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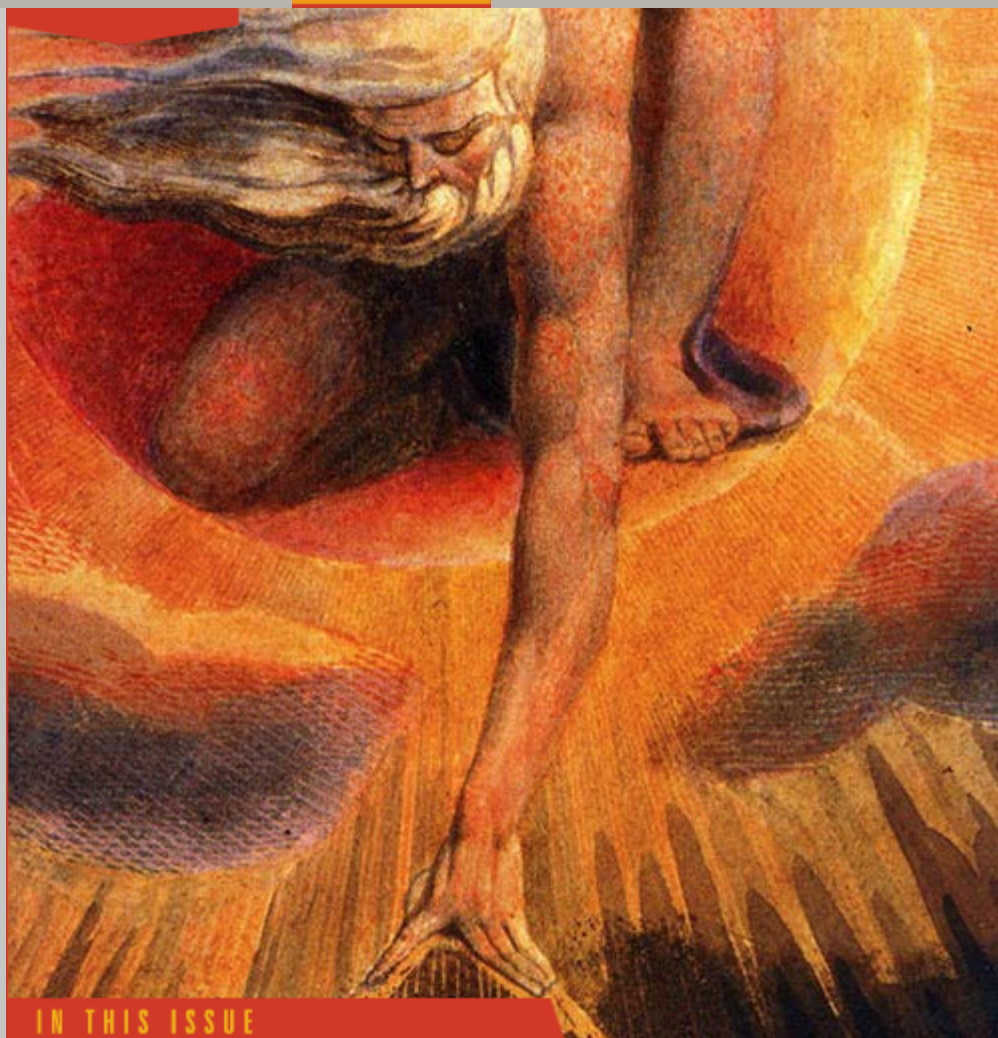
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[IN THE MEDIA](#)

MAY / JUNE 2006

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IN THIS ISSUE

Then God...

Creation as Prologue

Gallileo in Reverse

Science or Religion?

The Idea of Freedom

Protect Religious Rhetoric?

Intelligent Reasoning

Freedom of Speech in Democracies

NEW! LIBERTY ROUND TABLE

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School prayer has been a matter of serious contention for decades. In 1962 the ...[Read More](#)



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MAY / JUNE 2009

Then God...

BY: LINCOLN E. STEED



Children seem to have an innate fascination with dinosaurs. I know this from my days as a book editor. Children's books on, about or illustrated with pictures of dinosaurs are instant sales stars. I know the appeal of dinosaurs firsthand now by way of my eight-year-old son. Christopher will spend hours at a clip delving into the secret life of dinosaurs. He is fascinated by details of their hunting, loves the way they look, is impressed by their strength, and is open to all the "facts" of their existence.

I read some of these books on dinosaurs myself. And it strikes me again and again how fanciful they are—how sure they are of what is often a guess applied to a theory. Were they warm or cold blooded? Scientists have shifted on that lately, without much evidence either way it seems. I now read how caring dinosaur parents were—the evidence I think comes from projecting our values anew on bones from the stone. And what did they really look like? There are times when I think the blind men and the elephant story is at work in the artists' renditions—after all, why not the feathered serpent look of a Quetzalcoatl rather than the totalitarian armor of a Godzilla?



God answers Job out of the Whirlwind
JOB William Blake

But one would have to be as naive as the children who read the dinosaur books to think that any scientific worldview throughout history existed purely on its own self-evident merits and apart from the expectations of the times. Many years ago I listened to a piper physicist by the name of Richard Feynman expound on the self-serving nature of scientific enquiry. His memorable example: if we believed the moon was made of cheese, we would naturally send up a series of space probes with sensors designed to detect the presence of cheese. Feynman was more than a theoretician. A member of the Challenger disaster enquiry, this Nobel Prize winner asked the question that uncovered the o-ring flaw.

The fact that our nominally Judeo-Christian culture does not presuppose God when it looks at the heavens and the earth tells me that we abandoned that mission somewhere around the time God was proclaimed dead—and that the sensors are now looking for inanimate objects.

The rub comes when an attempt is made to correct the Hubble mirror of our enquiry without changing the worldview. The result could easily be something like intelligent design theory.

In my Bible it says that "in six days God created the heavens and the earth and all that in them is." I don't expect everyone to buy that revealed truth, any more than I think the earth is held up on the back of four giant tortoises. But I can tell you that it is faint support indeed to premise a God/Designer who may have laid down the templates for things and then let them develop along the lines of evolutionary theory, over vast eons of

time.

The Bible says that "he that cometh to God must first believe that He is." And of course that is true. It is in the vein of "I think, therefore I am." There is a required philosophical assumption both to posit God and to assume that we ourselves are anything beyond a shared abstraction. Even the pop philosophers of our day recognize the soggy soil of assumptions about reality: ergo films like "The Matrix."

If He exists, God must necessarily be more than an absent landlord—or worse, sending out misleading information in what proclaims itself as His revelation—the Bible. The reality of God argues for more than Intelligent Design—else we are at the very least heading back toward the very Deism which facilitated the rise of modern evolutionary thought.

The God of the six days of creation is far more than one of the backroom boys drawing templates for life—He must be the First Cause. The God of Sinai and the Ten Commandments came with thunder and lightning and His commands expected obedience. The God of Bethlehem was more than a Star in unusual orbit; He was the miracle of a Babe in the Manger. The risen Christ was a phantom to Thomas—until he reached out and touched the reality of God.

“Then God said, ‘Let us make man in Our image.’”
GENESIS 1:26, N.K.J.V.

I am afraid that the probably well intentioned promotion of Intelligent Design makes a phantom of God without dealing at all with the "evidence" which the modern mind grapples with in its search for meaning. And once established as intelligent designer, this new scientific entity has to survive the dissonance this creates with both ongoing cheese sensors and the rather overarching claims of the Bible.

If not Creator in the grand biblical sense, then how are we to take seriously the Ten Commandments, for example. And as a Seventh-day Adventist, I must protest the importance of the 4th Commandment, which has as its point of reference the 7th Day after Creation—the Saturday Sabbath rest which is the memorial of God's creative power. Not specifically Jewish—as some have suggested—nor easily moved to another day, as others have wished.

In this issue you can read some of the developments in efforts to insert Intelligent Design into school curricula alongside teachings of evolution. So far the courts have rejected this blatant attempt to insert what amounts to a particular religious view into state indoctrination.

The First Amendment is intended to keep the state from projecting a particular form of religion. But it must be said that the teaching of evolution has by its very nature tended to undermine religious certainty—not just Judeo Christian norms, but particularly the norms that formed this nation's civil assumptions 200 years ago. And there is a very real danger in the state uncritically endorsing a scientific mindset that may have consciously set itself against spiritual norms.

A solution could come with the state holding scientific expression responsible for its worldview. The republic is betraying itself if it slips into promoting an antireligious mindset. We should require that state educators present evolution and other scientific philosophies as the works in process that they are—and in explaining their worldview, give information about and respect for other views, such as Biblical Creationism. We should go further and demand that in places other than science class, students are given adequate information about religious world views other than the so-called but very real Secular Humanism.

This magazine has always insisted on a separation of church and state as the best basis for continued religious freedom for all. But I see trouble for that paradigm in the escalating debate of evolution versus intelligent design. Too many people of faith are looking to intelligent design as a Trojan Horse to counter state support of a scientific worldview that has become overtly antireligious. They risk two very central things in this attempt. First, they are further contributing to the state sponsorship of religious views in demanding that intelligent design be taught as science. Second, in putting up a pseudo-science named intelligent design they of necessity will mute or deny specifics of the Biblical account and demean the very authority of the concept.

