CONSTITUTIONAL RIGHTS FOUNDATION

BILL OF RIGHTS IN ACTION

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The Scopes Trial: Who Decides What Gets Taught in the Classroom?

One of the most famous trials in American history took place in a small town in Tennessee in 1925. On trial was a high-school teacher, John Scopes. The charge against him: teaching evolution.

On July 10, 1925, hundreds of reporters gathered in Dayton, Tennessee. They were covering the trial of John Scopes, a 24-year-old science teacher and part-time football coach. Scopes had been arrested for violating a Tennessee law that made it unlawful "to teach any theory that denies the Story of Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animal." The Scopes trial riveted national attention and is one of the most famous trials of the century.

Attorney Clarence Darrow (standing on the right) questions the witness William Jennings Bryan in the Scopes trial. The judge had moved the trial outdoors because he was afraid the floor might collapse. (Smithsonian Institution Archives, Record Unit 7091, image #2005-26202)

Evolution Versus Religion

In 1859 in Great Britain, Charles Darwin published *On the Origin of the Species*. In his book, Darwin laid out evidence that living things had evolved from common ancestors through a mechanism he called "natural selection." While most scientists responded positively to Darwin's theory of evolution, it provoked anger among those who saw it as an attack on their religious beliefs. In 1874, a Princeton theologian named Charles Hodge wrote a book titled *What Is Darwinism?* It answered that question simply: "It is atheism [and] utterly inconsistent with the Scriptures."

In the United States, an anti-evolution movement began in the early 1920s. Many leaders of the new campaign had been involved in the Prohibition movement. Prohibitionists had succeeded in banning the sale of alcohol by getting the 18th Amendment ratified in 1919.

Other leaders in the anti-evolution movement were members of the "fundamentalist" Christian movement, which had begun to gather steam after World War I. The outcome of the war caused widespread disillusionment, and many were concerned about a perceived collapse in public morals. Fundamentalists shared a belief in biblical literalism. They opposed teaching evolution because of the harm they believed it would do to the spiritual and moral development of students. "Ramming poison down the throats

(Continued on next page)

U S HISTORY

The Establishment of Religion

This edition of *Bill of Rights in Action* examines issues on the relationship of religion and government. The first article explores the Scopes trial, the famous trial pitting William Jennings Bryan and Clarence Darrow in a courtroom contest over a Tennessee law banning the teaching of evolution. The second article looks at the development of law in this area since the Scopes trial. The third article examines Turkey and its attempt to create a secular democracy in the Middle East.

U.S. History: The Scopes Trial

U.S. Government: More Monkey Trials

World History: Turkey: An Evolving Democracy in the Middle East

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of our children is nothing compared with damning their souls with the teaching of evolution," claimed one activist.

Believing the teaching of evolution posed a danger, the fundamentalists sought a legal remedy. The first anti-evolution law passed with little notice in Oklahoma in March 1923. Two months later, Florida adopted a resolution on evolution. It stated that it was improper for any public school teacher "to teach as true Darwinism or any other hypothesis that links man in blood relation to any form of lower life."

The Florida resolution had been proposed by William Jennings Bryan. He had served as secretary of state and had run three times for president as the nominee of the Democratic Party. In his later years, he emerged as a major opponent of evolution. In 1924, Bryan went to Tennessee and gave a speech in the state capital against teaching evolution. Most people, he had concluded, "do not believe in the ape theory." He favored laws against teaching evolution because "those who pay the taxes have a right to determine what is taught; the hand that writes the paycheck rules the school." Thousands of copies of his speeches were distributed to legislators and state residents. One year later, on March 23, 1925, Tennessee became the third state to pass an anti-evolution law. It was the first state in which the law was tested in court.

The Monkey Trial Unfolds

On May 4, 1925, the *Chattanooga Daily Times* printed a statement by the American Civil Liberties Union:

> We are looking for a Tennessee teacher who is willing to accept our services in testing this law in the courts . . . . Distinguished counsel have volunteered their services. All we need now is a willing client.

Forty miles north of Chattanooga, in the small rural town of Dayton, George Rappelyea, a local businessman, read the ACLU announcement. He believed that staging the test case in Dayton might boost the local economy. Rappelyea convinced other businessmen that the case would bring Dayton much-needed publicity. At the soda fountain in Fred Robinson's drugstore, he talked to John Scopes, who taught science in the Dayton high school. Scopes was popular in the town and did not intend to live there permanently.

Scopes told Rappelyea that he had assigned students to read about evolution in the state-approved biology text. Rappelyea asked him to be the defendant in the case. After Scopes agreed, Rappelyea called a justice of the peace and swore out a warrant for Scopes' arrest.

The charge in the case was that John Scopes had violated the Tennessee anti-evolution law by using a textbook that included material about human evolution. The penalty for breaking the law was $100. As one local lawyer said to a reporter, this was a simple misdemeanor case that any judge should be able to dispose of in a few hours. But that was not to be. The ACLU wanted to make the Scopes case the centerpiece of its campaign for freedom of speech. Roger Baldwin, the founder of the ACLU, said: "We shall take the Scopes case to the United States Supreme Court if necessary to establish that a teacher may tell the truth without being thrown in jail."

