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# The Legal Setting

IN 1981 THE STATE legislature of Louisiana passed a law requiring that if “evolution-science” is taught in the public schools, the schools must also provide balanced treatment for something called “creation-science.” The statute was a direct challenge to the scientific orthodoxy of today, which is that all living things evolved by a gradual, natural process—from nonliving matter to simple microorganisms, leading eventually to man. Evolution is taught in the public schools (and presented in the media) not as a theory but as a fact, the “fact of evolution.” There are nonetheless many dissidents, some with advanced scientific degrees, who deny that evolution is a fact and who insist that an intelligent Creator caused all living things to come into being in furtherance of a purpose.

The conflict requires careful explanation, because the terms are confusing. The concept of creation in itself does not imply opposition to evolution, if evolution means only a gradual process by which one kind of living creature changes into something different. A

Creator might well have employed such a gradual process as a means of creation. "Evolution" contradicts "creation" only when it is explicitly or tacitly defined as *fully naturalistic evolution*—meaning evolution that is not directed by any purposeful intelligence.

Similarly, "creation" contradicts evolution only when it means *sudden creation*, rather than creation by progressive development. For example, the term "creation-science," as used in the Louisiana law, is commonly understood to refer to a movement of Christian fundamentalists based upon an extremely literal interpretation of the Bible. Creation-scientists do not merely insist that life was *created*; they insist that the job was completed in six days no more than ten thousand years ago, and that all evolution since that time has involved trivial modifications rather than basic changes. Because creation-science has been the subject of so much controversy and media attention, many people assume that anyone who advocates "creation" endorses the "young earth" position and attributes the existence of fossils to Noah's flood. Clearing up that confusion is one of the purposes of this book.<sup>1</sup>

The Louisiana statute and comparable laws in other states grew out of the long-standing efforts of Christian fundamentalists to reassert the scientific vitality of the Biblical narrative of creation against its Darwinist rival. The great landmark in this Bible-science conflict was the famous *Scopes* case, the "monkey trial" of the 1920s, which most Americans know in the legendary version portrayed in the play and movie *Inherit the Wind*. The legend tells of religious fanatics who invade a school classroom to persecute an inoffensive science teacher, and of a heroic defense lawyer who symbolizes reason itself in its endless battle against superstition.

As with many legendary incidents the historical record is more complex. The Tennessee legislature had passed as a symbolic measure a statute prohibiting the teaching of evolution, which the

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<sup>1</sup> Clearing up confusion requires a careful and consistent use of terms. In this book, "creation-science" refers to young-earth, six-day special creation. "Creationism" means belief in creation in a more general sense. Persons who believe that the earth is billions of years old, and that simple forms of life evolved gradually to become more complex forms including humans, are "creationists" if they believe that a supernatural Creator not only initiated this process but in some meaningful sense *controls* it in furtherance of a purpose. As we shall see, "evolution" (in contemporary scientific usage) excludes not just creation-science but creationism in the broad sense. By "Darwinism" I mean fully naturalistic evolution, involving chance mechanisms guided by natural selection.

governor signed only with the explicit understanding that the ban would not be enforced. Opponents of the law (and some people who just wanted to put Dayton, Tennessee, on the map) engineered a test case. A former substitute teacher named Scopes, who wasn't sure whether he had ever actually *taught* evolution, volunteered to be the defendant.

The case became a media circus because of the colorful attorneys involved. William Jennings Bryan, three-time Democratic presidential candidate and secretary of state under President Woodrow Wilson, led the prosecution. Bryan was a Bible believer but not an uncompromising literalist, in that he thought that the "days" of Genesis referred not to 24-hour periods but to historical ages of indefinite duration. He opposed Darwinism largely because he thought that its acceptance had encouraged the ethic of ruthless competition that underlay such evils as German militarism and robber baron capitalism.

The Scopes defense team was led by the famous criminal lawyer and agnostic lecturer Clarence Darrow. Darrow maneuvered Bryan into taking the stand as an expert witness on the Bible and humiliated him in a devastating cross-examination. Having achieved his main purpose, Darrow admitted that his client had violated the statute and invited the jury to convict. The trial thus ended in a conviction and a nominal fine of \$100. On appeal, the Tennessee supreme court threw out the fine on a technicality but held the statute constitutional. From a legal standpoint the outcome was inconclusive, but as presented to the world by the sarcastic journalist H. L. Mencken, and later by Broadway and Hollywood, the "monkey trial" was a public relations triumph for Darwinism.

The scientific establishment was not exactly covering itself with glory at the time, however. Although he did not appear at the trial, the principal spokesman for evolution during the 1920s was Henry Fairfield Osborn, Director of the American Museum of Natural History. Osborn relied heavily upon the notorious Piltdown Man fossil, now known to be a fraud, and he was delighted to confirm the discovery of a supposedly pre-human fossil tooth by the paleontologist Harold Cooke in Bryan's home state of Nebraska. Thereafter Osborn prominently featured "Nebraska Man" (scientific designation: *Hesperopithecus haroldcookii*) in his antifundamentalist newspaper articles and radio broadcasts, until the tooth was discovered

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ISBN 0-8308-1324-1



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