

Creationism in the United States

IV. The Aftermath of *Epperson v. Arkansas*

Randy Moore

Evolution should be taught as a theory. Teaching it as a fact, however, is a different matter.—Harry Shelton, a student of John Scopes who testified at Scopes' trial, 1967

This monkey mythology of Darwin is the cause of permissiveness, promiscuity, pills, prophylactics, perversions, pregnancies, abortions, pornotherapy, pollution, poisoning, and the proliferation of crimes of all types.—Braswell Deen, Chief Justice of the Georgia Circuit Court of Appeals, 1981

IN 1968, *Epperson v. Arkansas* legalized the teaching of evolution in Arkansas, ruled that laws banning the teaching of evolution were unconstitutional, and made it unconstitutional to ban the instruction of one theory and not another. That is, *Epperson v. Arkansas* outlawed attempts to prevent public school teachers from discussing evolution, and announced that evolution is not religion (Moore 1998c, Levy 1986). Subsequent court rulings have upheld the right of a school district to require a teacher to teach evolution and not creationism. For example,

In *Webster v. New Lenox School District #122* (917 F.2d 1004, 1990), which relied heavily on *Edwards v. Aguillard* (Moore 1999), the Seventh Circuit Court of Appeals declared that 1) a teacher does not have a First Amendment right to teach creationism in a public school, and 2) a school district may ban a teacher from teaching creationism (i.e., the teaching of creationism violates the First Amendment).

In *John E. Peloza v. Capistrano Unified School District* (1994, 37 F. 3d 517), the Ninth Circuit Court of Appeals declared that because evolution is not a religion, requiring an instructor to teach evolution does not violate the Establishment Clause of the U.S. Constitution.¹ That is, a teacher's First Amendment right to religious freedom is not violated by a school district's requirement that evolution be taught in biology classes.

Epperson v. Arkansas—the first legal challenge to an anti-evolution law since the Scopes trial in 1925—was a death knell for other anti-evolution laws. For

¹For more about these cases, see <http://natscncied.org/voicont.htm#legal>.

Randy Moore is Professor of Biology and Dean of the College of Arts & Sciences at the University of Louisville, Louisville, KY 40292; e-mail: randy.moore@louisville.edu

example, the legal drive to repeal the Mississippi anti-evolution law began in 1969 when a citizen of Jackson filed suit in state court complaining that the law denied her daughter's freedom to learn and violated the Establishment Clause of the Constitution. Although some legislators opposed the repeal (one legislator urged his colleagues "to hold the line as a Christian state"), the Mississippi Supreme Court accepted the inevitable: On 21 December 1970, the Mississippi Supreme Court blamed *Epperson v. Arkansas* for unanimously declaring its anti-evolution statute—the nation's last—to be "void and of no effect."

Despite its tremendous impact, *Epperson v. Arkansas* left several important issues unresolved. For example, *Epperson v. Arkansas* did not address the legitimacy of what would come to be known as "creation science," nor did it address possible restrictions on the nature of, or the constitutionality of teaching creationism. Nevertheless, *Epperson v. Arkansas* outraged conservative Christians and galvanized them into action (Eve & Harrold 1991). Feeling vulnerable, threatened by the BSCS-driven return of evolution to textbooks and the curriculum (Moore 1998b, d), and convinced that their beliefs were not being protected, creationists turned to the courts for relief, as had leaders of earlier social movements. There, creationists became involved in a variety of legal and political skirmishes:

1970 witnessed the first lawsuit initiated by creationists. In that case, the mother of Rita Wright sued the Houston Independent School District, claiming that the schools had violated her daughter's constitutional rights by teaching evolution "without critical analysis and without reference to other theories which purport to explain the origin of the human species." Wright claimed that the schools' actions endorsed a "religion of secularism" that implied that beliefs in creationism are wrong, thereby inhibiting her daughter's free exercise of religion. Wright's suit (*Wright v. Houston Independent School District*; 366 F. Supp. 1208, 1208-09, S.D. Tex. 1972) was dismissed before reaching trial when Judge Woodrow Seals ruled that the free exercise of religion was not accompanied by a right to be insulated from scientific findings incompatible with one's beliefs.