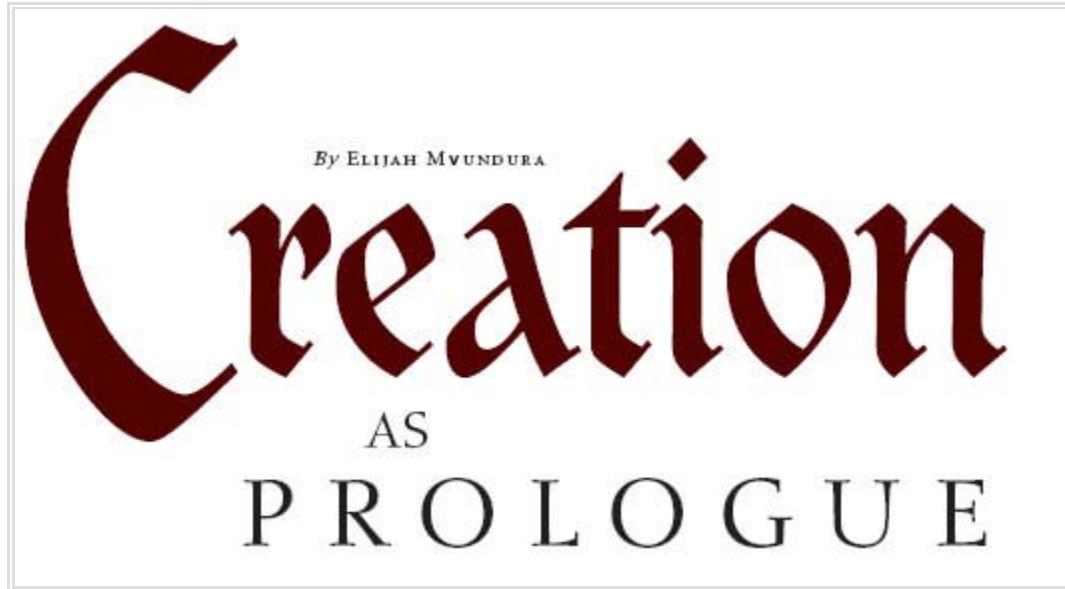


Lincoln E. Steed
Editor,
Liberty Magazine

MAY / JUNE 2009

Creation As Prologue

BY: ELIJAH MUUNDURA



Charles Darwin's *The Origin of Species* (1859) shattered faith in Creation, God, and other fundamental Bible truths for many readers. Since that time Christian scholars have struggled to establish Creation on scientific grounds: first, through scientific creationism and recently through intelligent design. But in so doing they have unwittingly detached the Creation story from the rest of the Bible. Also, by overly focusing on the origin aspect of the Creation story they have obscured its broader spiritual dimensions. Or, to put it differently, they have inadvertently smothered the Word that spoke the universe into existence.

While the book of Genesis begins with the creation of the world, it ends with the creation of a nation. In other words, the Creation story "does not stand by itself as though it were a prescientific attempt to explain the origin of the universe." Rather it is prologue to a history-salvation history that begins with the call of Abraham, extends to the Exodus, ancient Israel, the New Testament, and culminates in the creation of "a new heaven and a new earth" (Revelation 21:1).^{*} To be sure, there is a sense in which the experience of redemption preceded the knowledge of Creation. Not only did Moses write Genesis centuries after the Creation, the event that gave birth to ancient Israel and shaped her faith, the event the prophets appealed to in their battle against idolatry, was not the Creation but the Exodus.

This appeal to the Exodus is highly instructive. Whereas all the people in the world have their Creation stories—and evolution is in many ways one—the Exodus is sui generis. It stands alone in religious history. "Ask from one end of the heavens to another. Has anything so great ever happened, or has anything like it ever been heard of? . . . Has any god ever tried to take for himself one nation out of another nation. . . like all the things the Lord did for you in Egypt?" (Deuteronomy 4:32-34). So singular was the Exodus that the prophets equated it with Creation. As Jeremiah 10:16 puts it, "He who is the Portion of Jacob. . . he is the Maker of all things, including Israel." And Isaiah 43:1 described Israel as created, formed, and redeemed by God. This conflation of Creation with a historical redemptive event is unprecedented. It represented a radical break with the religions of antiquity. The ancient gods had a story (mythos) but never a "history." In contrast Yahweh revealed Himself not in the rhythms of nature but in the tempos of history. And by implication He was to be sought or encountered not in nature but in history.

Not without significance, the New Testament fixes this revelation in the historical person of Jesus Christ. John 1:1-16 describes Him as the principal agent in Creation and redemption; Colossians 1:15-20, as the center and foundation of the whole creation; and Ephesians 1:9, 10 as the purpose and end of Creation. While Romans 5:12-19 transfers the Creation motif of Adam as head of humanity to Christ, 2 Corinthians 4:6 literally equates Creation with redemption. And then, in a language that clearly echoes the Creation, the angel preaching the eternal gospel in Revelation 14:6, 7 calls on "every nation, tribe, language and people" to fear and worship the God who created "the heavens, the earth, the sea and the springs of water."

All in all, in both the Old and New Testaments God's creative acts are not restricted to the creation of the world. Rather, there is an

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unbroken continuum embracing His redemptive work in human history. Jesus was clearly alluding to this continuum when He declared, "My Father is working until now, and I Myself am working" (John 5:17, NASB).† And this work of redemption—of creating new people in Christ (2 Corinthians 5:17)—that God is still doing provides the most compelling evidence of His existence. As the apostle John insightfully pointed out, "No one has ever seen God; but if we love one another, God lives in us and his love is made complete in us" (1 John 4:12). Or, as Jesus Himself succinctly put it, "By this all men will know that you are my disciples, if you love one another" (John 13:35).

Love—true love—can transcend ethnic, class, and national barriers. This is what Jesus Himself proffered as evidence for the authenticity of the gospel. But why do Christians flagrantly ignore His advice? Why resort to the power of reason rather than the power of love. After all, the argument from design, as Immanuel Kant cogently established in *The Critique of Pure Reason* (1781), at best proves only a designer, not a creator, and therefore cannot give an adequate conception of God. Indeed, it tells us nothing about "the compassionate and gracious God, slow to anger, abounding in love and faithfulness, maintaining love to thousands, and forgiving wickedness, rebellion and sin" (Exodus 34:6, 7); the God who "so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life" (John 3:16).

Such a loving God cannot be demonstrated, let alone communicated through scientific proofs. In fact, it is because love cannot be proved theo-retically or communicated abstractly that God became human. Also, it is because love cannot be commanded, won by force or authority, that He eschewed power and status to assume the lowest position in human society.⁶ And He has not changed. He still chooses "the foolish things of the world to shame the wise. . . the weak things of this world to shame the strong" (1 Corinthians 1:27, 28). For it is "not by might nor by power, but by. . . [His] Spirit" (Zechariah 4:6) that God will establish His kingdom on earth.



Elijah Muundura is a freelance writer living in St. Catharines, Ontario, Canada.

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†Scripture quotations marked NASB are from the New American Standard Bible, copyright © 1960, 1962, 1963, 1968, 1971, 1972, 1973, 1974, 1975, 1977, 1995 by The Lockman Foundation. Used by permission.

1 Bernhard W. Anderson, *From Creation to New Creation: Old Testament Perspectives* (Fortress Press, 1994), pp. 25, 26.

2 Jeremiah 11:1-5; Ezekiel 20; Amos 3:1, 2; Hosea 11:1, 12:9; Micah 6:1-5.

3 Isaiah 42:5; 45:18-22; 54:5; Psalms 33, 89, 104, 136.

4 Anderson, p. 27.

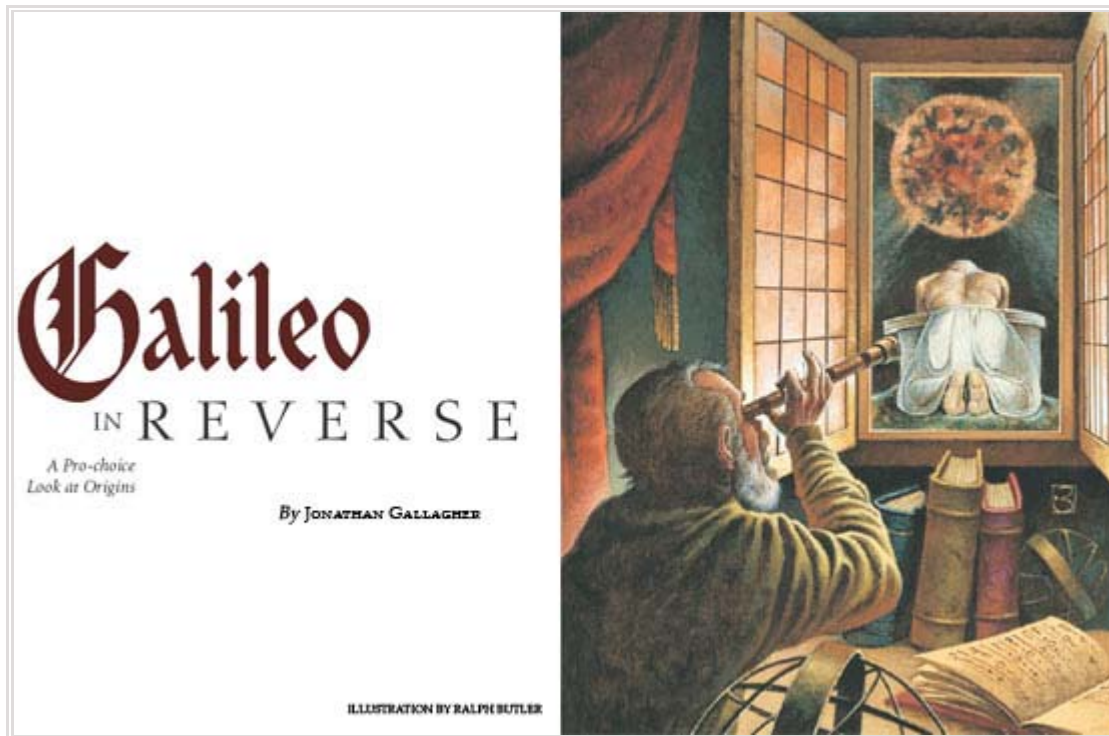
5 Bertrand Russell, *A History of Western Philosophy* (Simon and Schuster, 1945), p. 709.

6 Ellen G. White, *The Desire of Ages* (Pacific Press Publishing Association, 1898), p. 20.

MAY / JUNE 2008

Gallileo In Reverse

BY: JONATHAN GALLAGHER



When Pennsylvania Judge John Jones wrote his opinion that "ID [intelligent design] is not science" in the case of *Kitzmiller v. Dover Area School District* (December 20, 2005), all sides of the argument grabbed his words for their cause.

To those keen to maintain the "scientific integrity" of the evolutionary argument, this was indeed good grist for the mill. Here was a judge concluding that the only acceptable definition of science was evolution-based, they said.

On the other side, activists pointed to the strange spectacle of a nonscientist defining science. How was it, they wondered, that scientists needed case law to bolster their position? Was this not a case illustrative of legal dogmatism rather than the supposed openness of scientific quest?

