

Creation and the court room—where do we go from here?

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A stalemate has been reached in the legal battle over creationism and intelligent design in the public school system. Recent court rulings have firmly closed the door on all aspects of current legal strategy, leaving attorneys and intelligent design advocates grappling with how to proceed in light of current opinions. This paper examines both case law and competing philosophies of science to understand why previous lines of reasoning have been unsuccessful, and explore alternative legal strategies. It demonstrates that effective arguments must begin to address the foundational issues of properly understanding and defining both science and Darwinian evolution, rather than merely trying to distance intelligent design from a religious viewpoint and categorize it as scientific.

An impasse has been reached in the American court systems today: a deadlock between scientists and educators who support teaching intelligent design (ID) or creationism in public school classrooms, and those who believe that by banishing it, they are “preventing bigots and ignoramuses from controlling the education of the United States.”¹ With the recent ruling of *Kitzmiller vs Dover*,² holding that any theory which invokes a belief about the divine is inherently religious in nature and, therefore, prohibited by the Constitution, educators, scientists, and attorneys alike have come upon an arguably permanent roadblock to all the legal arguments used to-date, to argue for including ID in the classroom.

In the face of such a sound defeat, the question of “where do we go from here?” has few easy answers. One thing has become quite clear—the ineffective arguments used for the last half-century either must be seriously altered, or abandoned entirely for a new legal theory. The old adage, “those who do not learn from history are doomed to repeat it”, is no less practical in the legal realm than it is in any other area of life, and so it is to an examination of the history surrounding this debate that we must turn in deciding where we “go from here”.

Two main arguments have been attempted as a means of opening the door to academic freedom: (A) A direct First-Amendment challenge to evolution, arguing that its association with secular humanism, and its effect of prohibiting creationism, is an unconstitutional establishment of religion; and (B) an attempt to distance ID from religious belief and categorize it as purely scientific, with the intent of proving there is a valid, secular reason for teaching in the public school classrooms. By examining the weaknesses of these strategies, and the courts’ rationale for rejecting them, new and more sound theories may be formed.

Direct First-Amendment challenge to evolution

The initial attempt at making a First-Amendment challenge to evolution itself came in *Wright vs Houston Independent School District*,³ when a group of students attempted to argue that the uncontested teaching of evolution

in the public schools had the effect both of restricting their free exercise by teaching a theory directly contradictory to their Judeo-Christian beliefs, and establishing a religion by promoting a theory intrinsically connected with the religion of secular humanism. Both arguments were soundly rejected by the court, which found that there could not be a violation of the First Amendment because the school district had no official policy regarding evolution, and no allegations were made that a free discussion on the subject of origins was in any way prohibited, or opposing ideas suppressed.

At first glance, this holding may appear to leave room for a similar argument today, as instruction in science is now restricted only to the theory of evolution and opposing viewpoints are directly suppressed. However, the court closed any such possibility by also concluding that any tie between evolution and secular humanism was too tenuous for a First-Amendment challenge and, further, that the proposed remedy of “equal time” for all theories of origins was impossible due to the vast differences in theological beliefs and, thus, the vast viewpoints on the subject of origins.

A second attempt at this argument was made eight years later, in *Crowley vs Smithsonian* (1980),⁴ but was even more strongly rejected when the court explicitly held that evolution merely coincided with secular humanism and was not in and of itself a religious belief. The court then furthered this opinion by stating that, even if it could be shown that evolution could not be proved in the lab and was taken “on faith”, this would not be sufficient to show the State had, by promoting evolution, established a religion of secularism because any tie between humanism and evolution was coincidental.

Since *Crowley*, few attempts have been made at repeating this argument, owing to its sound defeat. Indeed, due to the difficulty both of proving that evolution itself specifically advances one particular religion and, as the court noted in *McLean vs Arkansas Board of Education*,⁵ even if such a showing were to be made, the correct remedy would be to bar evolution, not to advance another religious theory such as creationism or ID, it is unlikely this argument will be successful in the future as well.