Teachers of science in the public schools should not be expected to avoid the discussion of every scientific issue on which some religions claim expertise.

The *Wright* decision made it clear that scientific findings can be taught, even if those findings are offensive. A

federal appeals court issued an unsigned opinion a year later that backed Seals' decision. Subsequent cases to restrict the teaching of evolution were dismissed by repeated reaffirmation of the *Wright* decision.

In 1969, the California Board of Education was reviewing a draft of *The Scientific Framework for California Schools*, a set of curriculum guidelines for its public schools prepared by a committee of scientists and teachers. *Framework* contained two paragraphs about evolution. Vernon Grose, a Pentecostal untrained in biology and who claimed that his "citizenship is in heaven," was outraged by the paragraphs about evolution. Claiming that he "felt something like Jesus did when he overthrew the tables and the money changers in the temple," Grose announced that the evolutionary bias of *Framework* was a threat to "our national heritage." He sent a 13-page memo to the Board of Education, after which the Board included a formal recommendation for the teaching of creationism in California's public schools. The scientists who advised the Board resigned, and various groups (including one consisting of 19 Nobel Laureates) condemned the creationists' ignorance of science. Nevertheless, publishers quickly changed their books to include creationism; one proposed replacing the description of Leaky's archeological discoveries with a reproduction of Michelangelo's Sistine Chapel painting of the Creation and a drawing of Moses. Another publisher produced a book claiming that science says nothing about who made the world and why; one chapter even included an investigation of the biblical account of creation. The Committee screened many books, changing "evolved" to "appeared," deleting words such as

"ancestors" and "descendants," and adding qualifiers such as "according to one point of view" and "it is believed, in the theory of evolution" (see discussion in Nelkin 1982). Many scientists were relieved that the changes were not more drastic. By 1974, a new method of evaluating educational materials resulted in the elimination of creationist books, and in May, 1974 the board reversed its earlier decision to include creationism in textbooks (Nelkin 1982). Frustrated and bitter that they could not change the guidelines, the creationists repeated William Jennings Bryan's majoritarian arguments (Kelly Segraves, as cited in Nelkin 1982):

The public schools are not controlled by the public nor does the public have any say in the educational process. It seems that the public through taxes simply pays for that which they do not want.

In 1970, prompted by the California State Board of Education's inclusion of creation and evolution as historical scientific theories, the Creation Science Research Center was formed by Nell Segraves, Kelly Segraves, and Henry Morris. Soon thereafter, Morris' Creation Research Society produced a high school biology textbook titled *Biology: A Search for Order in Complexity*. That book, which promoted the biblical story of creation and declared that "There is no way to support the doctrine of evolution," was offered to teachers interested in a "balanced treatment" of studies of origins. The use of *Biology: A Search for Order in Complexity* in public schools was subsequently declared unconstitutional because it violated the separation of church and state (see discussion in Moore 1998d).

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In 1972, largely in response to events in California, the National Academy of Sciences, the National Science Teachers Association, and the National Association of Biology Teachers (NABT) began campaigns opposing requirements to teach scientific creationism. NABT retained legal counsel in California, hoping to prevent the California Board of Education from implementing the pro-creationism *Framework*. In the following months, NABT stirred the interest of the scientific community, and received \$12,000 in donations for its controversial "Fund for Freedom in Science Teaching." But NABT soon met with a strong backlash from its members who were creationists. In response to these members, NABT sponsored a creationism panel at its national meeting, which was attended by 1500 biologists. William Mayer of the BSCS, in a letter published in *The American Biology Teacher* (April, 1974, p. 246), condemned NABT's actions, labeling the creationists as "religious missionaries . . . smuggling religious dogma into classrooms in a Trojan horse." Mayer branded NABT as "schizoid" because it fought the inclusion of creationists' ideas via legal means while simultaneously providing them with a forum at meetings.² Soon thereafter, BSCS was also condemned by scientists for having "sold out" by producing a sound-slide program titled "An Inquiry into the Origin of Man: Science and Religion" (see discussion in Nelkin 1982).