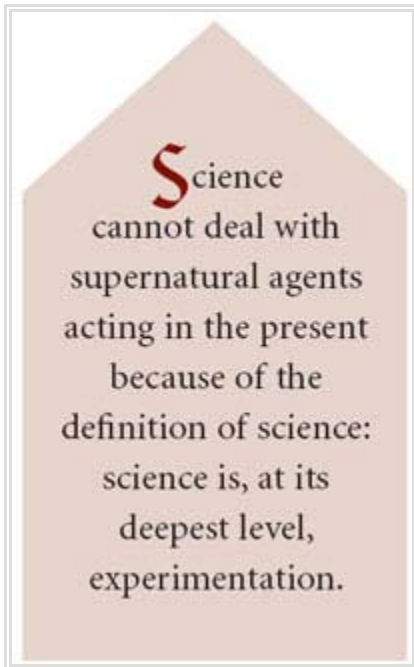
Add to the mix the issue of separation of church and state regarding intelligent design ideas (one argument that to many seemed a stretch too far); the moral conclusions that are inevitably dependent on origin perspectives; and the continuing battle for the minds of the young and innocent, and it's no wonder that this verdict has brought an avalanche of varied observations.

Yet in all the infighting, it's tragic that the essential freedom of belief and the right to choose seem lost. Those on each side are so sure of the correctness of their respective positions that this is the point of debate, and not the opportunity to calmly and reasonably examine the evidence before making one's decision.

Dictating the Meaning of Science

Take another look at Judge Jones's affirmations regarding science. First, what it is not:

"ID is not science. We find that ID fails on three different levels, any one of which is sufficient to preclude a determination that ID is science. They are: (1) ID violates the centuries-old ground rules of science by invoking and permitting supernatural causation; (2) the argument of irreducible complexity, central to ID, employs the same flawed and illogical contrived dualism that doomed creation science in the 1980's; and (3) ID's negative attacks on evolution have been refuted by the scientific community."



The esteemed judge surely makes a historical error in point 1. Newton, while establishing his laws of motion, was also writing a commentary on the book of Revelation. He saw no contradiction between natural laws and the supernatural actions of the Creator. Similarly, many scientists over the centuries have not dismissed supernatural causation in such a cavalier manner as did Judge Jones.

For Newton, his investigations were "thinking God's thoughts after him." More recently no less a scientist than Einstein wrote, "I want to know how God created this world. I am not interested in this or that phenomenon, in the spectrum of this or that element. I want to know His thoughts; the rest are details."

It all depends on the definition of science, as we shall see later. For the moment, let us simply observe that the "centuries-old ground rules of science" do not speak in either religious or secular terms. Scientific methods relate to observable facts and determinations. It is in the realm of interpretation that concepts differ.

The judge's out-of-hand dismissal of irreducible complexity in point 2 is more an illustration of a belief position than a reasoned examination of the evidence. His comments sound more like a prejudged opinion than a desire for openness to differing ways of reading the evidence, as is required by scientific inquiry.

Similarly the assertion in point 3 that the attacks on evolution have been refuted by the scientific community is such a broad generalization that it is unacceptable. (Who agrees that refutation has occurred? Who decides on the standard for refutation? By whose interpretation of the evidence has the concept been refuted? Etc.) Even if such an assertion were true, does this mean that the debate on the question of origins must then be silenced and only one view advanced?

What Is Science? Who Decides?

The judge goes further in his delineation of what science means: "This self-imposed convention of science, which limits inquiry to testable, natural explanations about the natural world, is referred to by philosophers as 'methodological naturalism' and is sometimes known as the scientific method. . . . Methodological naturalism is a 'ground rule' of science today which requires scientists to seek explanations in the world around us based upon what we can observe, test, replicate, and verify."

He continues: "NAS [National Academy of Sciences] is in agreement that science is limited to empirical, observable and ultimately testable data: 'Science is a particular way of knowing about the world. In science, explanations are restricted to those that can be inferred from the confirmable data—the results obtained through observations and experiments that can be substantiated by other scientists. Anything that can be observed or measured is amenable to scientific investigation. Explanations that cannot be based upon empirical evidence are not part of science.' . . . This rigorous attachment to 'natural' explanations is an essential attribute to science by definition and by convention."

All well and good. In the words of the famous scientist Lord Kelvin: "Science is measurement." The problem at issue is, however, not over scientific methodology or measurement, but over how scientific facts are understood and interpreted. When it comes to concepts and mechanisms of origins, science as so precisely defined by Judge Jones totally fails. There is no possibility for measurement or observation, since it is a past event. It cannot be reproduced. It cannot be studied in a laboratory. So by very definition, all theories about origins are just that—theories. They cannot be established by science. Scientific facts noted in the current universe may lead to some postulations as to what occurred, but these are based on inference, not on scientific methodology of observation, hypothesis, experiment, and demonstration.

"Science cannot deal with supernatural agents acting in the present because of the definition of science: science is, at its deepest level, experimentation. We cannot experiment on a supernatural process; neither can we experiment on the past. Only the present and the physical processes currently at work are testable. . . . Thus, by definition, intelligent design is not science, because the act of design no longer occurs and is not testable. But the theory of evolution is not science either" (student Jake Morris commenting on the *Kitzmilller* decision in the *York Daily Record*).

Directly contradicting such an observation is this from the University of California at Berkeley's Web site: "Evolution is observable and testable. The misconception here is that science is limited to controlled experiments that are conducted in laboratories by people in white lab coats."

Actually, much of science is accomplished by gathering evidence from the real world and inferring how things work. Astronomers cannot hold stars in their hands and geologists cannot go back in time, but in both cases scientists can learn a great deal by using multiple lines

of evidence to make valid and useful inferences about their objects of study." (As an aside, perhaps the most interesting aspect of this piece of dogmatic assertion is the use of the words "inferring" and "inference.")

In a *World Peace Herald* piece, Lloyd Eby, a lecturer at George Washington University with a doctorate in the philosophy of science, blasts the judge in seeking to define science, and then extrapolate to denying anything other than natural causation:

"Judge Jones went beyond both his competence and the proper bounds of his office when he propounded an answer—and a tendentious one at that—to the question, 'What is science?' and then went on to declare that science must be restricted to methodological naturalism. . . . But many people, among them a lot of today's proponents of neo-Darwinist evolution, move from the scientific stance of methodological naturalism to metaphysical naturalism. In other words they make a leap—a leap that is not supported by either good logic or good observation—from a method of science in which only natural explanations are to be accepted as scientific, to a declaration that only natural phenomena exist and that all natural phenomena can be explained without reference to extra natural (supernatural) phenomena and existence(s). . . . Thus, in the stance of many of its proponents, Darwinian and neo-Darwinian evolution frequently becomes a semi-religious view because it is given as a support for the view that no supernatural reality exists, and because it is offered as an answer to the question of 'ultimate things.' Such answers are, by their nature, at least semi-religious if not fully so."

But the judge claims, on the basis of this trial, to represent the best authority: "After a six week trial that spanned twenty-one days and included countless hours of detailed expert witness presentations, the Court is confident that no other tribunal in the United States is in a better position than are we to traipse into this controversial area."

Free Expression?

The real issue here is openness. If different theories about origins cannot be discussed in the classroom, then where? The goal of education is to provide not just information—the factual evidence—but also mechanisms for interpreting evidence. Questioning, examining, analyzing—all these are essential tools. But if scientific dogmatism is allowed to close the door to alternatives, then it is not surprising that there is a negative reaction. The idea that "science" always provides the answer is increasingly difficult to maintain in a world plagued by some of the results of scientific and technological "developments," and it demeans good science if some are allowed to dictate one particular view on any subject.

It is interesting that the case of Galileo and his treatment by the church is often used as an example of overreaching dogmatism. Certainly in the end Galileo was proved right, not through dogmatic assertion, but through the demonstration of the truth of his observations—this despite the persecuting power of the church that branded him and his views heretical. Indeed Cardinal Bellarmine, judge at Galileo's "trial," affirmed that "to assert that the earth revolves around the sun is as erroneous as to claim that Jesus was not born of a virgin."

But now the dogmatic boot is on the other foot. Judge Jones has ordered that intelligent design not be referred to as an alternative theory of origins in the classrooms of the Dover School District. The Skeptic's Society trumpeted the verdict as "Not Intelligent, Surely Not Science." Even the American Institute of Physics issued a news bulletin with the headline "Judge Concludes Intelligent Design Should Not Be Taught as Science."

Instead of wondering what a judge is doing in defining science, it seems that such defenders of dogmatism in the scientific community are only too happy for a legal "No Trespassing" fence that prevents entrance and discussion by those of differing views.

The most disturbing aspect of the whole debate is that under the guise of supposed church-state separation issues, the opportunity for investigation and debate about origins is chilled. Required academic uniformity is enforced, and good learning goes out the window. Instead of a healthy debate in a respectful environment we have the imposition of thought control more in keeping with Orwell's *1984*. Whatever happened to freedom of thought and expression?

In the end it was one Galileo Galilei who concluded, "I do not feel obliged to believe that the same God who has endowed us with sense, reason, and intellect has intended us to forgo their use." Wise words for our times too.



Jonathan Gallagher holds a bachelor's in applied chemistry from Portsmouth University, England, and a Doctor of Philosophy degree from the University of St. Andrews in Scotland. After working as a scientist in the European space industry, and as an ordained minister, he currently represents the Seventh-day Adventist Church to the United Nations.

¹ Available at www.pamd.uscourts.gov/kitzmiller/kitzmiller_342.pdf.

² *Ibid.*, p. 64.

³ *Ibid.*, p. 66.

4 *York Daily Record*, Dec. 25, 2005.

5 evolution.berkeley.edu/evolibrary/misconceptions_faq.php#b6.

6 *World Peace Herald*, Jan. 5, 2006.

7 *Kitzmiller*, p. 63.

8 *FYI*, #177, Dec. 26, 2005.

MAY / JUNE 2009

Science Or Religion?

BY: TIMOTHY STANDISH

In the often cited—but rarely understood—historical case of Galileo, a court was called on to address scientific questions about the nature of the universe. Unsurprisingly, the outcome of that proceeding was a disastrous affirmation of the orthodoxy current at the time. Courtrooms have never been a good forum for addressing questions of science or religion, and they remain ill equipped to address these questions in the present. This has been illustrated in the recent series of legal skirmishes over intelligent design (ID); in the near future we will no doubt see more examples of why these matters are best left in the world of academia and out of the realm of public policy.

ID is a theory that states: "Certain features of the universe and of living things are best explained by an intelligent cause, not an undirected process such as natural selection." On cursory examination this modest proposal does not sound like a religious doctrine, but in the recent case of *Kitzmiller v. Dover Area School District* the question of whether ID is religion was answered with a resounding "Yes." In closing arguments, lawyers for the plaintiffs argued that "at this trial, plaintiffs have submitted overwhelming evidence that intelligent design is just a new name for creationism discarding a few of traditional creationism tenets, such as direct reference to God or the Bible and a specific commitment to a young earth, but maintaining essential aspects, particularly the special creation of kinds by a supernatural actor."