Categorizing intelligent design as scientific rather than religious

Early on in the battle between evolution and alternate theories, an attempt was made to distance a theistic view of origins from a particular religious belief, thereby escaping the charge of establishing a particular religion. The first landmark case where this was attempted was in *McLean vs Arkansas Board of Education* (1982).⁵ In *McLean*, plaintiffs brought suit asking the court to declare unconstitutional a statute which required that equal time be devoted to teaching both evolution and creation science. The school board defended by arguing that creation science was scientific rather than religious in nature and, thus, there was a valid secular purpose and effect for the legislation. The court predominately ruled the statute was unconstitutional based on the lack of a valid secular purpose, citing to statements made by proponents of the legislation that were clearly religious in nature. In deciding, however, the court also took a detailed look at the origin and development of creation science, and found that the theory itself was religious in nature because of its roots in the Judeo-Christian faith. The court also found that the concept of a creator God was, in itself, religious, holding, “In traditional Western religious thought, the conception of a creator of the world is a conception of God. Indeed, creation of the world ‘out of nothing’ is the ultimate religious statement because God is the only actor.”⁶

While the defendants argued that an acknowledgment or belief in God was not “religion” for the purposes of the First Amendment, because it required no commitment or confession of faith, the court rejected this contention, citing the Supreme Court’s interpretation of the establishment clause in *Everson* and cases thereafter, which held, in part, that the First Amendment meant that the government may not show any preference for a religious belief. Finally, the Court rejected the argument that creation science could be science because, in their view, science by its very definition was limited to the natural world.

With the court defining science as inherently exclusive of anything supernatural, the concept of God as inherently religious, and creation science religious by its very nature, the legal tide was already rapidly turning, so that when the Supreme Court of the United States heard the case *Edwards vs Aguillard*,⁷ it was but a small step to essentially turn the ruling in *McLean* into federal precedent. The holding in *Edwards* was not quite so broad as in *McLean*, as the court focused mainly on evidence that the statute requiring fair treatment was really intended to further Christian beliefs, rather than encourage academic freedom, and thus did not give thorough treatment on whether creation science was religious by nature. Yet while the religious nature of creation science was not the lynchpin of the Court’s holding, the Court did, nonetheless, cite to the historical analysis in *McLean* as evidence of the theistic nature of creation science, and noted that the theory, by definition, entailed belief in a deity, which is a religious concept. Thus, the defendants in *Edwards* were unable to successfully argue

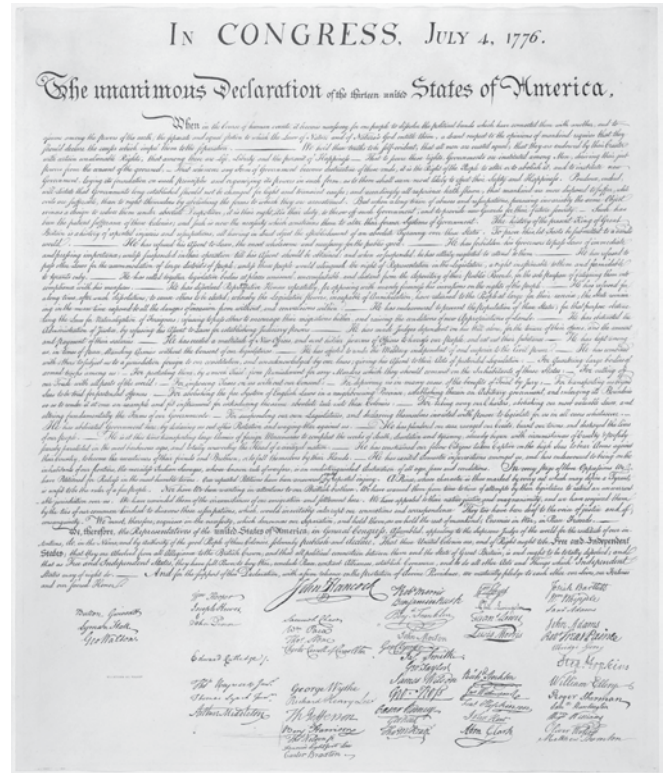


Photo courtesy of <www.archives.gov>

Figure 1. The court in *McLean* found that the concept of a Creator was the “ultimate religious statement” and, therefore, unconstitutional, despite this concept being clearly displayed in America’s founding documents.

that a statute requiring equal time for evolution and creation was not religiously motivated.