In 1972, William Willoughby (an evangelist and the religion editor of the conservative *Washington Evening Star*), acting "in the interest of forty million evangelistic Christians in the United States," sued H. Guyton Stever (director of the National Science Foundation; NSF) and the Board of Regents of the University of Colorado for funding the pro-evolution BSCS textbooks, claiming that creationists should receive the same amount of money "for the promulgation of the creationist theory of the origin of man." Willoughby, who claimed that the government was establishing "secular humanism" as "the official religion of the United States," decried the "intellectual snobbery" of scientists and opposed using tax revenues to support educational programs that are "one-sided, biased, and damaging" to religious views. Willoughby received much public support, but his suit (*Willoughby v. Stever*; Civil Action No. 1574-72, D.D.C. August 25, 1972) was dismissed in May, 1973 by the U.S. District Court in Washington, DC on the grounds that 1) NSF had been disseminating scientific findings, not promoting secular humanism, and 2) the First Amendment does not allow the state to require that teaching be tailored to particular religious beliefs (see discussion in Nelkin 1982).

In 1973, a group of five Tennessee legislators—all of whom had witnessed the repeal of the Butler Law but none of whom had voted for the repeal—introduced a "Genesis Bill" that required biology textbooks 1) to identify evolution as a theory rather than a "scientific fact," and 2) to give "equal emphasis" to "the Genesis account in the Bible."³ This bill, which declared the Bible to be a reference book for biology, was the

brainchild of a biology professor who was a member of the Creation Research Society; it neither banned evolution nor promoted scientific creationism, yet defended creationists by qualifying the teaching of evolution. Amidst overwhelming public support and claims by legislators "that the Biblical account of creation is fact, not theory," the bill passed easily (by votes of 69-15 in the Tennessee House of Representatives and 28-1 in the Tennessee Senate) and became law one week later when Governor Winfield Dunn refused to either sign or veto the bill (Daughtrey 1973). The law was promptly challenged in federal court by NABT and three co-plaintiffs (two professors from the University of Tennessee and a public school teacher).⁴ NABT contended that the bill interfered with free speech, freedom of religion, and freedom of the press as guaranteed by the First and Fourteenth Amendments (see Nelkin 1982). In 1975—50 years after the Scopes trial—Tennessee's Genesis Bill was struck down because it violated the Establishment Clause of the U.S. Constitution by mandating the instruction of a religious doctrine in public schools. The overturning of the Genesis Bill (*Daniel v. Waters*; 515 F. 2d 485, 6th Cir. 1975; see Moore 1998d) caused many "equal time for religion" bills to die quiet deaths in several state legislatures (Larson 1989; Moore 1998b, c). For example, Georgia had passed an equal-time bill in 1973, but had tabled the legislation while the Divine Creation Committee of the Georgia House of Representatives held hearings. The Committee reported that the public wanted all theories of creation to be available in public schools, but recommended that the issue be dealt with via textbook selection rather than legislation. Soon thereafter, the "Science and Creation Series" was approved for state adoption.

During the 1970s there were protests throughout the United States about a federally funded, pro-evolution curriculum titled *MACOS (Man: A Course of Study)*. *MACOS* had won national awards and had been praised by teachers, students and parents as a major innovation in science teaching. Nevertheless, hundreds of parents "stormed the schools" and argued that equal time be given to traditional views (Nelkin 1982). Many people equated the *MACOS* program with communism. Many of the opponents of the *MACOS* program had also opposed the introduction of the BSCS books.

In 1978, Dale Crowley and the National Foundation for Fairness in Education sued the Smithsonian Foundation in U.S. District Court to ban an exhibit titled "The Emergence of Man" that dealt with human origins. Crowley opposed the federal support for the evolution-based exhibit. *Crowley v. Smithsonian Institution* (462 F. Supp. 725, 725, D.D.C. 1978) was dismissed on the same grounds as *Willoughby v. Stever*. Like the *Willoughby v. Stever* decision, the *Crowley v. Smithsonian Institution* decision was supported in appeals courts. The U.S. Supreme Court refused further review of both cases.

²By 1973, biologists became increasingly reluctant to acknowledge creationism; NABT's 1973 annual meeting did not mention the controversy (Nelkin 1982).