Clarence Darrow, one of the most famous trial lawyers in the country, volunteered his services to the ACLU. He agreed to serve without pay—the only time in his career that he did so.

There was similar passion among the fundamentalists who believed that Darwinism undermined belief in the Bible. Raising money to prosecute Scopes, Methodist ministers in Dayton preached: "We do not believe that the right of freedom or religious liberty warrants any man . . . to teach our children any theory which has as its purpose or tendency the discrediting of our religion."

William Jennings Bryan agreed to join the prosecution team. Bryan was a hugely popular orator. During the winter, from December to May, he drew an average of 4,000 people to his Sunday Bible classes at Royal Palm Park, Florida. Bryan went to Dayton not so much as a lawyer going to court, but as a preacher going to a revival meeting. He saw the Scopes trial as a "battle royal" in defense of the faith.

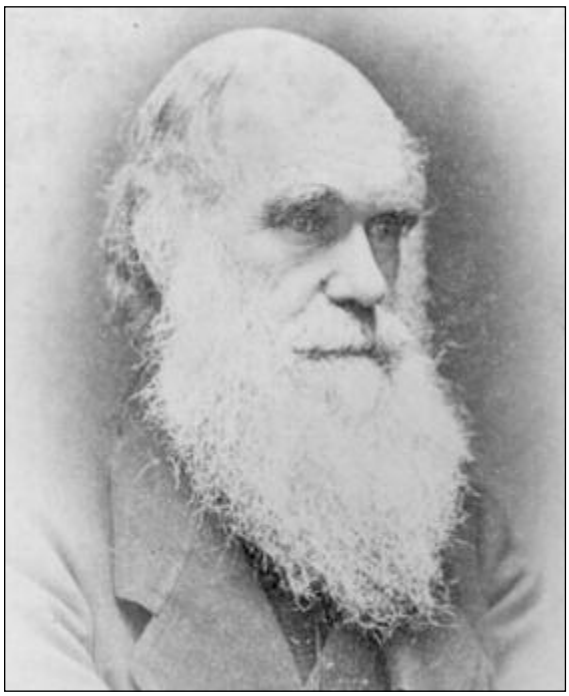
In fact, the trial was more of a carnival than a war. Journalists came to town in huge numbers. They had already been writing about the upcoming "monkey trial" for weeks. The townspeople organized a "Scopes Trial Entertainment Committee" to help arrange accommodations. Shop windows were hung with pictures of monkeys and apes, and a policeman cruised town with a sign "Monkeyville Police" on his motorcycle. When the court adjourned at noon on the first day of trial, four steers were roasting in a barbeque pit behind the courthouse and hot-dog and soft-drink stands lined the main street.

Who Won the Trial?

Coming into court, Darrow and Bryan had opposing strategies and goals. As an agnostic who did not believe in

traditional religion, Darrow wanted to free people from unthinking belief in biblical truth and encourage skepticism and scientific inquiry. To this end, he put together a group of eight distinguished scientists and theologians who would explain the scientific basis for evolution and show that it did not conflict with the Bible.

Bryan's strategy was far different. He would have liked to present scientific experts to show the flaws and gaps in evolutionary theory, but could not find any distinguished scientists who would agree to testify. Instead, he focused on the argument for majority rule. In a letter to one of the prosecutors, he said: "This is the *easiest* case to explain I have ever found. The *right* of the *people* speaking through the legislature to control the schools which they create and support is the real issue as I see it."



Charles Darwin (1809–1882) developed the theory of evolution in his book On the Origin of the Species. *(Library of Congress)*

Early in the trial, prosecution lawyers objected to the defense calling any expert witnesses. They argued that expert testimony would be irrelevant because the law banned any teaching about human evolution. It did not matter whether or not it conflicted with the Bible or was scientifically valid. The judge agreed and ruled that the defense would not be allowed to present their expert witnesses to the jury. The judge also denied a motion by the defense challenging the constitutionality of the law. The law, according to the judge, did not violate any teacher's rights. "The relations between the teacher and his employer are purely contractual and if his conscience constrains him to teach the evolution theory, he can find opportunities elsewhere."

The only issue that remained was whether Scopes had violated the law. But Darrow had one last strategy to show that the Bible could not be interpreted literally. On the last day of trial, he called Bryan as an expert on the Bible. Bryan, who had been teaching the Bible for years, could not resist. By then the trial had been moved outside, because the judge was worried that the floor of the courtroom might collapse. So Bryan took the stand on the courthouse lawn, surrounded by 2,000 people sitting on benches under the maple trees and sitting cross-legged on the grass.

What ensued was a debacle for the witness. Darrow posed numerous questions about events recounted in the Book of Genesis: Did Jonah live inside a whale for three days? How could Joshua lengthen the day by making the sun stand still? Bryan had no good answers to the questions, and the interactions grew nasty. When lawyers tried to stop the questioning, Bryan shouted: "I am simply trying to protect the word of God against the greatest atheist or agnostic in the United States."

"I object to your statement," Darrow shouted back. "I am examining your fool ideas that no intelligent Christian in the world believes."

After two hours, the judge adjourned the court. The next day, the defense conceded that it had no defense to the charge that Scopes had taught evolution. The judge then sent the case to the jury. It returned nine minutes later with a verdict of guilty.