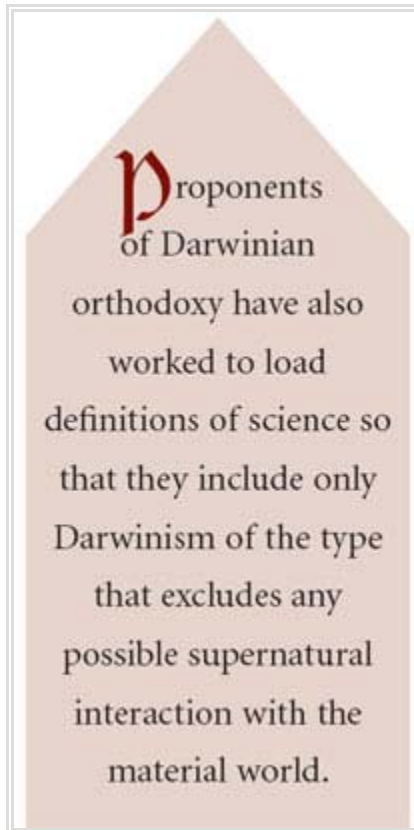
Judge John E. Jones III agreed with the plaintiffs' argument that ID is equivalent to creationism and, as creationism has been previously ruled to be religious, teaching it in government-run schools is a violation of the establishment clause of the First Amendment. His ruling states: "To preserve the separation of church and state mandated by the Establishment Clause of the First Amendment to the United States Constitution, and Art. I, § 3 of the Pennsylvania Constitution, we will enter an order permanently enjoining Defendants from maintaining the ID Policy in any school within the Dover Area School District, from requiring teachers to denigrate or disparage the scientific theory of evolution, and from requiring teachers to refer to a religious, alternative theory known as ID."

The ruling in *Kitzmiller* may have come as a shock to some of those involved in the defense, but not to those who understand the traditionally conservative approach taken by courts. In the tradition of the court that convicted Galileo, Judge Jones endorsed the current orthodoxy and rejected an alternative idea by ruling that ID is religion, not science. This illustrates once again why courts are not the best, or even a useful, forum for deciding matters of science. Science does not advance by espousing entrenched orthodoxy, but by exploring alternative ways of viewing nature and testing them to see which theories stand up best in light of empirical reality.

It is true that Darwinian evolution is the current orthodoxy in science, but forbidding a school district "from requiring teachers to denigrate or disparage the scientific theory of evolution" could be construed as a ban on teaching science as it is practiced and an endorsement of teaching orthodoxy as a science substitute. It is the work of scientists to question current theories, test them, question them again, and ultimately reject them if they fail to withstand rigorous scrutiny. It seems incredible that a school board would need to ask teachers to question a scientific theory, or that a court would find it necessary to forbid this. In short, Judge Jones was correct in recognizing Darwinism as the current orthodoxy, but still revealed a profound misunderstanding of the very nature of science.

One of the more startling aspects of the *Kitzmiller et al.* ruling was the judge's assertion that some of the defendants had "lied outright under oath on several occasions." Unfortunately, this kind of accusation is not new in cases involving questions of science and religion. In the famous Arkansas creation science case, *McLean v. Arkansas Board of Education*, the eminent philosopher of science and enthusiastic Darwinist Michael Ruse has been accused of disingenuously advocating a position in his testimony that "is a laughingstock among his professional peers and an ethical and conceptual embarrassment to his profession." Ruse has defended himself by stating that "creationism of the ilk to be found in John Whitcomb and Henry Morris's *Genesis Flood* is not [science]. (It was their kind of creationism that I had in my sights in Arkansas.)" This sounds disturbingly like an end-justifies-the-means rationalization for an expert testifying under oath to misrepresent the state of the art in their field with the specific purpose of throwing the trial.

The arguments presented by Ruse in the Arkansas creation science case fall into a general category commonly referred to as "demarcation arguments." These are among the most common arguments used in discussions of whether something is or is not science. It is easy to see the attractiveness of such arguments, as they provide nice clear ways of demarcating between science and everything else. One example would be the criterion proposed by Karl Popper, that to be scientific an idea must, at least theoretically, be subject to falsification. The problem with this argument, and demarcation arguments in general, is the lack of success in developing criteria that include everything generally accepted as science while excluding everything that is not. For example, in the case of Darwinism, the concept of natural selection or "survival of the fittest" has been criticized as a tautology that is unfalsifiable:



Question: Which individuals survive?

Answer: The fittest ones.

Question: Which individuals are the fittest?

Answer: The ones that survive.

Ironically, Popper himself endorsed the idea that natural selection is a tautology and thus is unfalsifiable, as it has no explanatory power, an endorsement he later recanted. Much has been written trying to construct survival of the fittest in a way that is falsifiable, and it may in fact be possible to do this, but it does seem that this particular facet of Darwinism is vulnerable to criticism for not being actually falsifiable. Thus while demarcation criteria serve as rules of thumb for deciding whether something is science or not, relying on a single criterion, or even a group of demarcation criteria, does not achieve the intended unambiguous means of ruling ideas into or out of the science category.

In the specific case of anti-ID demarcation arguments, it is common to attempt to exclude ID from science because it lacks predictive power raising questions about how one would design a research program based on ID. Naturally, these accusations have been addressed by ID supporters in various ways, but the simplest response is probably that to be scientific, a theory may not have to meet this particular demarcation criterion. Science may include some things that are simply brute observations, such as that a plethora of profoundly different animal fossils are found in Cambrian rocks.

Proponents of Darwinian orthodoxy have also worked to load definitions of science so that they include only Darwinism of the type that excludes any possible supernatural interaction

with the material world. An example of this occurred during development of science standards in Ohio during 2001. Initially grade 10 students were to be expected to "recognize that scientific knowledge is limited to natural explanations for natural phenomena based on evidence from our senses or technological extensions." By limiting science to "natural explanations" the answer to the question of life's origin and development is answered before the investigation begins; life came about by natural forces and not supernatural intervention. It may be possible to formulate ID in such a way that the intelligence is not outside of nature, so definitions of this kind may not exclude ID, but it is probably for the best that this definition was modified to the much more epistemologically neutral "recognize that science is a systematic method of continuing investigation, based on observation, hypothesis testing, measurement, experimentation, and theory building, which leads to more adequate explanations of natural phenomena."

Another strategy used against ID is to associate it with religious ideas. Those who oppose ID commonly refer to it as "intelligent design creationism," which associates ID with the religious belief of creationism. The implication is that if something falls into the religion category, then it can't be also categorized as science. It could be argued that in the courts, efforts to promote "creation science" failed in part because the idea that religion (creationism) and science could coexist within a single category was inconceivable. In any case, the specific religious position of creationism was sufficient criterion to rule creation science out of government-run schools on constitutional grounds.

This explains in part why anyone would even bother to ask whether ID is science or religion. Champions of the current orthodoxy in science hope to use the courts as the forum to resolve the issues raised for Darwinism by ID. Presumably the courts are seen by some as providing an advantage to the conservative Darwinian side. Thus the competition of ideas about the origin and nature of life is shifted from a matter of exclusive use of logic, data, and rhetoric to very different questions of constitutional law, civil rights, and other political considerations under which normal science should not, one would hope, be subject.

The very question "Is ID science or religion?" is loaded, as it requires that ID be either one or the other. But these two options do not represent the entire universe of possibilities; ID could be both science and religion or possibly neither. As there is general agreement that ID has something to do with science and religion and not much to do with home economics, poetry, or other possible categories of knowledge, the option that it could be neither science nor religion will not be discussed here (although this may be worth thinking about, and the possibility that it, along with much of Darwinism, falls more comfortably into the category of philosophy is certainly of interest).

The question of whether something could be both science and religion (or philosophy) is worth considering. Philosopher and author Nancy Pearcey has argued strongly that a false dichotomy entered Western thinking at the time of the Enlightenment. In this false dichotomy, religion, the humanities, ethics, and other matters of the private mind are viewed as completely separate entities from science and reason, which are matters of public knowledge or universal truth. In the real world, science is not isolated from issues of

“It would be very foolish to throw away the right answer on the basis that it doesn't conform to some criteria for what is or isn't science.”

philosophy, religion, or ethics, and this may explain some of the difficulties inherent in demarcation arguments. Science does not sit in a nice neat box, and neither does religion or the humanities. In reality much of the truly exciting activity happens at the interface between different areas of knowledge, and some things, especially in the realm of ideas, may very well have both scientific and religious facets to them. In short, ID may be science and yet have strong religious implications as well.

ID is not unique in being possibly science while also having profound religious implications. An excellent modern example of this would be the emergence of big bang cosmology, which was initially strongly resisted by atheist scientists because of its profound religious implications. Instead of an eternal universe, cosmologists had to deal with a beginning with all that beginnings imply. As John Gribbin put it in *Nature*:

"The biggest problem with the Big Bang theory of the origin of the universe is philosophical—perhaps even theological—what was there before the bang. . . .The best way around this initial difficulty is provided by a model in which the universe expands from a singularity, collapses back again, and repeats the cycle indefinitely." On the other side, some religious people have seen the big bang as incompatible with their theology and responded with their own challenges to it.

Of course big bang cosmology is not the only area in which science and theology may interface. Archaeology (particularly in the Middle East), the end of life, fetal stem cell research, and Copernicus's heliocentric solar system championed by Galileo are a few of the plethora of areas in which religion has come into direct contact with empirical knowledge. The ideas of Copernicus are not now rejected on theological grounds, but at the time of the Reformation they were rejected by both Protestants and Catholics alike on theological and scientific grounds. In modern times, accumulating archaeological evidence for or against the existence of David, king of Israel, is hardly rendered unscientific just because he is mentioned in the Bible. The question is not one of whether science or religion is being dealt with, but what role is to be allowed for either or both in understanding those areas in which they interface. In the big bang example, at least until the next revolution in cosmology, it was probably best to go with the empirical knowledge and not the atheistic theology of those who opposed the theory. Why ID, or Darwinism, for that matter, would be different is not obvious.