³Unlike Tennessee's earlier anti-evolution law that was challenged by John Scopes (Moore 1998a), the Genesis Bill was restricted to textbooks; teachers were not mentioned in the legislation.

⁴One month later, and unbeknownst to NABT, America United for the Separation of Church and State, Inc. filed a similar suit in the state chancery court in Nashville. This suit delayed action in NABT's suit, which prompted NABT to appeal the case to the U.S. Supreme Court. The Supreme Court refused to hear the case, soon after which a court of appeals in Tennessee overturned the Genesis Bill (Moore 1998d).

In the 1970s, the BSCS textbooks were banned in Texas. By 1974, all textbooks in Texas were required to prominently display a disclaimer that evolution is a theory and one of the several explanations of origins.⁵ These disclaimers were subsequently removed. When, in 1989, the Texas Education Agency proposed requiring biology textbooks to include the "scientific theory of evolution," one witness at a hearing told the board members that

God is watching you. Please do not provoke his wrath.

In 1979, the Creation Science Research Center's Kelly Segraves petitioned a California Court to overturn the California State Board of Education's *The Scientific Framework for California Schools* because the document was too dogmatic. When Segraves' petition was denied, Segraves sued in state court, claiming that the state was violating his children's rights because evolution was taught dogmatically as fact and that classroom discussions of evolution prohibited his and his children's free exercise of religion. The plaintiffs had school children plead that they should not be taught that their religious beliefs are wrong. Segraves objected to several features of a textbook titled *Principles of Science*, including a chart listing successive geologic periods over the last 4.5 billion years (the chart also placed the development of different life forms in different periods), because those features were "clearly in

opposition to [their] Christian faith." During the trial, however, the creationists abandoned their request for equal treatment of the biblical account of creation; soon thereafter, they reduced their complaint to details regarding the wording of *Framework*. In *Segraves v. State of California* (No. 278978, Sacramento Superior Court, 1981), the Sacramento Superior Court 1) instructed the California Board of Education to circulate a statement stressing the need to eliminate dogmatism and include qualifying statements about speculations on the origins of life, and 2) found that *Framework* gave sufficient accommodation to the views of Segraves and his children.⁶ An appeals court acknowledged the balance between religious beliefs and the right to

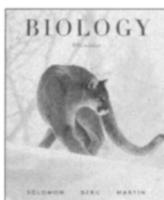
⁵In 1963, Nell Segraves (Kelly's mother, a Baptist, and a member of the Bible Science Association and the Creation Research Society) had petitioned the California State Board of Education to require that evolution be presented as a theory in all state-approved textbooks; this was done to "seek justice for the Christian child." The petition was based on the 1963 U.S. Supreme Court *Abington School District v. Schempp* decision that declared it is unconstitutional to force nonbelieving children to read prayers in school. Segraves used this decision to claim that if it is unconstitutional "to teach God in the school," then it must also be unconstitutional "to teach the absence of God." Her effort failed. Later, Nell and her son Kelly (a Baptist preacher) became directors of the Creation Science Research Center (CSRC), which fought evolution, sex education, women's rights, and gay rights. CSRC studied issues such as the relation of teaching evolution to the incidence of venereal diseases, and reported in 1977 that "the results of evolutionary interpretations of scientific data result in a widespread breakdown in law and order" that "leads to divorce, abortion, and rampant venereal disease" (see discussion in Numbers 1992).

⁶In 1975, 80% of the biology textbooks adopted for approval by the Texas Board of Education did not mention evolution (Webb 1994). For more about the disclaimers, see Moore (1998a).



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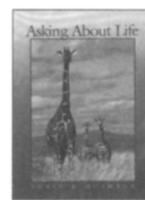
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disseminate knowledge, through schools and other institutions, but precluded a courtroom trial for religious challenges to the teaching of evolution. In 1989, the anti-dogmatism policy was expanded to include all areas of science, not just those about origins.