The ACLU appealed the decision to the Tennessee Supreme Court, arguing that the statute was unconstitutional. The court narrowly upheld the constitutionality of the statute. But it overturned the verdict on a technicality, which ruled out any chance of taking the case to the U.S. Supreme Court.

Neither side had achieved a clear victory in the case. The jury had found Scopes guilty, but his conviction was overturned on appeal. Bryan had taken a beating in court and was widely ridiculed in the national press. Five days after the trial, he died in his sleep. The ACLU had brought the case to get a definitive ruling in favor of free speech and against anti-evolution laws. The Scopes case failed to achieve this goal.

Forty Years Later

Two more states passed anti-evolution bills after the Scopes trial: Mississippi (in 1926) and Arkansas (in 1928). Various state and local school boards also passed measures barring the use of textbooks that included material on evolution. But the laws were never enforced, and the ACLU couldn't find anyone to challenge them.

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Forty years later, Susan Epperson, a 10th-grade biology teacher in Little Rock, Arkansas, decided to take up the challenge. Epperson was teaching from a new edition of a textbook titled *Modern Biology*, which discussed the fossil evidence for human evolution. After several pages, the book concluded that: "It is believed by many anthropologists that, although man evolved along separate lines from primates, the two forms may have had a common generalized ancestor in the remote past." The text was thus in direct conflict with the Arkansas law that barred teaching "the theory or doctrine that mankind ascended or descended from a lower order of animals."

Backed by the Arkansas Education Association, Epperson filed a complaint in December 1965. She asserted that the anti-evolution law violated her freedom of speech and other constitutional rights. After a trial that took just over two hours, the judge ruled that the law was unconstitutional. The appellate court disagreed, and the case went to the U.S. Supreme Court in 1968.

The Supreme Court based its decision on the First Amendment, specifically on its ban against the government establishing a religion. Over the years, the Supreme Court had decided a number of cases on the First Amendment's establishment clause. In 1947, the court ruled that a state may not pass a law that aids or prefers one religion over another. In 1963, in *Abington v. Schempp*, the court held that a state may not adopt programs or practices in public schools that "aid or oppose" any religion.

In the *Abington* case, the court applied a two-pronged test of purpose and effect: "[W]hat are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment" violates the Constitution. Applying that test in the *Epperson* case, the court found that the Arkansas law was not one of religious neutrality. It found that the motivation for the law was the same as the motivation for the Tennessee law in the Scopes trial, which was "to suppress the teaching of a theory which, it was thought, 'denied' the divine creation of man." The court struck down the Arkansas law and brought to an end the first chapter of the legal debate over teaching evolution.

For Discussion

1. Why did the Scopes trial take place? What was the controversy in the case? Why was the case so important to both sides?
2. Who were William Jennings Bryan and Clarence Darrow? Why did they participate in the case?
3. Some people argue that neither side won the Scopes case? Do you agree? Explain.
4. What was the *Epperson* case? On what basis was it decided? Do you agree with the decision? Why or why not?

A C T I V I T Y

Change and Reaction

The 1920s was a time of change and reaction against change. The Scopes trial exposed fault lines in American society between those embracing modernity and science and those believing in fundamentalism and a literal interpretation of the Bible.

In this activity, students pick a topic under one of the categories below about the 1920s. Students write an essay explaining the topic and how it relates to the theme of "change and reaction against change" in the 1920s. Then students report to the class on the topic.

Topics on the 1920s

Trials
Black Sox
Sacco and Vanzetti
Fatty Arbuckle
Leopold and Loeb
Billy Mitchell
Ossian Sweet

Laws & Politics
Election of 1920
Teapot Dome Scandal
Organized Crime
"Red Scare" and Palmer Raids
American Civil Liberties Union
18th Amendment and Volstead Act
19th Amendment
Immigration Act of 1924

New Technologies
Radio
Motion Pictures
Automobile
Airplane
Spread of electricity
Penicillin

Social Trends
Migration of African-Americans
Black Nationalism
Ku Klux Klan
"New Woman"
Fundamentalism
Urbanization
Celebrities and Sports Heroes
Hays Office

Business
Chain Grocery Stores
Advertising
The Assembly Line
Stock Market Crash

Cultural Trends
Harlem Renaissance
Jazz
"Lost Generation"
Fads of the 1920s

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More Monkey Trials

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Standards Addressed

National High School U.S. History Standard 22: Understands how the United States changed between the post-World War I years and the eve of the Great Depression.

California History-Social Science Content Standard 11.5: Students analyze the major political, social, economic, technological, and cultural developments of the 1920s.

National Civics Standard 25: Understands issues regarding personal, political, and economic rights. (1) Understands the importance to individuals and to society of personal rights such as freedom of thought and conscience . . . .

California History-Social Science Content Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech, press, petition, and assembly) articulated in the First Amendment and the due process and equal-protection-of-the-law clauses of the Fourteenth Amendment.

National World History Standard 38. Understands reform, revolution, and social change in the world economy of the early 20th century. (5) Understands the reforms of Ottoman government and society advocated by the Young Turk movement, its origins, and possible reasons for its success

National World History Standard 40. Understands the search for peace and stability throughout the world in the 1920s and 1930s. (8) Understands post-World War I shifts in geographic and political borders in Europe and the Middle East (e.g., . . . how Ataturk worked to modernize Turkey, how Turkish society and international society responded).