Religious implications did not cause big bang cosmology to be squelched by judges. During its development as a scientific theory, it was not subjected to legal challenges in courtrooms around the United States. If it had been, newspapers could very well have been filled with quotes by opponents referring to "big bang creationism." Because the theory was allowed to compete in the marketplace of ideas, we now have a better appreciation of the universe we occupy than was given by steady state universe cosmology.

Is the idea that "certain features of the universe and of living things are best explained by an intelligent cause, not an undirected process such as natural selection" religious? It does not invoke God or gods, magic, demons, angels, the Bible, the Koran, the six Vedangas, four Sutras, Dhammapada, or any other form of supernatural revelation or holy book. This clearly differentiates it from creationism, but ID still has obvious religious implications for those willing to believe in religious things. Having said that, ID is similar to Darwinian evolution, which has its own set of religious implications, in that it is quite possible to embrace both ID and theistic or atheistic religious views. Yes, ID may inform those views, but it does not compel belief in the supernatural, and in fact scientists as eminent as Nobel Prize laureate Francis Crick have seen the inadequacy of Darwinian mechanisms to produce what we see in nature, particularly at the molecular level, and yet have not felt compelled to embrace the God of Abraham, Isaac, and Jacob.

The very question
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Is ID science? To answer this question requires that one actually understand what science is, and, in the absence of reliable demarcation arguments, this is not as simple as one would hope. Having said that, it should be possible to determine whether ID exhibits characteristics commonly accepted as those exhibited by other ideas that fall into the category of science. First, it is essential to understand that to be scientific, an idea does not have to be true or correct. If this were the case, then no ideas would be science, as science is characterized by its tentative nature. The theories held as science today represent the best understanding we have, but they are always subject to revision as more data is collected, better models are constructed, more experimental tests are carried out and new related ideas develop. To the degree that ID relies on empirical data and its logical interpretation, it is reasonable to categorize it as science, whether it has religious implications or not.

Ironically, much of the criticism of ID stems from the fact that it goes only as far as empirical data and logic can go and no further. Thus while the implications are obvious to religious people and those who oppose theistic religion, it does not step over the threshold into those parts of religion that are exclusively informed by revelation.

Realistically, the jury is out on whether ID is correct, whether it will be accepted as true. Before it is taught along with other scientific concepts to public grade school and high school students, ID should be openly contested in the rough-and-tumble academic world. ID proponents must present their arguments, and those arguments must be rigorously examined. Only then, if enough minds have been convinced that it is a viable idea, does it belong in the science curriculum of government-run schools. This process should be carried out irrespective of any religious implications of ID, although it would be asking too much to expect that religious ideas would not serve as powerful motivators in the competition of ideas. Because ID is an emerging idea, it should be debated in the forums where such emerging ideas are best examined; specifically, ID should be openly tested in university classes and in scientific literature and meetings. Perhaps it is a measure of the power of the nascent ID argument that desperate efforts are being made to exclude a fair evaluation of ID from such academic discussions.

Clearly the competition necessary to properly evaluate ID will be stifled if the entire process is skipped because of overeager local school boards who wish to intercalate ID into science classes before it has proven itself. In addition, premature injection of ID into government-sponsored schools provides a gift to champions of the current Darwinian orthodoxy who wish to short-circuit the process by using the courts to attack ID rather than defending their own ideas in the appropriate academic setting. If either court judgments or premature forcing of ID into classrooms is the way the ID debate is resolved, it will be a tremendous loss. Without a proper academic vetting, ID will never gain the strength and confidence it would enjoy if it survives being properly challenged.

On the other hand, using the courts to advance an orthodoxy has not proven to be a successful long-term strategy in the past. Despite Galileo's courtroom conviction of heresy, the Copernican heliocentric solar system he advocated has now become the orthodoxy in science. Repeating the mistakes made in Galileo's case would be tragic, whether it is with ID or any other emerging idea in science that has religious implications. Modern courts should not be declaring scientific ideas such as ID heretical because of their religious implications or because of some parties' interest in the prevailing orthodoxy. In the specific case of ID, "it would be very foolish to throw away the right answer on the basis that it doesn't conform to some criteria for what is or isn't science."



Timothy Standish is a research scientist at the Geoscience Research Institute, Loma Linda, California.

1 This is how intelligent design is defined by the Discovery Institute, a leading ID think tank. It can be found at: www.discovery.org/csc/topQuestions.php#questionsAboutIntelligentDesign.

2 Plaintiffs' closing arguments, *Kitzmiller Versus Dover Area School District*, pp. 30, 31. www.ncseweb.org/kvd/trans/2005_1104_day21_pm.pdf.

3 Case 4:04-cv-02688-JEJ Document 342 Filed 12/20/2005 Judge Jones Memorandum Opinion and Order, p. 138. www.pamd.uscourts.gov/kitzmiller/decision.htm.

4 *Ibid.*, p. 105.

5 J. A. Campbell, "Intelligent Design, Darwinism, and the Philosophy of Public Education," *Rhetoric and Public Affairs* 1, no. 1 (1998): 491.

6 J. C. Whitcomb, H. M. Morris, *The Genesis Flood: The Biblical Record and Its Scientific Implications.*, (Philadelphia: Presbyterian



and Reformed Publishing, 1961).

7 M. Ruse, "On Behalf of the Fool," in *Darwinism, Design, and Public Education*, J. A. Campbell and S. C. Meyers, eds., (East Lansing, Mich.: Michigan State University Press 2003), pp. 475-485.

8 K. Popper, *Conjectures and Refutations* (London: Routledge and Keagan Paul, 1963).

9 K. Popper, "Natural Selection and the Emergence of Mind," *Dialectica* 32, (no. 3-4 (1978): 339-355.

10 Original Ohio State Science Standards, 2001, "Scientific Ways of Knowing," Grade 10, Indicator 3, which was later modified.

11 *Ibid.*, p. 147.

12 This term is used consistently by spokespeople for anti-ID organizations such as the National Center for Science Education (NCSE) www.natcensci.org/. It even appears in the title of a book: R. T. Pennock, ed., *Intelligent Design Creationism and Its Critics: Philosophical, Theological, and Scientific Perspectives* (MIT Press, (2001).

13 N. R. Pearcey, *Total Truth: Liberating Christianity From Its Cultural Captivity* (Wheaton, Ill.: Crossway Books, 2004).

14 J. Gribbin, "Oscillating Universe Bounces Back," *Nature* 259 (1976): 15, 16. For other even more recent examples of opposition in *Nature* to big bang cosmology see: A. Grünbaum, "Pseudo-Creation of the Big Bang," *Nature* 344 (1990):821, 822.; J. M.

Lévy-Leblond, "Unbegun Big Bang," *Nature* 342 (1989): 23; J. Maddox, "Down With the Big Bang," *Nature* 340 (1989): 425.

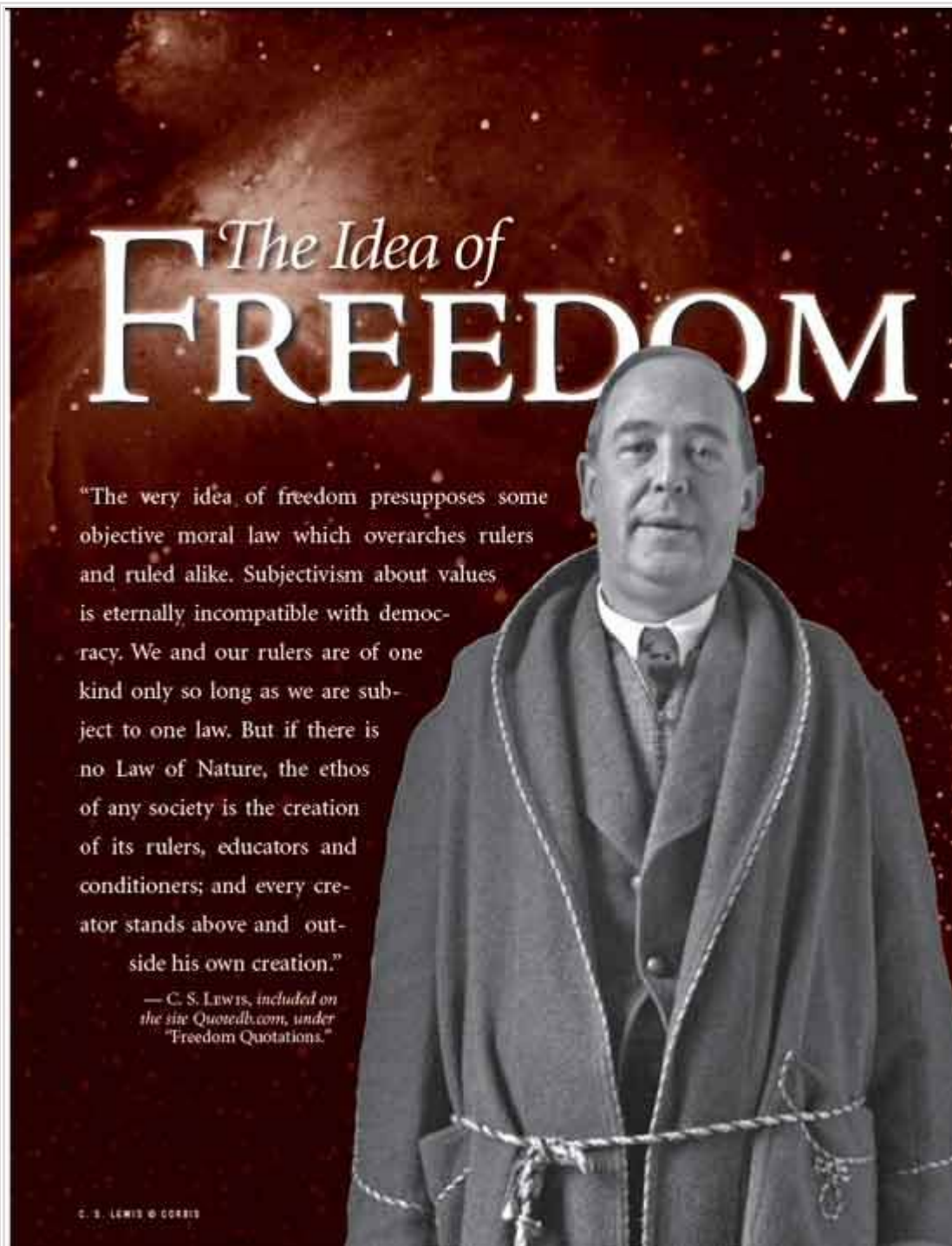
15 Among the more prominent organizations promoting this position are the Institute for Creation Research, *Answers in Genesis*, and the Creation Research Society. The primary theological objection raised relates to the age of the universe suggested in current big bang models, but the objections raised are not exclusively theological and deal with specific phenomena not well explained within a purely naturalistic big bang model.

