

The Scopes Trial

*An essay by Prof. Alan M. Dershowitz
from his book*

**America on Trial:
Inside the Legal Battles that Transformed Our Nation
(eBook Edition: May 2004)**

Trial Date: 1925
Location: Dayton, Tennessee
Defendant: John Thomas Scopes
Charge: Violation of Tennessee's antievolution statute
Verdict: Guilty
Sentence: \$100 fine, later rescinded by the Supreme Court of Tennessee

Some trials are about people; others are about events; and still others are about issues. The Scopes trial of 1925, the so-called monkey trial, was about the clash between religion and science in public education. Though the trial itself took only a few days, the great issues that separated William Jennings Bryan from Clarence Darrow still divide our nation today. Neither a jury verdict nor a Supreme Court decision will make them go away. They are concerns as old as humankind and as new as genetic engineering.

As has become all too common with regard to famous and infamous trials, the popular perception of what transpired in the courtroom comes not from the transcript of the court proceeding itself, but rather from the motion picture and/or stage play that was based – often loosely – on the trial. *Inherit the Wind* was both a prizewinning play and movie. On the stage, it starred Paul Muni, one of the greatest actors of his time. (It was the first Broadway play I ever saw, and it had some influence on my career decision.) The movie version, now available on video, starred Fredric March and Spencer Tracy. These fictionalized accounts presented the conflict as stark and simple: the forces of fundamentalist darkness versus those of progressive light. The William Jennings Bryan character, Scopes's prosecutor, was a burlesque of know-nothing religious literalism. The Clarence Darrow character, Scopes's defender, was the champion of tolerance, understanding, and pluralism.

In the most dramatic scene, the Darrow character calls the Bryan character as an expert witness on the Bible. The attack is scathing and merciless, as the man of science destroys the man of religion before our very eyes. The questions are devastating: How could the early days be measured before the creation of the sun? Were they really

twenty-four-hour days? How could Joshua order the sun to stop, when we all know that the earth moves around a fixed sun?

The fictional answers are true to the caricature of know-nothing literalism manufactured by the authors of *Inherit the Wind*: God knows how to measure time without a sun. Of course they were twenty-four-hour days, if God wanted them to be. God can make the sun move and stop.

As usual, the real story, as told in the trial transcript and in contemporaneous accounts, was more complex and far more interesting. The actual William Jennings Bryan was no simple-minded literalist, and he certainly was no bigot. He was a great populist who cared deeply about equality and about the downtrodden.

Indeed, one of his reasons for becoming so deeply involved in the campaign against evolution was that Darwin's theories were being used – misused, it turns out – by racists, militarists, and nationalists to further some pretty horrible programs. The eugenics movement, which advocated sterilization of “unfit” and “inferior” stock, was at its zenith, and it took its impetus from Darwin's theory of natural selection. German militarism, which had just led to the disastrous world war, drew inspiration from Darwin's ideas on survival of the fittest. The anti-immigration movement, which had succeeded in closing American ports of entry to “inferior racial stock,” was grounded in a mistaken belief that certain ethnic groups had evolved more fully than others. The Jim Crow laws, which maintained racial segregation, were rationalized on grounds of the racial inferiority of blacks.

Indeed, the very book – Hunter's *Civic Biology* – from which John T. Scopes taught Darwin's theory of evolution to high school students in Dayton, Tennessee, contained dangerous misapplications of that theory.¹ It explicitly accepted the naturalistic fallacy (that moral conclusions can be drawn from descriptions of nature) and repeatedly drew moral instruction from nature. Indeed, its very title, *Civic Biology*, made it clear that biology had direct political implications for civic society. In discussing the “five races” of man, the text assured the all-white, legally segregated high school students taught by Scopes that “the highest type of all, the Caucasians, [are] represented by the civilized white inhabitants of Europe and America.” The book, the avowed goal of which was the improvement of the future human race, then proposed certain eugenic remedies. After a discussion of the inheritability of crime and immorality, the author proposed an analogy: “. . . Just as certain animals or plants become parasitic on other plants or animals, these families have become parasitic on society. They not only do harm to others by corrupting, stealing, or spreading disease, but they are actually protected and cared for by the state out of public money. Largely for them the poorhouse and the

¹ George W. Hunter, *A Civic Biology: Presented in Problems* (New York: American Book Co., 1914).

asylum exist. They take from society, but they give nothing in return. They are true parasites.”