Though *Edwards* left the door open for critiques of Darwinism which were proposed for purely secular reasons, by redefining the meaning of the First Amendment and the idea of science, and finding creation science religious because of the inherent belief in a higher authority and its ties to Judeo-Christian values, any argument that either ID or creation science is secular has been utterly unsuccessful.

Nowhere is this more clearly seen than in the recent case of *Kitzmiller vs Dover* where the court explicitly found ID was not, and could not be, science. Despite expert testimony from scientists, and arguably the best defense for the scientific nature of ID to-date, the court returned to the holding that, because ID required a higher authority, and was an off-shoot of creation science, it was a religious, rather than scientific, theory. The school district strenuously attempted to distance itself from creation science for that very reason, noting that the question of who or what “designed” life is not addressed by the hypothesis, and pointing to the factual nature of the theory, but was entirely unable to establish a fundamental distinction between ID and creation science. What is most notable about the ruling in *Kitzmiller*, however, is that the court went so far as to state that even *if* the scientific arguments in support of ID were true, the theory is not, and cannot be, considered science simply because it requires an entity which is supernatural.

The attempt to categorize ID, or creation science, as science, has thus been soundly rejected for three main reasons:

1. The theory's inescapable ties to Judeo-Christian values.
2. The inherent requirement for a higher authority as the designer, which is a religious concept.
3. The theory's rejection of pure naturalism, a fundamental requirement for true science

Because the Court's interpretation of the establishment clause has, since *Everson*, defined any belief regarding a deity to be religion, and interpreted the meaning of "establish" as a requirement that the government show no preference or endorsement of a religious belief, it is difficult to imagine any circumstance where ID could pass an establishment clause challenge. The question then becomes, where does one go from here?

The court in *Kitzmiller* was clear that, regardless of the validity of ID claims, it is prohibited simply by virtue of the fact it entails the idea of a deity. It is further inescapable that the court's rationale in every case is explicitly and directly tied to the reshaping of the establishment clause that took place in *Everson*. As the court in *McLean* aptly stated, the meaning of the establishment clause "has not varied from the principles articulated by Justice Black in *Everson*".⁸ This legal foundation is critical to note because under the version of the establishment clause that the court set out in that decision, many scholars and legal counsel have argued, quite persuasively, that even if ID were found to be a science, it would still be prohibited as government endorsement of religion simply by virtue of the fact it necessitates belief in a deity, an inherently religious concept.⁹ As Richard B. Katskee, Assistant Legal Director of Americans United for Separation of Church and State and one of the principal attorneys for the plaintiffs in the *Kitzmiller* case, admitted in a recently published law review article, "whether intelligent design is science was not the ultimate question in *Kitzmiller*. *What really mattered was whether intelligent design is religion ... [emphasis added]*."¹⁰ While Katskee argued that proving ID isn't science is part of this analysis, he nonetheless made it clear that the essential issue is the *religious* nature of intelligent design, validity of the scientific claims very much aside.

Alternative strategies—properly defining evolution

Given this backdrop, an alternative approach that may be useful to employ is one which emphasizes the religious nature of Darwinian evolution, and its failure to meet the definition of true science. Because similar arguments had been tried in previous cases, and soundly rejected by courts,¹¹ most argumentation in recent cases has focused on framing ID as a science, without much emphasis on the framework in which evolution is placed. Yet properly defining the nature of evolution may yield much greater credibility to placing ID in a non-religious framework as well.

If this is attempted, it will be important to recognize where previous attempts have failed, and approach this line of reasoning from a different angle. In previous cases where the religious nature of evolution has been argued, it has been done only in a direct challenge against evolution itself, arguing that the teaching of the theory violates the establishment clause.¹¹ Further, the majority of argumentation has focused not on the religious nature of evolution *per se*, but rather on its ties to secular humanism.¹¹ Courts have strongly rejected this argument, reasoning that the ties between the two are tenuous at best. Thus, rather than using the religious nature of evolution to make a direct First-Amendment challenge to the theory, the argument should instead focus simply on placing evolution on an equal philosophical footing with ID. That is, rather than arguing that teaching evolution is *unconstitutional* because of inherent religious beliefs, it would be wiser to analogize that, because evolution has religious underpinnings, and may nonetheless be taught, ID, in the same way, may be taught even though it may entail a religious belief. Further, rather than attempting to tie evolution to the particular religion of secular humanism, focus instead on the religious beliefs evolution itself requires, and its correspondence to other religions, so that evolution is properly seen as similarly situated with ID, which likewise incorporates a belief regarding a deity, and corresponds to certain religious sects. Thus, the goal of this line of reasoning, unlike with previous attempts, would not be to declare government-sponsored evolution unconstitutional, but rather to simply put evolution on the same philosophical and religious footing as Intelligent Design, and reason that, where one is permissible, the other must be as well, because both are similarly situated.