National World History Standard 44. Understands the search for community, stability, and peace in an interdependent world. (5) Understands the role of political ideology, religion, and ethnicity in shaping modern governments . . . .

California History-Social Science Content Standard 10.9: Students analyze the international developments in the post-World War II world. (6) Understand how the forces of nationalism developed in the Middle East

More Monkey Trials: The Evolution Debate Goes Back to Court

The Scopes trial of 1925 did not end the court battles over teaching evolution. Numerous trials and appeals have taken place since. More probably will occur in the future.

In 1968, the U.S. Supreme Court ruled unconstitutional an Arkansas law banning the teaching of evolution. (Andrew Costly/CRF Photo)

On July 21, 1925, John Scopes was found guilty of teaching evolution to his students. Earlier that year, the Tennessee Legislature had passed a law making it illegal to teach "any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals." On appeal, Scopes' conviction was overturned on a technicality, but his constitutional challenge to the law never reached the Supreme Court. Laws banning the teaching of evolution remained in effect in Tennessee, Mississippi, and Arkansas.

US GOVERNMENT

Forty years later, a 10th-grade biology teacher in Little Rock, Arkansas, decided to challenge the law making it illegal for her to teach evolution. The Arkansas law, like the Tennessee law, made it unlawful to teach the theory that mankind "ascended or descended from a lower order of animals." The trial lasted less than a day and did not include any scientific testimony. But in 1968 the *Epperson* case reached the U.S. Supreme Court. The court concluded that the purpose behind the Arkansas law was to prevent teaching the theory of evolution because it was thought to conflict with the Bible. The court ruled that the law was unconstitutional, because the establishment clause of the First Amendment does not allow any programs or practices in public schools that " 'aid or oppose' any religion."

After the ruling in *Epperson*, it was unlawful to ban the teaching of evolution. Anti-evolutionists gave up trying to ban it and shifted their efforts to get public schools to teach creationism. After 1968, local school boards began passing resolutions requiring schools to provide equal time for teaching "creation science" alongside evolution. And more recently, school boards around the country have passed resolutions encouraging the teaching of "intelligent design," another alternative to the theory of evolution. The curricula required by these resolutions are seen by many as new attempts to inject religion into the classroom. So the debate over creation versus evolution has continued to be fought out in the courtroom, and the monkey trials go on.

Giving Evolution and "Creation Science" Equal Time

After the Scopes trial, many publishers began to de-emphasize evolution in high school textbooks. The most popular biology textbook in the 1920s was rewritten deleting almost all specific references to evolution. In 1940, a survey of high-school biology teachers found that less than half taught evolution as the theory underlying plant, animal, and human origin. Evolution was fading from view in the classroom.

In the late 1950s, this began to change. The United States and the Soviet Union were in a nuclear arms race. And in 1957, the Soviet Union put the first satellite—"Sputnik"—into orbit. Fear and concern arose in Washington, and among the public, that the Soviet Union was overtaking the United States in science and technology. As a result, the government began funding programs to reform science education. Some of that money was put into a program to develop new

high-school textbooks. And the new textbooks written in the early 1960s strongly emphasized evolution.

At the same time, fundamentalist Christian groups also began developing high-school biology textbooks to teach a "creationist" view of human origin. A book titled *The Genesis Flood* was published in 1961. Written by John C. Whitcomb Jr and Henry Morris, this book became the cornerstone of a new movement called "creation science." According to the book, Noah's flood can explain most of geology, scientific evidence shows that the Earth is less than 10,000 years old, and Darwin's theory of evolution is therefore wrong. Fundamentalist groups founded organizations devoted to teaching creation science, like the Institute for Creation Research (ICR). They spread their message through publications and by reaching out to churches.

ICR was also committed to having creation science taught in public schools. In 1979, an ICR publication encouraged local citizens to urge their school boards to add creation science to the biology curriculum. Inspired by ICR, a campaign began in the late '70s to pass state laws that would require teaching both "evolution science" and "creation science" in all public schools. By the early '80s, "equal time" laws had been introduced in 27 states. Many scientists and educators were involved in campaigns to prevent their passage. And most bills failed. But in Arkansas and Louisiana, equal-time laws were passed and went into effect.

The "Equal Time" Laws Go to Court

McLean v. Arkansas Board of Education (1982)

The Arkansas ACLU immediately challenged the Arkansas equal-time law in federal district court. The plaintiffs included the Reverend Bill McLean of Little Rock and many local church bishops and officers. The defendants included the Arkansas Board of Education. What followed was another legal confrontation, similar in many ways to the Scopes trial in 1925. Seventy-five news organizations registered to cover the trial. And numerous expert witnesses were called to the stand in a trial that lasted for two weeks.

On January 5, 1982, the court struck down the Arkansas law and banned its enforcement. The judge ruled that the act violated the establishment clause of the First Amendment for two reasons:

1. Its purpose "was simply and purely an effort to introduce the Biblical version of creation into the public school curricula."
2. Its effect was "the advancement of a particular religious belief."

