversy," **10 Pepperdine** L. Rev. 2, 461-87 (1983).
2. 289 S.W. 363 (Tenn. 1927).
3. **id.** at 366-67.
4. 393 U.S. 97 (1968).
5. **id.** at 100.
6. Watson v. Jones, 13 Wall. 679, 728 (1872).
7. Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 505 (1952).
8. Smith v. Mississippi, 242 So. 2d 692 (Miss. 1970).
9. **id.** at 697.
10. Wright v. Houston Independent School Dist., 366 F. Supp. 1208 (S.D. Tex. 1972).
11. **id.** at 1211.
12. Moore v. Gaston County Bd. of Educ., 357 F. Supp. 1037 (W.D.N.C. 1973).
13. **See e.g.,** Sweezy v. New Hampshire, 354 U.S. 234 (1957).
14. Moore v. Gaston County Bd. of Educ., 357 F. Supp. at 1041.
15. **id.**
16. **id.** at 1043.
17. 515 F.2d 485 (6th Cir. 1975). *See also,* Steele v. Waters, 527 S.W.2d 72 (Tenn. 1975).
18. A California court decision indirectly suggested that if the Tennessee statute only had required that evolution be identified as "theory" and had not mentioned religious publications or positions, it may have been permissible. In that case, **Seagraves v. California,** No. 278979 [(Cal. Super., Sacramento (1981)], the court required the state board of education to promulgate guidelines stipulating that evolution cannot be taught as dogma. In spite of this state decision and its rationale, the courts would, nevertheless, review not only a statute's wording, but also would examine its intent or motive. If the intent of the law were to discredit evolution in an effort to aggrandize creation science, the statute still would be held to violate the Constitution.

    In Indiana, the state textbook commission did not require that evolution be labelled a "theory," but its actions were equally controversial. The commission had placed a biology book developed by the Creation Science Research Center on the state approved list for use in public school biology classes. The text was adopted by several school districts and a law suit resulted. A state superior court ruled that such use of the text was a first amendment violation. Hendren v. Campbell, No. 5577-0139 (Ind. Super., Marion County, April 14, 1977).
19. Crowley v. Smithsonian Institution, 636 F.2d 738 (D.C. Cir. 1980).
20. Dale v. Board of Educ., Lemon Independent School Dist., 316 N.W.2d 108 (S.D. 1982).
21. 529 F. Supp. 1255 (E.D. Ark. 1982).
22. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).
23. According to the court, the essential characteristics of a science are (1) it is guided by natural law; (2) it has to be explained by reference to natural law; (3) it is testable against the empirical world; (4) its conclusions are tentative (i.e., are not necessarily the final word); and (5) it is falsifiable.
24. For a related discussion, *see* Michael F. Taylor, "McLean v. Board of Education: Creation Science's First Confrontation with the Establishment Clause," 36 **Ark. L. Rev.** 2, 326-37 (1982); Edward Testino, "Creation Science and the Balanced Treatment Acts: Examining McLean v. Board of Education and a Modest Prediction on Keith v. Department of Education," 7 **Okla. City L. Rev.** 1, 109-29 (1982); Steven O. Dean, First Amendment Concerns Regarding Balanced Science Instruction in Evolution and Creation," 10 **Ohio Northern Univ. L. Rev.** 1, 147-58 (1983).
25. Civil Action No. 81-4787 (U.S. Dist. Ct. for the Eastern Dist. of La., November 22, 1982).
26. Moore v. Gaston County Bd. of Educ., 357 F. Supp. at 1042.
27. **id.** at 1042-3.
28. **See** Clifford P. Hooker, "Creation Science Has No Legitimate Educational Purpose: McLean v. The Arkansas Board of Education," 1 **Education Law Reporter** 1069 (1982).