There are two prongs to this line of reasoning, which correspond directly to the court's criticism of ID. To date, courts have classified ID as religious for two main reasons:

1. The theory's inescapable ties to Judeo-Christian values.
2. The inherent requirement for a higher authority as the designer, which is a religious concept.

Yet a converse line of reasoning is equally valid for evolution, for evolution is every bit as markedly linked with particular religious sects as ID. Further, while ID does require at least a foundational belief regarding a deity, evolution most certainly does as well. Developing these two facets of evolution may be useful in creating an analogy to demonstrate that neither theory is disqualified simply by association with a religious group, or inherently religious simply because it entails a belief regarding a deity.

Evolution is inextricably linked to religious sects

A primary line of reasoning advanced by the courts, particularly in *McLean vs Arkansas Board of Education*⁵ and *Kitzmiller vs Dover*,² is that creationism and ID both are invalidated by virtue of their inescapable ties to the Judeo-Christian religion. The court in *McLean* entered an opinion

which included a fairly thorough treatise of the history of creationism, and its links to the Christian faith, which was then relied upon by the court in *Kitzmiller*, and applied by analogy to the ID movement, with the court classifying ID as a mere offshoot of creationism and, thus, similarly flawed. Both courts used the evidence of creationism or ID's close ties to Christianity as evidence both of the theory's religious nature, and as a demonstration that the advancement of religion was the true primary purpose of seeking to have either theory taught in the classroom.

Typically, the primary response to this reasoning is to attempt to distance one theory or the other from the Judeo-Christian belief, pointing out dissension in the Church on theories of origins, explaining true fundamental doctrines of Christianity, or citing both creationism and ID's ambiguous nature regarding the ID entity of the Creator. To a degree, this may be a legitimate line of reasoning, yet the problem remains that both theories *were* clearly birthed from the Christian belief system, and both do share unavoidable ties not merely with facets of that religious belief, but with Christian organizations and leaders alike. If association is the plum line for guilt in American courts, the likelihood of being able to distance either theory enough from its Christian associations is slim at best, irrespective of how strong the arguments may be that one theory or the other is validly scientific. Yet what is interesting to note is that the very arguments leveled against ID are equally true for evolution. Indeed, while ID may be linked to theistic religious groups, evolution is just as clearly linked with atheistic or humanistic groups, both of which are belief systems the Supreme Court has expressly declared to be religious in nature.¹² Furthermore, while ID does necessarily correspond with aspects of Christianity, evolution corresponds directly with its counterpart of secular humanism and atheism, once again, distinctly religious beliefs.

This is not a fact which has gone unannounced by either atheists or humanists. On the contrary, the foundational role evolution plays in both religions has been clearly stated both in formal statements of the faith, and by leaders in the religious groups. While ID has been attacked as religious because it is a lynchpin to the Christian belief that man has been created by God, humanism is every bit as directly hinged on evolution as Christianity is upon a creator God. Indeed, the Humanist Manifestos asserts, "Humanism believes that man ... has emerged as the result of a continuous process"¹³ and that "the human species is an emergence from natural evolution".¹⁴ Furthermore, Julian Huxley, one of the foundational and key figures in secular humanism, defined a humanist specifically as one who believes in evolution, stating,



Figure 2. The importance of evolution to the religious view of secular humanism is clearly seen in the works of Julian Huxley, who defined a humanist as one who holds to the theory of natural evolution, rather than divine creation.