The judge's conclusion on the purpose of the law was based in part on the history of the creation-science movement. It was also based on evidence concerning the individuals involved in drafting and passing the bill. Documents introduced into evidence showed their beliefs and motives. One document was a letter from Paul Ellwanger (who drafted the bill) to Louisiana State Senator Bill Keith (who introduced the equal-time law in Louisiana). In his letter, Ellwanger said: "I view this whole battle as one between God and the anti-God forces."

With respect to the religious effect of the act, the judge determined that "creation science," as defined by the act, was based on the concept of creation by God and was inspired by the Book of Genesis. Moreover, based on the testimony of expert witnesses, the judge decided that there was no legitimate educational value to creation science. He stated that, as defined in the act, creation science "is simply not science." Having concluded that the only "real" effect of the act was the advancement of religion, the judge ruled that it was unconstitutional.

Edwards v. Aguillard (1987)

The Arkansas decision did not go to the Supreme Court. But the Louisiana equal-time law (called the Creationism Act) did. That law was passed in 1981. Like the Arkansas law, it was based on model legislation developed by Ellwanger. The law banned teaching evolution unless accompanied by instruction in creation science. Aware of the problems that the Arkansas law had encountered, the authors of the Louisiana bill did not define "creation science" in terms that had religious connotations. Instead, the theories of evolution and creation science were defined as "the scientific evidences for [creation or evolution] and inferences from those scientific evidences."

Litigation was filed almost immediately. The case went back and forth between various state and federal courts. But unlike the *McLean* case, no trial ever took place. The plaintiffs included the parents of children attending public schools and Louisiana teachers. They filed a motion for summary judgment, claiming that the act was invalid on its face. After much legal maneuvering, their motion was granted. The ruling was appealed.

(Continued on next page)

The case reached the Supreme Court in December 1986. In addition to hearing oral arguments, the court received written briefs from 16 organizations and individuals. One was submitted by 72 Nobel Prize–winning scientists. The briefs addressed the question of whether creation science was science or religion. But the Supreme Court chose not to address that issue. Instead, the court focused on the purpose of the law.

The state argued that the act was intended to protect academic freedom. But the court disagreed. In its opinion, the court stated that it will usually defer to a state's "articulation of a secular purpose," but only if the statement of purpose is "sincere and not a sham." After reviewing the legislative history, the court concluded that the term "creation science" as used in the Creationism Act embodied a religious belief—namely that a "supernatural creator" was responsible for creating mankind. The court determined that by passing the law, the Louisiana Legislature had given preference to certain religious groups—i.e., the groups that believe in a divine creator. And because the primary purpose of the Creationism Act was "to endorse a particular religious doctrine," the act violated the establishment clause.

Intelligent Design

After the Supreme Court's ruling in *Edwards*, equal time for creation science was no longer an option. But the anti-evolution movement did not give up. And the decision in *Edwards* had left the door open to teaching other theories about origin. "We do not imply," the court said, "that a legislature could never require that *scientific critiques* of prevailing scientific theories be taught." (Italics added.) With this in mind, activists developed a new approach to creationism called "intelligent design."

Much of what is written about intelligent design is devoted to demonstrating flaws and gaps in evolutionary theory. There is no single authoritative text—like Darwin's *Origin of the Species*—that explains intelligent design and how it works. In fact, many proponents of intelligent design disagree about how life came into being. But in the words of one spokesman, Philip Johnson, all agree that a supernatural creator "not only initiated the process but in some meaningful sense c*ontrols* it in furtherance of a purpose."

During the 1990s, intelligent design began to attract notice around the country. Legislatures in various states introduced bills that required the teaching of evidence against evolution. Some school boards on their own initiative added it to the curriculum.

One such board controlled the Dover Area School District. Dover is a small town in Pennsylvania. Some members of the school board wanted to see creationism added to the curriculum. On October 18, 2004, they voted to make "students aware of gaps/problems in Darwin's theory and of other theories of evolution, including but not limited to intelligent design." A month later, the Dover Area School District announced by press release that beginning in January 2005, teachers in ninth-grade biology classes would have to read a statement to their students. The statement said that Darwin's theory "is not a fact" and described intelligent design as another explanation about the origins of life. (The statement also told students that a textbook called *Of Pandas and People* was available in the library for anyone who was interested in learning "what Intelligent Design actually involves.")

These rulings were not well received by the teachers at Dover High School. The science faculty wrote a letter to the school board stating that "Intelligent Design is not science. It is not biology." The letter said that reading the statement would force teachers "to knowingly and intentionally misrepresent subject matter or curriculum." Ultimately, the biology teachers refused to read the statement, and the school administrator was forced to read it to the class. By then, however, 11 parents had already filed a lawsuit against the Dover Area School District.

Kitzmiller v. Dover Area School District (2005)

Intelligent design went on trial in federal court in Harrisburg, Pennsylvania, in October 2005. Both sides assembled teams of attorneys and a number of prominent experts. The trial, which lasted six weeks, gave intelligent design an exhaustive academic and legal examination. Many compared it to the Scopes case that had put evolution on trial 80 years earlier.