16 F. Crick and L. E. Orgel, "Directed Panspermia," *Icarus* 19 (1973): 341-346, and F. Crick, *Life Itself* (Simon & Schuster), 1981).

17 Leonard Susskind, quoted in G. Brumfiel, "Our Universe: Outrageous Fortune," *Nature*, Jan. 5, 2006.

MAY / JUNE 2000

The Idea Of Freedom



The Idea of
FREEDOM

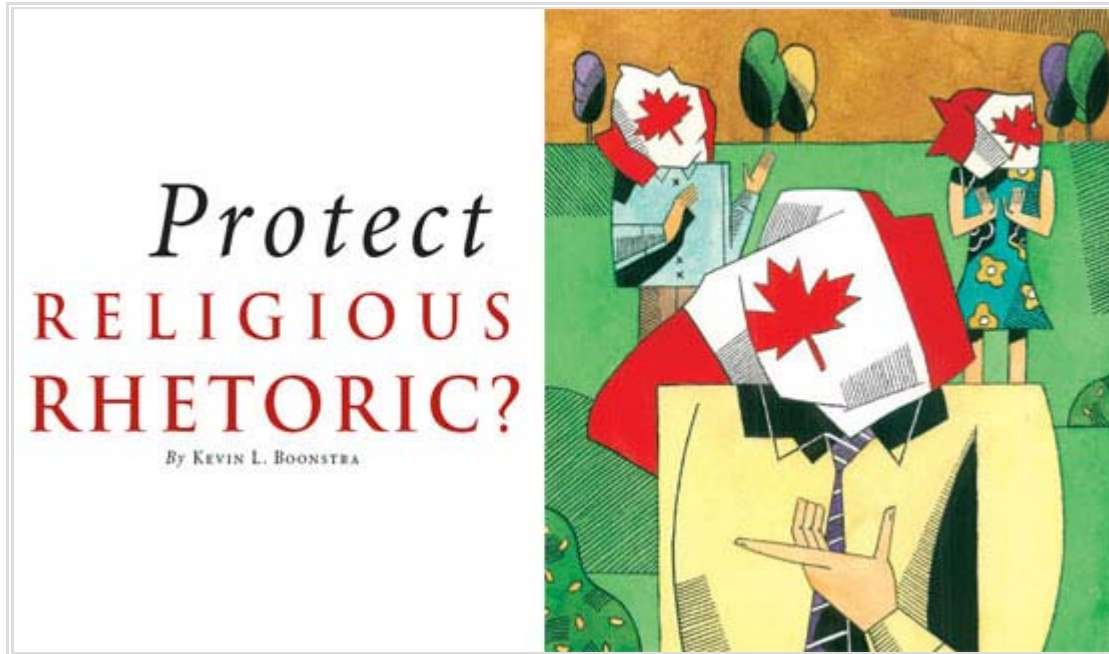
“The very idea of freedom presupposes some objective moral law which overarches rulers and ruled alike. Subjectivism about values is eternally incompatible with democracy. We and our rulers are of one kind only so long as we are subject to one law. But if there is no Law of Nature, the ethos of any society is the creation of its rulers, educators and conditioners; and every creator stands above and outside his own creation.”

— C. S. LEWIS, included on *the site Quotedly.com*, under “Freedom Quotations.”

C. S. LEWIS © CORBIS

MAY / JUNE 2009

Protect Religious Rhetoric?



Deeply held religious faith permeates every sphere of life. Spiritual people cannot segregate their religious belief from their mundane, daily life. A robust understanding of religious liberty would not require that they try to do so.

As has been discovered by a teacher in British Columbia, when one's religious beliefs contradict secular values, full participation in the life of one's community can be jeopardized. So can one's membership in his or her professional association and, indeed, his or her ability to continue making a living. How can a country that appears to have such strong protections for religious belief and practice permit this to occur?

Chris Kempling is a public school teacher and counselor in the small northern town of Quesnel, British Columbia. He is a devoted evangelical Christian and is outspoken in his community. He is concerned about what he sees occurring in Canadian society, particularly with respect to the growing acceptance of the homosexual lifestyle, which Mr. Kempling believes to be both unhealthy and immoral.

Between 1997 and 2000 Mr. Kempling wrote and published an article and a series of letters to the editor in his local newspaper, the Quesnel Cariboo Observer. Mr. Kempling's topic was homosexuality and homosexual relationships. Not surprisingly, Mr. Kempling is opposed to homosexual behavior because of his religious beliefs, and his beliefs were discussed at length in the articles and letters he published. There were even specific scriptural references that made the religious origin of his beliefs and comments quite clear.

His professional body, the British Columbia College of Teachers, received a complaint about his writings and decided that he had been guilty of conduct unbecoming a member. The College of Teachers found that Mr. Kempling's writings demonstrated that "he is not prepared to take into account the core values of the educational systems which recognizes that homosexuals have a right to equality, personal dignity and respect. . . ."



Mr. Kempling challenged the college's decision in court, arguing that it and the punishment handed out to him (a one-month suspension) infringed on his freedom of religion and freedom of expression under the Canadian Charter of Rights and Freedoms (the "Charter").

At the British Columbia Supreme Court, Mr. Kempling lost his case. The judge held that since Mr. Kempling referenced his position as a public school teacher in his writings, the statements that he made were not protected by the Charter. This was a very peculiar result. In effect, the court held that one has no freedom of expression or freedom of religion in the context of one's employment or profession. If this were the true state of Canadian law, a professional person could never reference his or her professional expertise without risking that very designation if the professional disciplinary body believes that the statements could be discriminatory.

Mr. Kempling appealed the court's decision. Interestingly, the College of Teachers did not support the lower court's ruling, conceding that the discipline did breach Mr. Kempling's Charter rights, but arguing that the breaches were justifiable.

On June 13, 2005, the B.C. Court of Appeal upheld the lower court decision but for different reasons. The Court of Appeal rejected the notion that Mr. Kempling's religious expression was not protected by the Charter but agreed with the college that its disciplinary decision was justifiable.

Discriminatory Statements?

The Court of Appeal agreed that Mr. Kempling's public statements were discriminatory. It was argued before the court that in debates about moral issues, those on either side of the debate judge and often denounce particular actions and behaviors of others. This is particularly true when the issue under debate is one on which religions have much to say, such as homosexual relationships and behaviors. Such debates are often emotional and controversial. That is the very nature of religious disagreement in a free and democratic society.

Labeling one side of the debate as discriminatory can have the effect of shutting down that viewpoint. That risks undermining a vibrant notion of pluralism and, worse, risks silencing those with religious objections to certain sexual conduct.

The court agreed that "statements critical of a person's way of life or which denounce a particular lifestyle are not in themselves discriminatory." However, the court went on to hold that when such statements "are made in disregard of an individual's inherent dignity," they become discriminatory. This is quite confusing at first blush. How can someone know, when being critical of a certain lifestyle, whether they are disregarding someone else's dignity? How can this test effectively be used to govern one's statements without having a massive chilling effect on free expression?

The court attempted to explain the difference. It held that when statements are based on stereotypical notions about homosexuality, they evidence a willingness to judge individuals on the basis of those stereotypes. With this logic in hand, the court concluded that Mr. Kempling's statements that "gay people are seriously at risk. . . because of their sexual behaviour" and that the homosexual community engages in "irresponsible behaviour" were discriminatory against homosexuals.

This reasoning lessens the constitutional protection afforded to an individual who makes statements concerning the sexual behavior of homosexuals because the statements are made about the group as a whole. Based on this decision, it is much easier to find that an infringement of freedom of expression or freedom of religion is justifiable if the underlying religiously motivated speech is deemed to be "discriminatory" and therefore less worthy of protection.

The protection afforded to gays and lesbians in Canada is based on their membership in a group that is defined by its sexual practices. Criticism of the group because of the sexual practices of many of the members of the group is deemed "discriminatory" because it is perceived to show a willingness to judge individual homosexuals on the basis of group "stereotypes."

The question then arises: If Mr. Kempling had deliberately recast his remarks to criticize only persons who engage in very specific sexual behavior, would his speech still be found to be discriminatory? Probably it would. This is so because the court specifically ruled that there is a difference between "reasoned debate" and "discriminatory rhetoric." "Reasoned debate" is permissible and should receive full Charter protection, but "discriminatory rhetoric" will not be permitted. Mr. Kempling's statements were found to fall in the latter category.

It will be very difficult for anyone to distinguish between "reasoned debate" and "discriminatory rhetoric." As is shown by Mr. Kempling's case, those who are members of a professional association, such as teachers, architects, and lawyers, may be penalized for failing to properly discern the dividing line. This will inevitably result in a chill on free debate and expression on issues of morality. How does one draw the line where "reasoned debate" ends and "discriminatory rhetoric" begins?

While the court also held that the punishment meted out to him violated his right to free expression under the Charter, it went on to hold that the infringement of his rights was justified.

Nature of the Harm

Unlike prior cases in which a teacher's off-duty conduct had been the subject of disciplinary action by their professional association, there had always been a need for fairly clear proof that the conduct complained of had caused harm to the public school system. In Mr. Kempling's case, there was no evidence that his public comments had directly affected the public schools in which he teaches. The Court of Appeal held that "when a teacher makes public statements espousing discriminatory views, and when such views are linked to his or her professional position as a teacher, harm to the integrity of the school system is a necessary result." This is distinct from the result in the first court decision, which found that there would be no protection when one's profession is referenced in the writings or statements. However, the impact may be the same, provided that the professional's statements have crossed from "reasoned debate" into "discriminatory rhetoric."

This aspect of the Court of Appeal's decision limits the ability of professional people to engage in political discourse, particularly if they wish to speak out on an unpopular or politically incorrect side of a moral issue on which others are protected from discrimination. For example, doctors and nurses who speak out in their professional capacity regarding the health risks of certain sexual conduct may be cited for "conduct unbecoming" by their professional associations, as their comments may be seen as intolerant, discriminatory, or in conflict with the values that underpin the health-care system.

Freedom of Religion

Mr. Kempling also argued that the College of Teachers' decision to suspend him infringed his freedom of religion under the Charter.