"I use the word 'Humanist' to mean someone who believes that man ... were not supernaturally created but are all products of evolution".¹⁵

Additionally, while ID has been maligned for its ties to organizations which have religious underpinnings, such as Institute for Creation Research, the fact remains that evolution is likewise inextricably linked with religious groups as well, most notably those which espouse the religion of secular humanism. For example, the National Center for Science Education (NCSE) currently publishes a journal entitled *Creation/evolution*, which attacks creation science and ID, while offering support for evolution. Yet a little known fact about this journal is that it was begun and edited by the American Humanist Association, who then transferred the project to NCSE.¹⁶ It is not surprising, then, that material within the magazine often directs readers to websites, or even articles on the NCSE website, which link to or discuss the religion of secular humanism, or attack biblical Christianity, rather than articles which discuss science.¹⁷ Nor should it be surprising that the American Humanist Association recently bestowed one of its highest awards on NCSE's executive director, Eugenie Scott.¹⁸ Indeed, should one examine the list of supporters of the NCSE, or its frequent contributors, it would be discovered that the list appears to be comprised entirely of atheists and secular humanists, including signers of the Humanist Manifesto.¹⁹

This link is further not limited to the NCSE. On the contrary, it is clearly seen even in worldwide organizations. For instance, the Committee for the Scientific Investigation of Claims of the Paranormal (CSICOP), whose supporters are indeed worldwide, is also supported entirely by atheists and secular humanists. The American chapter of the Committee (American Skeptics) was actually founded by aggressively atheistic and humanistic philosopher Paul Kurtz, and the link between the Committee and the religion of humanism is so strong that CSICOP shares headquarters with the Council for Secular Humanism. Furthermore, though CSICOP professes to be a scientific group, they regularly publish articles which single out biblical Christianity for derision,²⁰ and contributors to the magazine are often those who are well-known for stridently anti-Christian articles and spirited defenses of humanism, such as John Stear, rather than those which are scientific in nature.

While the charge may accurately be leveled that ID, or at least creation science, is somewhat linked to Christian groups, and corresponds with Judeo-Christian beliefs, the exact same line of reasoning can, and should, be applied to evolution, which is likewise the lynchpin of admittedly religious beliefs,



Figure 3. Karl Popper (left), a prominent philosopher of science, accurately stated that Darwinism is a metaphysical framework, not a scientific theory, an acknowledgment which puts evolution on the same philosophical playing field as creationism.

and inextricably interwoven within the religion of secular humanism, their statement of faith, their “preachers”, and their organizations. While this line of reasoning would be unsuccessful in an *offensive* argument *against* evolution *per se*, it may be useful in reasoning by analogy to put evolution on equal footing with ID in terms of the religious connections and correlations each theory entails. For where one theory is not invalidated simply by its association to religious groups, the same must be said for the other.

Evolution presupposes a belief regarding a deity, a religious concept

While much has been made previously about evolution’s ties to religions such as secular humanism, little emphasis has focused on the fact that evolution itself requires a presupposition about a deity, an inherently religious concept. Though great emphasis has been placed by opponents of ID on arguing that ID is religious because it requires a belief regarding a deity, the exact same criticism can be leveled at evolution. Under the Court’s current definition of religion, while it may arguably be accurate to assert that a belief regarding a deity is religious, it is *not* accurate to assert that only a *positive* belief in the existence of a deity is religious. In *Torcaso vs Watkins*,¹⁴ a case challenging Maryland’s requirement that public officials profess a belief in God, the Supreme Court recognized that a belief that God does *not* exist is also *religious*, noting that certain religions are theistic, while others were atheistic. While *Watkins* focused on preventing preferential treatment of theistic religions over atheistic belief systems, the result of the Court’s holding was an official recognition that *any* belief regarding a deity, whether that belief is in the existence *or non-existence* of the deity, is a religious concept. Thus, while it may be accurate to argue ID’s presupposition of a deity is religious under the Court’s current definition of religion, it is equally accurate to assert that evolution’s presupposition of atheism or, naturalism, is just as religious. Both theories

require a belief regarding a deity. The fact that one theory posits its existence, while the other firmly asserts its non-existence is immaterial; both are inherently religious concepts.

What must then be discussed is whether evolution *requires*, or presupposes, an atheistic religious philosophy in the same way that ID requires, or presupposes, a theistic religious philosophy. Perhaps the most accurate and weightiest evidence of this assertion comes from evolutionists themselves.