Unlike the Scopes trial, both sides presented numerous scientific experts, who testified on the underpinnings of evolution and of intelligent design (ID). Defense experts presented three days of testimony by Dr. Michael Behe, the leading scientific advocate of ID. Behe described structures like the bacterial flagellum, which he contended are so complex that they could not have evolved naturally and must be the product of an intelligent, "supernatural" designer. The defense experts also testified about gaps and problems in evolutionary theory. The plaintiffs' experts countered with scientific data support-

ing evolution. With all the testimony from scientific experts it was, in the words of one spectator, "rather like the biology class you wish you could have taken."

U.S. District Court Judge John E. Jones listened to the scientific testimony. He was not convinced that ID should be part of a scientific curriculum. ID, he concluded, is not science because it is based on the "supernatural." True science is limited to the search "for natural causes to explain natural phenomena." "Science," he wrote, since the 16th century, "has been a discipline in which testability has been the measure of a scientific idea's worth." The way science works is to seek explanations of how nature works from what can be observed, tested, and verified. "While supernatural explanations may be important and have merit, they are not part of science."

Judge Jones also concluded that the statement that was being read to students was misleading. Paragraph two of the statement says:

> Because Darwin's Theory is only a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact . . . .

The word "theory" he said, would suggest to most students that evolution "is only a highly questionable 'opinion' or 'hunch.' " That would create a wrong impression about the status of evolution, which, as many experts testified, is the scientific theory of origin accepted by the overwhelming majority of scientists.

Judge Jones also relied on evidence about the events that led to the Dover School Board's adopting the ID policy. Testimony showed that during debate, many school board members had talked about their belief in creationism and the need to balance evolution with creationism. Some school board members made openly religious statements. And one member, when questioned about the supposedly anonymous donation of 60 copies of the ID textbook (*Of Pandas and People*) to the school library, failed to acknowledge that the money for the textbooks had come from a collection that he took at his church. This, and other instances of false testimony, led Judge Jones to find that no credible evidence of a sincere secular purpose behind the school board's ID policy. In a lengthy (139-page) opinion, the judge summarized the six weeks of trial testimony. He laid out in detail the basis for his conclusion, namely that "the secular purposes claimed by the Board amount to a pretext for the Board's real purpose, which was to promote religion in the public school classroom, in violation of the Establishment Clause."

What's Next?

Four days after the end of the Kitzmiller trial (and before the judge had issued his opinion), a new slate of candidates opposing the ID policy was elected to the Dover School Board. The new board will not appeal Judge Jones' ruling so it will not go to a higher court. And although it is likely to be consulted by any judge presiding over a similar case, Judge Jones' decision is only legally binding for school districts in the middle federal district of Pennsylvania.

Many experts think that the decision will deter other school districts from teaching intelligent design. But the American public is still divided on the issue. A poll taken in October 2005 shows 51 percent of Americans say God created humans in their present form, and another 30 percent say that while humans evolved, God guided the process. Just 15 percent say humans evolved without intervention from God. Another poll shows that 29 percent of Americans want creationism taught in public school science classes. Given these poll numbers, it is likely that the debate will continue, both in the political arena and in the courts.

For Discussion

1. What was the *Epperson* case about? What was its decision based on? Do you agree with the decision? Why or why not?
2. What is "creation science"? What are equal-time laws? What was the Supreme Court's decision in *Edwards v. Aguillard*? Do you agree with the decision? Explain.
3. How is "intelligent design" different from "creationism"? What was the case *Kitzmiller v. Dover Area School District* about? What was the federal court's decision in the case? Do you agree with the decision? Explain.

The establishment clause of the First Amendment states: "**Congress shall make no law respecting an establishment of religion** . . . ." Like other parts of the Bill of Rights, this clause at first only applied to Congress. But the passage of the 14th Amendment, which applied to the states, changed this. The Supreme Court interpreted the 14th Amendment's due process clause to incorporate all the fundamental freedoms found in the Bill of Rights. The court then on a case-by-case basis determined which rights were incorporated. In 1947 in *Everson v. Board of Education*, the court ruled that the First Amendment's establishment clause

(Continued on next page)

Establishment Clause Cases

was fundamental and therefore applied to the states. The court explained the establishment clause:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. . . . In the words of Thomas Jefferson, the clause against the establishment of religion by law was intended to erect a "wall of separation between Church and State."

Since this case, the court has decided many other establishment-clause cases. To decide whether a law or government practice violates the establishment clause, the court has usually relied on the *Lemon* test (adopted in the 1971 case of *Lemon v. Kurtzman*). To be constitutional under the *Lemon* test, the law must do three things:

1. it "must have a secular legislative purpose . . ."
2. "its principal or primary effect must be one that neither advances nor inhibits religion"
3. the law "must not foster 'an excessive government entanglement with religion.' "

In this activity, students role play the U.S. Supreme Court. They apply the *Lemon* test to particular cases challenging laws or practices as unconstitutional violations of the establishment clause.

1. Divide the class into groups of three to five students. Assign each group one of the cases below.
2. Each group should:
   a. Discuss its case and apply the *Lemon* test to it.
   b. Decide whether the law or practice violates the establishment clause.
   c. Be prepared to report to the class on its decision and reasons for it.
3. Regroup as a class and discuss each case.