In light of these decisions, creationists concluded that their only hope was to mount a credible *scientific* challenge to evolution. Realizing that the teaching of religious beliefs ("creationism" and similar terms) would violate the Establishment Clause of the Constitution, creationists repackaged the Bible as "creation science"⁷ and demanded "equal time" and "balanced treatment" for creationism in public schools. Although Tennessee's Genesis Bill in 1973 had mandated that biology textbooks give equal emphasis to alternative theories of origins (especially the Genesis account), the most popular "balanced treatment" strategy took shape in 1978, when Yale law student and avowed creationist Wendell Bird presented an award-winning legal justification for teaching evolution and creation science in public schools (Bird 1978; Bird would later make similar arguments to the U.S. Supreme Court; see Moore 1999).⁸ Bird built his "equal time" argument on Supreme Court decisions which recognized the rights of religious minorities such as Jehovah's Witnesses and the Amish to practice their beliefs without state interference (Irons 1988). This strategy was remarkably effective, for it changed the discussion from the realm of science to the realm of popular idiom (Taylor & Condit 1988). In doing so, Bird held the teaching of evolution not to the scientific standard of testable evidence, but rather to the political concept of fairness and equal time.

After graduating from law school, Bird joined the Institute for Creation Research (ICR)⁹ as a legal advi-

sor. There, he used his award-winning article as a basis for revising and providing a constitutional justification for ICR's "equal time" resolution, which Henry Morris had drafted early in 1975 (Larson 1989). Bird's revision was a Baconian effort to equate creationism with science and was based on several key arguments (Bird 1979):

Creationism is as scientific as evolution, and evolution is as religious as creationism.

Because scientific creationism is science rather than religion, it is not subject to Establishment-Clause challenges.

Although teaching only creationism may violate religious freedoms, the presentation of "both the theory of evolution and the theory of creationism would not [violate religious freedoms] because it would involve presenting the scientific evidence for each theory rather than any religious doctrine."

Presentations of both theories "must be limited to scientific evidence and must not include religious doctrine."

There must be a "balanced treatment" of both theories in classroom lectures, library materials, and other educational programs. Neutralizing the public schools' instruction with a "balanced treatment" of origins would not advance religion.

The failure to teach scientific creationism violates the First Amendment because it gives "preference to religious Liberalism, Humanism, and other religious faiths" (Bird 1979). It does this by implying an official disapproval of some religious beliefs while simultaneously putting the prestige of science and the state behind other religions.

Teaching scientific creationism would ensure the State's neutrality, for both major theories would be taught.¹⁰ This, in turn, would ensure academic freedom, a well-rounded scientific education, and the protection of everyone's First Amendment rights.

Like many of those before him, Bird invoked the legacy of William Jennings Bryan by reminding people of the popularity of the "balanced treatment" proposition:

Most citizens, whether they personally believe in evolution or creation, favor balanced treatment in public schools.

⁷In the 1970s and 1980s, "creation science" became increasingly popular. On occasion, the anti-evolution sentiment that accompanies creation science influenced federal funding for science. For example, in 1976, Arizona Congressman John Conlan—partially in response to complaints about MACOS—sponsored an amendment to the National Defense Education Act that would "prohibit federal funding of any curriculum project with evolutionary content or implications." The amendment passed by a vote of 222-174 (Taylor 1992). Although the Senate narrowly rejected the amendment, funding for some projects (including many at the National Science Foundation) was delayed pending a review of their "evolutionary content." Today, NSF remains afraid of the evolution-creationism controversy; talks about the controversy are seldom publicized, administrators often refuse to discuss the controversy, and the word *evolution* is often expunged from lists of funded projects that are submitted to Congress (e.g., see McDonald 1986; Zimmerman 1989; Eve & Harrold 1991).

⁸At Yale, Bird studied under later Supreme Court nominee Robert Bork (Eve & Harrold 1991).

⁹ICR (<http://www.icr.org>) originated at an affiliate of the Christian Heritage College, which was established as an unaccredited Baptist college linked with the Moral Majority in San Diego, CA (see Gilkey 1985). Christian Heritage College is presided over by Rev. Tim LaHaye, a long-time associate of Moral Majority leader Jerry Falwell and author of books such as *The Battle for the Schools*. ICR has been supported by various Baptist churches and was established to address the "urgent need for our nation to return to belief in a personal, omnipotent Creator, who has a purpose for His creation and to whom all people must eventually give

account." A goal of ICR is "a revival of belief in special creation as the true explanation of the origin of the world." The Institute publishes a variety of anti-evolution books (e.g., Gish 1995; Bird 1989) and offers graduate degrees from a "somewhat unique perspective." ICR often helps with local efforts to mandate the teaching of creationism (Berman 1997). The president of ICR is John Morris (Henry Morris' son), who searches for Noah's ark and promotes the alleged coexistence of dinosaur tracks and human footprints in the Paluxy River bed of Texas. His *The Young Earth* (Morris 1994) includes 70 pages of overhead projector masters designed to "be shared with your church or Bible study groups."