Despite the fact that Mr. Kempling expressly linked some of his statements to his religious beliefs, the Court of Appeal ruled that because Mr. Kempling did not appear before the initial disciplinary panel there was no evidence upon which to assess whether his freedom of religion had been infringed. The court said that there was no evidence that Mr. Kempling's "ability to practice his religion would in any way be compromised."

It would have been preferable for Mr. Kempling to have provided evidence about the religious motivation for his public statements at the disciplinary hearings. Notwithstanding that, the very first Supreme Court of Canada decision interpreting freedom of religion under the Charter established that at a minimum, freedom of religion included the right to openly "declare beliefs. . . without fear of hindrance or reprisal." Religious liberty must allow the freedom to express religiously based opinions and beliefs, subject to proof that the beliefs are sincerely held. While neither religious people nor the courts should ever allow religion to be used as a fraudulent veneer for hate, when statements are truly the product of deeply held religious belief, they should be protected under the Charter.

Mr. Kempling's statements made specific reference to Scripture and morality. His nonappearance at the original disciplinary hearing created a difficulty in that the sincerity of those beliefs could not be tested. But the College of Teachers did not contest the sincerity of his religious faith or the fact that his statements about homosexuality were derived from his religious beliefs. As such, there was a basis on which the Court of Appeal could have made specific determinations concerning the impact on the ability of Mr. Kempling to exercise free religious expression.

Conclusion

Mr. Kempling sought leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. On January 19, 2006, the Supreme Court of Canada dismissed Mr. Kempling's application for leave and awarded costs against him. It is possible that the Supreme Court justices who dealt with the application were concerned about the fact that Mr. Kempling did not appear at the original hearing and, as such, a full evidentiary foundation did not exist. This is only speculation, since the Supreme Court of Canada does not provide reasons when deciding issues of leave to appeal.

For the time being, the Court of Appeal's decision, which permits professionals to be punished when their statements cross from being "reasoned debate" into "discriminatory rhetoric," is the law, at least in British Columbia. The Court of Appeal's decision may have profound impacts on the ability of religious people to publicly comment on contentious moral issues. There may be a chilling effect, even on "reasoned debate," when it comes to contentious issues of morality, including sexual morality. Few professional people will want to be the next Chris Kempling, and therefore they may censor themselves. This would be real loss for a free and democratic society, as Canada claims to be.



Kevin L. Boonstra is a partner in the law firm Kuhn and Company, practicing in Vancouver and Abbotsford, British Columbia. He was co-counsel for the Canadian Religious Freedom Alliance, which intervened in Mr. Kempling's case at the B.C. Court of Appeal.

1 This is the same professional body against which Trinity Western University took legal action for failing to approve its teacher education program. The College of Teachers refused to approve the program because it said that TWU engaged in "discriminatory practices" for prohibiting its students to engage in homosexual behavior. TWU was successful throughout and the Supreme Court of

Canada ordered the College of Teachers to approve the program (*Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772).

2 For example, in *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, the Supreme Court of Canada upheld a finding of discrimination against a teacher who had engaged in anti-Semitic writings off-duty. The court found that the writings had made their way into the school and had caused a "poisoned environment." As such, the court found that the off-duty conduct specifically caused harm to the public school system.

3 *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 at 336.

MAY / JUNE 2006

Intelligent Reasoning

BY: K. HOLLYN HOLLMAN

Left: Students head home after classes ended for the day at Dover Area High School Dec. 20, 2005, in Dover, Pa. This year, eight families upset over "intelligent design" being offered as an alternative to evolution in their high school's biology curriculum ultimately prevailed in a legal challenge that emerged as a key battle in America's culture war. Center: A billboard with the current Dover Area School Board seeking re-election is seen above Main Street in Dover, Pa., on election day Tuesday, Nov. 8, 2005. Right: Defense attorney Richard Thompson, center, and Dover Area School District Superintendent Richard Nilsen, right, walk to the federal court in Harrisburg, Pa., Monday, Sept. 26, 2005.

When a federal court ruled unconstitutional the Dover, Pennsylvania, school board policy promoting "intelligent design" in the science classroom, it also noted the limits of its decision. The court explicitly refrained from taking a position on the validity of the religious belief that a supernatural force played a role in creation. It also made plain that it was not banning the topic from the public schools. Instead, the decision falls squarely in line with other cases that protect religious freedom by ensuring that public school curriculum is not used to advance religion. Whether the decision will substantially quell efforts to alter science curriculum about evolution remains to be seen.

The Latest Controversy—Defining ID

"Intelligent design," or "ID" as it is often called, is a theory that holds that certain features of the natural world are best explained by an intelligent cause, as opposed to natural selection. Its proponents say that the complexity of living organisms indicates the work of a designer. Generally, they do not name the designer and disavow any interest in defending a creationist belief based upon Genesis. On the surface, ID appears to be unrelated to efforts to promote biblical creationism. While the ID movement has mostly been focused on research and writings of private-interest groups such as the Discovery Institute, in Seattle, Washington, there has been a growing interest in ID from public school boards. The nature of that interest, however, may be

changing following recent events in Dover, where the ID movement experienced its first legal test, and failed.

Kitzmiller v. Dover Area School District

The Dover case began with the adoption of a poorly written school board policy providing that "students will be made aware of gaps/problems in Darwin's theory and of other theories of evolution including, but not limited to, intelligent design." The school district issued a press release, explaining its policy to treat intelligent design as a bona fide scientific theory competing with the scientific theory of evolution. The release included this statement, to be read to all students prior to the teaching of the scientific theory of evolution: "The state standards require students to learn about Darwin's Theory of Evolution and to eventually take a standardized test of which evolution is a part. Because Darwin's Theory is a theory, it is still being tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations. Intelligent design is an explanation of the origin of life that differs from Darwin's view. The reference book *Of Pandas and People* is available for students to see if they would like to explore this view in an effort to gain an understanding of what intelligent design actually involves. As is true with any theory, students are encouraged to keep an open mind."

The adoption of the policy by the school board set off an immediate controversy. Dover science teachers refused to read the statement, forcing school administrators to do it and adding to the confusion about the substance and purpose of the policy. After trying unsuccessfully to get the board to reverse the policy, a group of parents sued, claiming the policy violated the no establishment provisions of the federal and state constitutions.

Foundation of a Constitutional Violation

The constitutional question in *Kitzmiller v. Dover Area School District* begins with the first 10 words of the First Amendment to the Constitution: "Congress shall make no law respecting an establishment of religion." Those words (along with the free exercise clause that follows and the Fourteenth Amendment, making the religion clauses applicable to the states) provide protection for religious liberty and the freedom of conscience. While the Supreme Court's establishment clause cases apply a variety of legal tests and are often criticized for turning on fine distinctions, the principles governing challenges to intelligent design in the public schools are well established.

The establishment clause prohibits government (through institutions such as the public schools) from taking sides in matters of religion. In its 1968 case dealing with a ban on teaching evolution, the Supreme Court put it this way: "The First Amendment mandates government neutrality between religion and religion, and between religion and non-religion" (*Epperson v. Arkansas* [1968]). *Epperson* found that an Arkansas law that made it unlawful to teach evolution was unconstitutional. The statute at issue was similar to the Tennessee law enforced in the famous *Scopes* trial of 1927. In 1971 the Court took the idea of government neutrality and formulated the Lemon test, which has remained an important judicial test in public school cases. *Lemon* asks whether the government act is taken with a secular legislative purpose; if it has the primary effect of advancing or inhibiting religion; and if it causes excessive government



We do not question that many of the leading advocates of ID have bona fide and deeply held beliefs which drive their scholarly endeavors. Nor do we controvert that ID should continue to be studied, debated, and discussed. As stated, our conclusion today is that it is unconstitutional to teach ID as an alternative to evolution in a public school science classroom.

Above from left: Steve Stough, plaintiff Tammy Kitzmiller, plaintiff attorney Eric Rothschild of the Pepper Hamilton law firm in Philadelphia, and expert witness Robert Pennock from Michigan State University walk to federal court in Harrisburg, Pa., Wednesday, September 28, 2005.

entanglement with religion (*Lemon v. Kurtzman*, 403 US 602 [1971]). If the governmental act at issue fails to satisfy any one of these parts, the act is unconstitutional.

Nearly 20 years after *Epperson*, the Supreme Court applied the *Lemon* test and struck Louisiana's "balanced treatment" statute, a law that forbid the teaching of evolution in public schools unless creation science was also taught (*Edwards v. Aguillard* [1987]). The Court rejected the statute as an effort "to restructure science curriculum to conform with a particular religious viewpoint." Nearly another 20 years have passed, and federal courts are again seeing cases that challenge the teaching of evolution.

In the years since the Supreme Court last heard a case about religion in science curriculum, the Court has continued to interpret the establishment clause in ways that guard against school-sponsored religious indoctrination. Public school prayer cases, such as *Lee v. Weisman* (graduation prayer) and *Santa Fe Independent School District v. Doe* (prayer at football games), have made clear the ban on school promotion of religion. Other cases, such as *Westside Community Schools v. Mergens* (upholding Equal Access Act) and *Good News Club v. Milford Central School* (allowing religious groups equal access to meet on school facilities after hours), have demonstrated the limits on the Establishment Clause and provided protection of religious expression by private actors in the public schools.

The Court's standards have been often applauded by religious liberty advocates who maintain that freedom of religion requires the public schools to be neutral toward religion. On matters of public school curriculum, the general rule is that public schools can teach about religion, but public schools may not teach religion. Most experts agree that this rule applies to the recurring controversy surrounding theories of evolution.

The Dover Decision

After a six-week bench trial, the federal court found that the Dover policy (promoting intelligent design in public schools) violates the establishment clause. With harsh words toward the board's decision, it permanently enjoined the school board from promoting ID. In a 139-page decision the court recounted extensive testimony from those who advocate ID and the scientific community that rejects it. In sum, the court found the school board had endorsed and advanced a religious idea, and had done so with a religious purpose.

Applying *Lemon*, the court found that the language, legislative history, and historical context in which the ID policy arose inevitably led to the conclusion that Dover consciously chose to change its biology curriculum to advance religion. The court identified numerous examples of board members attempting to promote their own religious views in the curriculum. The court found that board members had introduced a religious conflict into the classroom by proposing a policy that appeared to make students choose between God and science.