Michael Ruse a renowned Canadian, professor of history and philosophy and author of, among others, *The Darwinian Revolution* (1979), *Darwinism Defended* (1982), and *Taking Darwin Seriously* (1986), is one leading evolutionist who is quite clear on this point. On 13 May 2000, in an article for the *National Post*, Ruse conceded:

“Evolution is promoted by its practitioners as more than mere science. Evolution is promulgated as an ideology, a secular religion—a full-fledged alternative to Christianity, with meaning and morality. I am an ardent evolutionist and an ex-Christian, but I must admit in this one complaint . . . the literalists [i.e. creationists] are absolutely right. *Evolution is a religion. This was true of evolution in the beginning, and it is true of evolution still today* [emphasis added].”²¹

Ruse is far from alone in his assessment of the religious nature of evolution. Indeed, he is quite correct that evolution was, from its very inception, a religious concept. Darwin’s most vocal defender, Thomas Henry Huxley (1825–1895), was not only known as “Darwin’s Bulldog”, he was also known as “Pope Huxley”, for his conception of evolution as a religious belief,²² leading his great-grandson, Julian Huxley (1887–1975), to concede that this belief set is “in the nature of a religion”, describing it as “The New Divinity”.²³ Perhaps even more notably, the introduction to the 1971 edition of Darwin’s *The Origin of Species*, written by L. Harrison Matthews, clearly identifies evolution not only as religious but as directly parallel to creation or ID. Matthews writes:

“The fact of evolution is the backbone of biology, and biology is thus in the peculiar position of being a science founded on an unproved theory—is it then a science, or a faith? *Belief in the theory of evolution is exactly parallel to belief in special creation*—both are concepts which believers know to be true but neither, up to the present, have been capable of proof [emphasis added].”²⁴

Karl Popper, a prominent philosopher of science, is perhaps even more direct, stating, “I have come to the conclusion that Darwinism is not a testable scientific theory, but a metaphysical research programme.”²⁵ That is, evolution is not science, but a philosophy and, further, a religious philosophy because it is founded on the belief of atheism. This religious nature of evolution has not escaped modern scientists either. The late Robert Jastrow,

an internationally known astronomer, founder and director of NASA's Goddard Institute for Space Studies, Professor of Astronomy and Geology at Columbia University, and Professor of Earth Sciences at Dartmouth College, wrote a book entitled *God and the Astronomers* (1992), where an entire chapter was dedicated to describing science as a religion. Notably, Jastrow was considered one of the greatest writers of science, yet freely concedes the religious nature of evolution.

Furthermore, not only is evolution admittedly religious in nature, it holds to its religious presupposition of atheism, or materialism, as foundational and immovable, regardless of other evidence that may come a scientist's way. Stephen J. Gould, arguably one of the most prominent scientists of this century, has had no qualms about revealing that the science community's preference for evolution (gradualism) is founded on a metaphysical preference, not evidence, stating,

"The general preference that so many of us hold for gradualism is a metaphysical stance embedded in the modern history of Western cultures: it is not a high-order empirical observation, induced from the objective study of nature."²⁶

Much as evolutionists wish to claim their theory is evidentiary alone, the most notable evolutionists throughout the theory's history have long admitted their basis is not evidentiary; it is metaphysical and religious.

Michael Ruse in his contribution to the book, *But is it Science?*, denounced creationism as religious, and shocked his evolutionist colleagues by admitting in an address at the 1993 annual meeting of the American Association for the Advancement of Science that evolution is not only religious, but has an unbending commitment to atheism or, naturalism. Ruse stated:

"At some very basic level, evolution ... makes a commitment to a kind of naturalism, namely that at some level one is going to exclude miracles and these sorts of things, come what may ... evolution, akin to religion, involves making certain *a priori* or metaphysical assumptions, which at some level *cannot* be proven empirically [emphasis added]."²⁷

Kansas State University immunologist Scott Todd was even clearer, asserting, "Even if all the data point to an intelligent designer, such an hypothesis is excluded from science because it is not naturalistic."²⁸ That is, evolutionists hold to this naturalistic, atheistic religious philosophy *irrespective* of evidence. Atheism, or naturalism, is a foundational presupposition to evolutionary thought, to the exclusion of all else. Richard Lewontin, a prominent evolutionist and science professor at Harvard, gave perhaps the clearest assessment of evolution's religious foundation and presupposition when he stated:

"We have a prior commitment, a commitment to materialism. *It is not that the methods and institutions of science somehow compel us to*

accept a material explanation of the phenomenal world, but, on the contrary, that we are forced by our *a priori* adherence to material causes to create an apparatus of investigation and a set of concepts that produce material explanations, no matter how counter-intuitive, no matter how mystifying to the uninitiated. Moreover, that materialism is an absolute, *for we cannot allow a Divine Foot in the door* [emphasis added]."²⁹

Not only does evolution require a religious belief in atheism, it is a belief that is dogmatic and foundational, shaping what evidence is accepted, and what is denied, constructing a framework through which data is filtered and dismissed. Lewontin is painfully clear about the purpose for this framework: to exclude any existence of a deity, and ensure the atheistic and materialistic view of life.

Thus, if a presuppositional belief regarding a deity causes the ID theory to be classified as inherently religious, it cannot be escaped that evolution must likewise be considered inherently religious, for it too holds dogmatically to a fundamental assertion and belief regarding a deity, and furthermore, a faith system already classified by the Court as religious. While this line of reasoning will not be useful to *prohibit* the teaching of evolution, it may be useful to combat the reasoning that any theory which encompasses a belief in a deity is automatically violative of the First Amendment, and begin putting evolution and ID on equal philosophical and religious grounds.

Alternative strategy— properly defining the term "science"

An additional argument fielded by the court in *Kitzmiller* and *McClean* is that ID is not, and cannot be, science because it invokes the idea of the supernatural. Clearly, given early court rulings such as *John Scopes vs State*,³⁰ this is a fairly recent redefinition of the term "science", calling into question the issue of how science ought to be defined and, perhaps more pertinently, whether evolution fits such a definition.

In *McClean*, the court identified five major characteristics of science as follows:

- "(1) It is guided by natural law;
- (2) It has to be explanatory 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 (Ruse and other science witnesses)."³¹

Within this definition of science, two major problems arise. First, the idea that science requires naturalism and by definition excludes the idea of God is not an accurate definition of science, nor can one examine history and the development of scientific thought and reach such a conclusion. Second, while the last three elements identified in *McClean* do match historical definitions of science and scientific thought, *evolution* does not match those elements.

The court was clear in *McLean* that, “A scientific theory must be tentative and always subject to revision or abandonment in light of facts that are inconsistent with or falsify the theory. A theory that is by its own terms dogmatic, absolutist and never subject to revision is not a scientific theory.”³² Yet evolutionists are anything but “tentative”. On the contrary, the theory is held so dogmatically that leading proponents frankly state that no evidence which contradicts it is even *considered*, because of the religious presupposition of atheism. It can hardly then be said a theory which baldly excludes any challenging evidence is “tentative”. Evolution, thus, immediately fails a key element in the court’s definition of “science”. As the court in *McClean* correctly noted, “While anybody is free to approach a scientific inquiry in any fashion they choose, they cannot properly describe the methodology used as scientific if they start with a conclusion and refuse to change it regardless of the evidence developed during the course of the investigation.”

The two additional elements of science are the ability to test the theory through repetition, and falsify it through repeated observation. Yet in this respect, as well, evolution fails, for it is a singular event, neither repeatable nor falsifiable through observation. As Colin Patterson, longtime evolutionist and senior paleontologist at the British Museum of Natural History stated:

“We must ask first whether the theory of evolution by natural selection is scientific or pseudo-scientific (metaphysical) ... taking the first part of the theory, that evolution has occurred, it says that the history of life is a single process of species-splitting and progression. This process must be unique and unrepeatable, like the history of England. This part of the theory is therefore a historical theory, about unique events, and unique events are, by definition, not part of science, for they are unrepeatable and so not subject to test.”³³

It is for this exact reason modern-day scientists, in unguarded moments, are quite clear that evolution is a metaphysical framework, not part of the scientific process. Evolution itself is an unrepeatable event which can be neither observed nor falsified, yet is based on a set of *a priori* metaphysical assumptions to which proponents will dogmatically cling, irrespective of the evidence.

At this point, it must also be noted that ID is, in that regard, much the same as evolution. The origin of life, *however* it began, was a unique and unrepeatable event. As a result, neither ID nor evolution is repeatable, observable, or falsifiable; both are based on metaphysical presuppositions. The issue, then, is not that one theory is science while the other is not; the issue is that *neither* theory is properly science, by the court’s definition. This is a direct result of the court’s failure to recognize the difference between *origins science* and *operational science*.