¹⁰The emphasis on *neutrality* in this and other cases involving religion came from the 1963 U.S. Supreme Court ruling that mandatory Bible readings and prayers in public schools were unconstitutional. This decision, prompted by efforts of atheist Madeline Murray, endorsed a policy of governmental *neutrality* (see Numbers 1992). U.S. Supreme Court Justice Abe Fortas' opinion in *Epperson v. Arkansas* (Moore 1988c) overturned the ban on the teaching of evolution because the anti-evolution law's primary effect was not neutral. What, argued the creationists, would be more neutral than "balanced time" and "equal treatment" of creationism and evolution?

ICR distributed thousands of copies of Bird's resolution in mid-1979, each with a disclaimer that the language was a suggested resolution for boards of education, not legislation to be enacted as law (Larson 1989). Bird's efforts prompted several fundamentalist organizations (e.g., Henry Morris' ICR, the Bible-Science Association; see Scott 1994) to produce propaganda for convincing school boards, administrators and teachers that creationism should be taught in public schools "to protect academic freedom," to protect freedom of religion, and to bar discrimination. The religious agenda of these publications was always obvious. For example, ICR began publishing two versions of their textbooks, one for Christian schools and one for public schools. The versions were identical except the public school editions avoided specific references to God, the Bible, and Noah. The "creative work of God" became "Creation," and "God" became the "Master Designer" (see discussion in Nelkin 1982). Other publications blamed the teaching of evolution for societal problems such as the spread of venereal disease.

Creationists' demands for "equal time" and "balanced treatment" in public schools received (and continue to receive) an inexplicably favorable public response (Taylor & Condit 1988); language supporting such treatments of evolution and creationism appeared in textbook adoption guidelines in several

states (e.g., the Texas Educational Agency told publishers that books submitted for adoption should discuss "scientific evidence of evolution and reliable scientific theories to the contrary"; see Scott 1994). By the late 1970s, tens of state legislatures were considering "equal time" laws. Arkansas and Louisiana were among the states that passed "balanced treatment" statutes, which required "creation science" to be taught in schools in which evolution was taught and forbade the teaching of evolution unless accompanied by instruction in creation science.

The first challenge of an "equal time" law would occur in Susan Epperson's home state of Arkansas.

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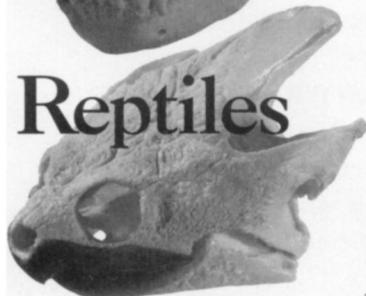
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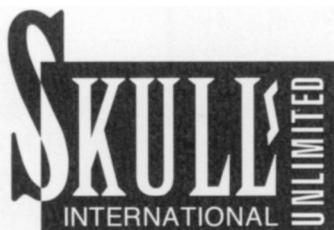
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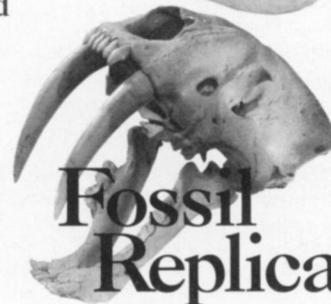
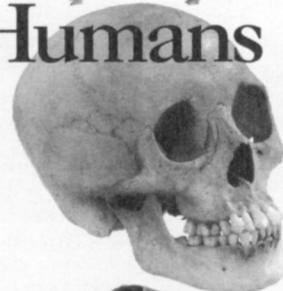
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