While the court's finding of a clear religious purpose was legally sufficient to strike the policy, it went further, agreeing to answer the question urged by the plaintiffs of whether ID is science. Anticipating objections, the court said it "was confident that no other tribunal in the United States is in a better position than are we to traipse into this controversial area" (p. 63). It cited expert testimony that revealed ID not as a new scientific argument, but rather as an old religious argument. Based upon all the evidence presented, the court held that intelligent design, at least as posited at this time, is not science. The court defended its finding as essential to the primary constitutional

question, noting that its decision "may prevent the obvious waste of judicial and other resources which would be occasioned by a subsequent trial involving the precise question which is before us" (p. 64).

Conclusion

While the court found that the ID movement could not be separated from its creationist roots, the court was also careful to make clear that it had no position on the veracity of religious arguments about the existence of God. It stated: "We express no opinion on the ultimate veracity of ID as a supernatural explanation" (p. 89). In making this distinction, the court recognized that its decision rested on the context of religion in the public schools. The court decision was not intended to end discussions and debates about intelligent design. Instead, it simply affirms the law that protects religion and religious liberty by ensuring that religious matters are left to individuals and faith communities, not delegated to public school officials.

Indeed, debates about intelligent design and other challenges to scientific teaching will undoubtedly continue. In the last couple of months, conflicts over the teaching of ID in a philosophy class in California and proposed changes to science standards in Ohio have been in the news. Perhaps it will take another case to reach the Supreme Court before we see this wave of controversies decline. In the meantime, the Dover decision deserves careful attention. Its thorough treatment of ID is persuasive authority against the latest attempts to advance religion in the public schools.



K. Hollyn Hollman, general counsel of the Baptist Joint Committee for Religious Liberty, Washington, D.C.

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Freedom Of Speech In Democracies

Since the republican form of government presupposes freedom of speech as axiomatic, does it really need a defense? Logically speaking, it would not. Yet, throughout our country, public forums of citizens are being organized for the purpose of intelligent and frank analyses of and discussions regarding public questions. Perhaps this is symptomatic of a sentiment that there must be this kind of participation in matters politic lest such participation be curtailed and civil liberty conceivably perish in the end. Should it be that such misgivings have actually been felt, it may also be known that they are not without foundation.

What should be the necessity for these many and imposing discourses and declarations, pro or con, regarding what has appeared to be the axiom of freedom of speech in a democracy? Would they not really seem to give indication of some subtle undercurrent of intolerant thought on the one hand or possibly of a radicalism and license in speech on the other, both of which threaten to break forth into a violent eruption jeopardizing the exercise of that civil right? That such is the case we can easily recognize in foreign and even domestic affairs. In some quarters freedom of speech has been abolished by governmental decree, while in other instances the abolition of freedom of speech has been brought on by the articulate but irrational sentiment of the masses. Indeed, national crises have a way of causing mass hysteria in which individual liberties are suppressed. Wars are such instances, but equally also, the so-called "war in peace" concerning which not a little has been heard of late, and it should be remembered that in our complex civilization it is impossible to eliminate the effect of past events or to achieve an airtight insulation against foreign influences.

Strictures in Time of War

How well do we remember the strictures placed upon public speech during the period of our participation in the World War! And the most drastic of these were applied by public opinion even upon perfectly harmless language. That war psychology gave birth to the enactment of anti-free-speech laws in 34 states since 1917. While the original purpose of these laws was to control and eliminate sedition and criminal syndicalism, it is apparent that they may lend themselves to applications exceeding in the limitation of speech the intent of their authors. The tendency toward legislative restrictions on freedom of speech has other ramifications. Out of the depression crisis and the drastic measures taken for the purposes of saving the situation, emerged a spirit that wished to find in emergencies the justification for the employment of extraordinary powers that would brook no resistance and would regard public criticism under the caption of sedition. The "crackdown" tactics of the blue eagle were definitely tending toward the restriction of free discussion in newspapers; and strange enough, even a code for the churches was proposed. Outside of our country it is now not uncommon for freedom of speech to be abolished. The philosophy of some states regards freedom of speech as a vice rather than as a virtue.

Two observations at this point may serve to clear the ground for what follows.

None other than Abraham Lincoln justified the suppression of free speech in the face of serious emergency, and did so by arguing: "I can no more be persuaded that the government can constitutionally take no strong measures in time of rebellion because it can be shown that the same could not lawfully be taken in time of peace, than I can be persuaded that a particular drug is not good medicine for a sick man which is not good for a well one." This logic would seem invulnerable, but its implications are dangerous to the democratic theory of government that Lincoln himself so classically enunciated. Does democracy cease in a national crisis? Whose is the right to declare war? Surely, in war the people are not the ones who have become sick and are in need of a doctor to prescribe heroic medicine for them. If a government is in need of the public's counsel and representation in peace, what makes that unnecessary in war? If free speech is normally a wholesome thing serving to direct a nation helpfully, why should it not be desirable when the nation is in a state of ill-health? Is it not true that crises may arise of equal danger to a nation though no state of war exists, and is then the suspension of ordinary civil liberties, among them free speech, justified? If so, when may freedom of speech flourish? Obviously, any situation could be construed as in need of emergency measures, and the local upshot of such reasoning would be a corporate state.

Wars Won Without Suppression of Free Speech

On the other hand, a war can be won without the suppression of speech, i.e., of a free speech which is not actually treasonable by being a deliberate communication of information to the enemy. Rupert Hughes tells of having lived in England when that country was at war with the Boers. "Hyde Park," he writes (1927), "has always been sacred to free speech, and one afternoon I saw an old white-bearded pacifist denouncing the government for attacking the Boers. He would have been lynched in this country for the same conduct during any of our wars. One half-drunken soldier, just back from South Africa, grew so indignant that he began to call the old man names. The crowd at once protested and roared, 'Fair pl'y! Fair pl'y!' and let the old man talk himself out. England won the war without checking freedom of speech." The classicist among historians, Athenian Thucydides, put into the mouth of Pericles an undying eulogy of his city's democracy: "Although domestic affairs absorb much of our time, we pay assiduous attention to our politics, and among all the calls of business we are well versed in the art of statescraft. . . . We can either criticize others' proposals or formulate our own; since to us discussion is no obstacle to action, but action without discussion can have no possible chance of success. For herein lies our gain, that we bring to the battle not only an unequalled courage, but also the advantage of previous debate." The survival of Athens over

Sparta justified the wisdom of the Periclean point of view.



Despotisms, ancient and modern, have developed along almost invariable lines and manifest phenomena that are instructive to those who are concerned about civil liberties, especially about that of our present subject. Repressive of free speech as these despotisms are, they all had their genesis of times when free speech was permitted. Taking free advantage of that freedom, and loudly demanding the right of it, if at any time a threat against it appeared, they finally created incidents that could be turned to their advantage and upon rising into power suppressed those very liberties that they had formerly claimed for themselves. I cannot help citing Thucydides once more in an observation regarding the rise of tyrannies (e.g., the kind that caused the downfall of Athens) that is strikingly contemporary in significance. "Thus the class war led to a complete moral breakdown throughout the Greek world. Sincerity, one of the chief elements in idealism, was laughed out of existence; and a spirit of suspicious antagonism prevailed. Conciliation could find no basis, seeing that pledges had lost their validity and oaths their sanction. Men relied solely upon a despairing resolve to take nothing for granted and security was sought by precautionary measures, not by mutual trust. Inferior intelligences usually had the best of it; for consciousness of their own inadequacy and the dread lest an opponent's quicker wits or superior powers of speech would enable him to get his blows in first, inclined them to ruthless action." This fine commentary strongly hints at that psychosis that is behind the political philosophy of suppression.

The Concept of a State God

The nations of antiquity had developed with certain universal presuppositions. Among these were the slavery of the majority, and a religious sanction taking the form of either a city-state or national cult on the one hand, or on the other, associations of deity for the ruler. Obviously, in those monarchies where the king was the incarnation of Ra or the divine genius of his empire or the representative of Asshur, public participation in matters of government was precluded by the simple fact that the decrees from the throne partook of the essence of oracular utterances. In the centuries that we call the Middle Ages and that represented the implanting of the Roman imperial ideal upon European territories, the ancient concept was refined into an abstract yet practical outworking worldview, through the scholastic application of a synthesis between Aristotelianism and a theological interpretation of the universe centered around the concept of the "State God." The religious presupposition persisted with its implication of "divine right." *Imperium and sacerdotium* were congruent. The philosophy of realism defined the nation as a universal, that is, a metaphysical entity, in which the individual personality was completely submerged. Furthermore, on that view no improvement could be made in the existing state of things; for whatever was, was right. Scholars and thinkers had only one function, namely, to justify and approve of things as they were.

This political theory has its outcropping in the contemporary philosophies of corporate states and other intensive forms of nationalism. Here we have notions of graduated degrees of citizenship; government by decrees that know no free reactions in speech by citizens, and that tacitly, at least, imply the claim for themselves of oracular revelation or the equivalent thereof; and even the religious sanction, be it the church which Fascism appropriates for itself (though they are by no means synonymous), or a Teutonic religion to embrace all Germans, or a national Shinto, or a Soviet antireligion which, after all, manifests itself with all the psychological symptoms of religious fervor and actually employs cult practices, such as the public display of the embalmed remains of its founder. Apropos of this I quote the trenchant analysis of the situation made by Dr. Nichol Macnicol of Edinburgh, formerly Wilde Lecturer on Natural and Comparative Religion in Oxford University, in a lecture delivered last year at Columbia University on "Religious Values of Contemporary Indian Nationalism": "What we see in the case of the violent and uncontrolled nationalisms that have arisen in so many lands, both of the East and of the West, in recent years is that they take to themselves in their arrogance the authority that belongs to God only and claim the supreme lordship over men's lives; such a nationalism has been transformed in large measure into a religion."

This article first appeared in Liberty magazine in 1938, second quarterly issue. Obviously, with World War II looming, the topic was of more than theoretical interest. This is one of a series of articles from the Liberty heritage that we have reused during the 100th year of publication to remind our readers of the consistency in the message over the past century. Editor.

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WHEN WILL WE CLAIM *the* RIGHT?

Written by a Friend

When will we rise and claim the right
That God has given to men?
When will we rise in all our might?
When will we rise, O when?

The two-faced tyrant, Hate and Greed,
Still rules the human race;
So all the masses are in need—
O curse his double face!

He is the one who foment's strife,
He brandished the sword;
'Tis he who is the foe of life,
'Tis he who fights the Lord.

O that the race of mortal man
True liberty might gain;
And freedom come in every land,
All-hallowed by God's name.

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