Operational science may be defined as: “a systematic approach to understanding that uses observable, testable, repeatable and falsifiable experimentation to understand

how nature commonly behaves.”³⁴ This is essentially the definition the Court has used when discussing science, but this is *not* the proper classification for either evolution or ID. On the contrary, the theories instead should be classified as origins science: the interpretation of evidence from past events based on a presupposed philosophical point of view.³⁴ Because the Court has failed to recognize the difference between the two types of science, they have restricted the term to encompass only the operational form, resulting in what should be a total exclusion of the ability to interpret or apply the data within a presuppositional framework. Yet this is insufficient for a practical, layman definition of science, for unless application and interpretation of data is allowed, there is little use for the information, and an inability to fully train students. A working definition of science, then, will allow for both the collection *and* interpretation of data. A proper definition of science, and proper classification of evolution within that definition, will begin to equalize evolution and ID both as metaphysical frameworks for analysis.

If this is done, the question then becomes, “is the court correct that Intelligent Design *precludes* science by presupposing supernaturalism [emphasis added]?” For if a theory of origins were to truly bar operational scientific inquiry, a legitimate argument could be made for not including it in the science classroom. Yet nothing could be farther from the truth. Indeed, the contention that a belief in a deity inhibits scientific inquiry is not only without foundation, but in fact completely contrary to history. It can hardly be said that the belief in God hinders science when the fathers of modern science themselves, on whom our entire system rests, held not only to a belief in God, but even to a young-earth, biblical creation model. Fathers such as Pasteur, Mendel, Linnaeus, Copernicus, Kepler, Galileo and Newton, were all scientists who held to a distinctly theistic, Judeo-Christian view of origins, yet who laid the groundwork, thought process, and scientific breakthroughs that serve as the lynchpin of modern science.

So widespread was this theistic framework in the science realms that it has been said, “*Most* early scientists worked out their scientific views from within this theistic Christian belief in a supernatural creator and the doctrine of creation [emphasis added].”³⁵ It is precisely this history that led renowned philosopher, historian, and scientist Stanley L. Jaki to conclude, “From Copernicus to Newton it was not deism but Christian theism that served as a principal factor helping the scientific enterprise reach self-sustaining maturity.”³⁶ Perhaps even more pertinently, not only did these men hold to a theistic view of the world, their belief was a driving force in everything they did. That is, they did not become great scientists *in spite of* the beliefs, but rather *because of* them. This fact, too, like many others, has not gone unnoticed by opponents of ID. Langdon Gilkey, renowned philosopher who testified as an expert witness for the American Civil Liberties Union in the case *Epperson v. Arkansas*,³⁷ asserting that creationism was not science, went

so far as to say, “The religious idea of a transcendent creator actually *made possible* rather than hindered the progress of the scientific understanding of the natural order [emphasis added].”³⁸ It cannot, thus, fairly be said that a theory which drove the founders of modern science, and served as the lynchpin making modern scientific thought possible,³⁸ now inhibits that same process. In order to combat the Court’s assertion that it does just that, however, it is essential that a strong case be put forth demonstrating the correspondence of a theistic worldview to the science realm.

Even further, if proponents of ID are to make headway in academia, it is imperative that the definition of science be modified to include the presuppositional nature of origin science and, further, that both evolution and ID are properly classified as metaphysical frameworks for interpreting science, ensuring that both are placed on accurate and equal footing in relation to each other.

Conclusion

The bulwark of court rulings that have been allied against teaching ID or creationism in the public sector is indeed formidable, and forging a path ahead will be no small task for any in the legal profession. One lesson can be learned from the past fifty years of history, however. For too long supporters of ID and creationism have been allowing opponents of academic freedom to define the terms, theories, and definitions in this debate. Rather than arguing for a return to a correct definition of science, or a precise explanation of evolution’s affiliations and underlying philosophies, legal professionals have been attempting to fight the judicial war within the carefully crafted framework of evolution proponents, using only the inadequate weapons the opponent allows them, rather than driving the battle back to a proper framework and context. It is imperative that we begin instead to deal accurately and precisely with the terminology and underlying philosophy, lest history continue to repeat itself in the fight for academic freedom.

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