Cases

A. A state law authorizes a one-minute period of silence each day in all public schools "for meditation or voluntary prayer." *Wallace v. Jaffree* (1985)

B. A state law lets taxpayers on their state income tax return deduct expenses for "tuition, textbooks and transportation" for their children attending elementary or secondary school, including private and religious schools. *Mueller v. Allen* (1983)

C. A federal law authorizes grants for construction on college campuses (including private and religious colleges). The law bans using funds for building any facility used for religious instruction or worship. After 20 years, however, the college can use the building for any purpose. *Tilton v. Richardson* (1971)

D. A state law requires the Ten Commandments be posted in every public school classroom. *Stone v. Graham* (1980)

E. One public school district has a policy of allowing principals of middle and high schools to invite members of the clergy to give prayers at their schools' graduation ceremonies. The prayers must meet criteria set by the principal such as being nonsectarian. *Lee v. Weisman* (1992)

F. A policy of a public school district requires elementary teachers to lead their students in reciting the Pledge of Allegiance daily. The pledge contains the words "under God." Students may choose to opt out of saying the flag salute. *Elk Grove School District v. Newdow* (2004)

The Supreme Court Decisions

A. *Wallace v. Jaffree* (1985): Law unconstitutional (6–3 decision). Majority: "The record here not only establishes that [the law's] purpose was to endorse religion, it also reveals that the enactment of the statute was not motivated by any clearly secular purpose."

B. *Mueller v. Allen* (1983): Law constitutional (5–4 decision). Majority: "The tax deduction in question has the secular purpose of ensuring that the State's citizenry is well educated . . . . The deduction does not have the primary effect of advancing the sectarian aims of nonpublic schools. . . . [It] does not 'excessively entangle' the State in religion."

C. *Tilton v. Richardson* (1971): Law constitutional except the 20-year ban must be replaced by one lasting until the building is no longer usable. (5–4 decision). Majority: "The Act itself was carefully drafted to ensure that the federally subsidized facilities would be devoted to the secular and not the religious function of the recipient institutions."

D. *Stone v. Graham* (1980): Law unconstitutional (6–3 decision). Majority: "The pre-eminent purpose of posting the Ten Commandments, which do not confine themselves to arguably secular matters, is plainly religious in nature, and the posting serves no constitutional educational function."

E. *Lee v. Weisman* (1992): Law unconstitutional (5–4 decision). Majority: "State officials here direct the performance of a formal religious exercise at secondary schools' promotional and graduation ceremonies. [The principal's] decision that prayers should be given and his selection of the religious participant are choices attributable to the State. Moreover, through the pamphlet and his advice that the prayers be nonsectarian, he directed and controlled the prayers' content."

F. *Elk Grove School District v. Newdow* (2004): The court did not decide the case, but rejected the plaintiff's claim on a technicality.

Turkey: An Evolving Democracy in the Middle East

Turkey is an evolving democracy with a mostly Muslim population. Its government is based on a strict separation of mosque and state. This democratic model faces strong opposition from those in the Middle East who want their nations firmly under Islamic law.

A guard stands and watches visitors enter the mausoleum of Kemal Ataturk in Ankara, Turkey. (iStockphoto.com)

Most countries in the Middle East have overwhelmingly Muslim populations. They also have had little experience with Western-style democracy. Today, countries like Kuwait, Egypt, and Iraq are just beginning to hold democratic elections. Only Turkey and Lebanon have any tradition of competitive, multiparty democracy.

Ataturk and the "New Turkey"

Before World War I, Turkey was part of the Ottoman Empire. At its peak, this vast Muslim Caliphate (Empire of Islam) had included the Middle East, part of North Africa, and southeastern Europe. By the 20th century, however, only remnants of the empire remained, with Turkey at its core. A group of mainly military men known as "Young Turks" opposed the absolute rule of the Ottoman Turk sultan (king).

WORLD HISTORY

One of the Young Turks, Mustafa Kemal, traveled in European countries and was shocked by how advanced they seemed to be. He concluded that his people were culturally backward and influenced too much by religious laws and customs. Kemal vowed to modernize and secularize Turkey.

Turkey entered World War I on the side of Germany, a move that Kemal opposed. After the war, the victors dismantled the Ottoman Empire. Only Turkey remained in the hands of the sultan. Greeks, traditional enemies of the Turks, occupied cities in western Turkey. Kemal rallied Turkish patriots and helped drive the Greeks from Turkish soil.

In 1919, Kemal backed a "National Pact" to create a new Turkish nation. In 1922, the European powers recognized Kemal as the legitimate leader of Turkey, prompting the sultan to flee the country. The next year, Kemal proclaimed the Republic of Turkey with himself as president.

In 1924, Kemal produced a constitution. He boldly aimed to transform Turkey into a modern Western-style state.

Turkey's current constitution pays homage to Kemal as "the immortal leader and the unrivaled hero." It declares, "The Republic of Turkey is a democratic, secular and social state. . . ." A key provision states that "there shall no interference whatsoever by sacred religious feelings in state affairs and politics. . . ."

With his constitution, Kemal launched a revolutionary program of modernization and secularization for the "New Turkey." Below are some of the far-reaching changes he imposed.

- Most Turks had one name. Kemal decreed that everyone must adopt a surname as in Western countries. To set an example, he changed his name to Kemal Ataturk. "Ataturk" meant "Father of the Turk."
- Ataturk outlawed public wearing of the male fez (a brimless hat), because he thought it showed cultural backwardness. He also banned the female veil

and other religious body coverings. He believed these old Muslim customs of female modesty served no purpose in a modern nation.