From the analogy flowed “the remedy”: “If such people were lower animals, we would probably kill them off to prevent them from spreading. Humanity will not allow this, but we do have the remedy of separating the sexes in asylums or other places and in various ways preventing intermarriage and the possibilities of perpetuating such a low and degenerate race. Remedies of this sort have been tried successfully in Europe and are now meeting with success in this country.” These “remedies” included involuntary sterilizations, and eventually laid the foundation for involuntary “euthanasia” of the kind practiced in Nazi Germany.

Nor were these misapplications of Darwinian theory limited to high school textbooks. Eugenic views held sway at institutions of higher learning such as Harvard University, under racist president Abbot Lawrence Lowell. Even so distinguished a Supreme Court justice as Oliver Wendell Holmes upheld a mandatory sterilization law on the basis of a pseudoscientific assumption about heritability and genetics. His widely quoted rationale – that “three generations of imbeciles are enough” – was later cited by Nazi apologists for mass sterilization.² Ironically, the journalist character in the play and movie was based on the real-life reporter H. L. Mencken, whose newspaper paid some of the legal expenses for the defense. The real-life Mencken was himself a rabid racist as well as an antireligious bigot.

It should not be surprising, therefore, that William Jennings Bryan, who was a populist and an egalitarian, would be outraged – both morally and religiously – at what he believed was a direct attack on the morality and religion that had formed the basis of his entire political career.

Nor was Bryan the know-nothing biblical literalist of *Inherit the Wind*. For the most part, he actually seems to have gotten the better of Clarence Darrow in the argument over the Bible (though not in the argument over banning the teaching of evolution). To Darrow’s question, “Do you think the earth was made in six days? Bryan’s actual answer was “[N]ot six days of twenty-four hours.”³ He then proceeded to suggest that these “days” were “periods,” and that the creation may have taken “6,000,000 years or . . . 600,000,000 years.”⁴

When Darrow questioned Bryan about the biblical story of Joshua ordering the sun to stand still, he obviously expected Bryan to claim that the sun orbited around the

² *Buck v. Bell*, 47 S. Ct. 584, 585 (1927).

³ National Book Company of Cincinnati, *The Scopes Trial* (New York: The Notable Trials Library, 1990), p. 299.

⁴ *Ibid.*, p. 302.

earth, as the bible implies. But Bryan disappointed him by testifying that he believed that “the earth goes around the sun.”⁵ He then proceeded to explain why the divinely inspired author of the Joshua story “may have used language that could be understood at that time.”⁶ All in all, a reading of the transcript shows Bryan doing quite well defending himself, while it is Darrow who comes off quite poorly – in fact, as something of an antireligious cynic.

Bryan, of course, won the case at trial, although the judgment of history – and eventually the Supreme Court – would eventually be in Darrow’s favor. Still, a close reading of the transcript in this case discloses more complex lessons than the easy ones available in the stylized version of events in *Inherit the Wind*. The textbook Scopes wanted to teach was a science text rather than a religious tract, but it was also a *bad* science text, filled with misapplied Darwinism and racist rubbish. Still, religious censorship of the kind dictated by the Tennessee antievolution law was not the proper response to the dangers of teaching high school students the kind of nonsense contained in the textbook used by Scopes. Religion may indeed have its proper role in constraining the misapplications of science, but not in the classrooms of public schools. The danger is simply too great that, as Jefferson warned, religiously motivated teachers and school boards may try to proselytize – rather than to educate – their highly impressionable young and captive audiences.

It is interesting to speculate how a current-day Scopes trial would be decided by a jury in Tennessee or, for that matter, in other areas of our nation. According to a recent article in the *New York Times*, “Americans are three times as likely to believe in the Virgin birth of Jesus (83 percent) as in evolution (28 percent).”⁷ This is apparently true despite the reality that most Christian churches accept the scientific validity of evolution and regard the Virgin birth the way prominent Catholic theologian Hans Küng does: as a “collection of largely uncertain, mutually contradictory, strongly legendary” narratives, “an echo of virgin birth myths that were widespread in many parts of the ancient world.”⁸

We live in an age of increasing fundamentalism among all faiths. It affects our politics, our schools, our laws and – almost certainly – our juries. The Scopes trial may not be an anachronism. It may be a portent.

⁵ *Ibid.*, p. 286.

⁶ *Ibid.*

⁷ Nicholas Kristof, “Believe it or not,” *New York Times*, August 15, 2003.

⁸ *Ibid.*