- He replaced Arabic writing with the Latin alphabet. He also adopted the Christian Gregorian calendar used by most Western nations.
- He abolished religious instruction in the public schools and adopted a modern European curriculum. While permitting the practice of Islam, he closed many religious shrines that the state had maintained.
- He legalized the sale of alcoholic beverages, banned by the Koran.

Ataturk also addressed the status of women. He overturned centuries of Muslim custom by making women the legal equals of men. For the first time, Turkish women had the right to vote and run for seats in the parliament. Ataturk placed matters like divorce and other family matters in civil rather than religious courts. He abolished polygamy, the right of Muslim men to have more than one wife.

These changes upset conservative Muslim Turks, who wanted to follow the old ways. When they resisted, Ataturk used his army to enforce his new policies.

Ataturk favored democracy in theory, but not in practice. He proclaimed himself president for life. After a brief experiment with multiparty parliamentary elections, he banned all parties except his own, the Republican People's Party. In effect, Ataturk headed a popular one-party dictatorship until his death in 1938.

An Evolving Democracy

After World War II, Turkey legalized opposition political parties and required the election of all future presidents. But the Turkish military assumed the role of preserving Ataturk's idea of a secular state.

On four occasions between 1960 and 1996, the military either directly took over the government or pressured elected leaders to change their policies. The military did this to restore public order or to protect Ataturk's vision of a secular Turkey.

After each intervention, the military eventually permitted elected governments to resume control of the country. But these interventions in Turkey's democracy have retarded its development.

Necmettin Erbakan emerged in the 1970s as the leader of a movement to bring Islam back into Turkish government, a fundamental violation of Ataturk's secular constitution. In 1996, Erbakan won enough seats in parliament to form a government. He pushed several Islamist policies, including the repeal of a law that prohibited female students from wearing the Muslim head scarf at public universities.

Alarmed at Erbakan's challenge to Ataturk's secular state, the military forced the government to ban all political activities by Islamist organizations. In 1997, Erbakan's government collapsed. The following year, the Constitutional Court banned his Welfare Party because of "acts against the secular principles of the republic."

A new Islamist party, the Justice and Development Party, soon arose headed by Recip Tayyip Erdogan, the mayor of Istanbul. But Erdogan renounced the Islamist label for his party and declared his support for Turkey's secular state.

Widespread corruption in the government, high unemployment, and the failure of politicians to respond quickly to a severe earthquake led to a decisive victory for Erdogan's party in 2002. Although troubled by the Islamist origins of his party, the military did not intervene.

With a majority of seats in the parliament, the Justice and Development Party formed a government with Erdogan as prime minister. Some party members, however, revived the controversy over the law banning female head scarves at public universities. Protest demonstrations by anti-secular Islamists further inflamed the issue.

Turkey is still an evolving democracy. It has a history of military interference with democratically elected governments. In addition, Turkey still has undemocratic laws that prohibit insulting the president, the military, and "Turkishness."

Erdogan's government strongly wants Turkey to become a member of European Union (EU) in order to gain significant economic advantages. The EU requires its member nations to guarantee democratic freedoms. Under pressure from the EU, Turkey may move closer to a fully functioning democracy.

No Muslim nation in the Middle East is a fully functioning democracy. Iran is run by Islamists as a theocracy, a state run by religious rulers. No Muslim state in the region is a theocracy like Iran. Most are secular,

(Continued on next page)

but authoritarian states—Egypt, Syria, Jordan, and others. The opposition in many of these states, however, is led by Islamists who seek states run under Islamic law.

Turkey may offer an alternative for the region. If the Islamists and secular Turks can compromise on the role of religion, Turkey may become a democratic model for other Muslim nations in the region.

For Discussion and Writing

1. What parts of Ataturk's system of government were democratic? What parts were not democratic?
2. Is Turkey today a Western-style democracy? Why or why not?
3. What is Islamism? What problems might it pose to countries seeking to become democracies?

For Further Reading

"Constitution of the Republic of Turkey." *Grand National Assembly of Turkey.* 14 Dec. 2005. URL: http://www.tbmm.gov.tr/english/constitution.htm

Diamond, Larry *et al.*, eds. *Islam and Democracy in the Middle East*. Baltimore, Md.: Johns Hopkins University Press, 2003.

A C T I V T Y

What Makes a Government Democratic?

One of the tests for gaining admittance to the EU is that a country must have a stable democratic government. What do you think are the criteria for a government being democratic?

1. Form small groups. Each group is a committee for the EU responsible for setting criteria to determine whether a government is democratic.
2. Each group should:
   a. Discuss what makes a government democratic.
   b. Decide on at least five standards that a democratic government should meet.
   c. Prepare to report the standards and the reasons behind them to the class
3. Have the groups report and discuss the standards with the class. Write each group's standards on the board. Vote on which standards you think are best.

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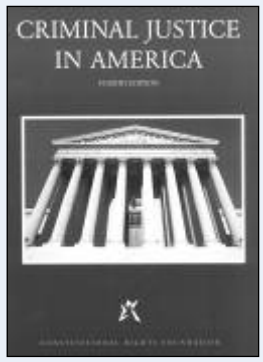

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