

THE PRESENT STATUS OF THE ANTI-EVOLUTION LAW IN TENNESSEE

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In the January, 1927, issue of the *Journal of the Tennessee Academy of Science*, an attorney, Mr. Henry E. Colton, presented under the above title an article based on his recent experience representing the Academy as one of the defense lawyers in the Scopes trial of 1925. In this article Mr. Colton argued cogently that the appeal, then pending, should be upheld. He pointed out that the Supreme Court, in suggesting to the prosecuting attorney that the case, on technical grounds, be *nolle prosequi* (in effect, removed from the consideration of any court by a refusal of the State to prosecute the defendant), intended to leave the constitutionality as well as the meaning of the statute in doubt. Because the Supreme Court Justices had their separate ideas as to the law's meaning and validity, which they expressed as *obiter dicta* (a legal term for words beyond or unnecessary to the decision), it would be impossible for a teacher of science in a state supported school or college to know whether or not in teaching some fact of evolution he was breaking the law. Besides, Mr. Colton said, the important questions, whether the law infringed the guarantees of freedom of religion in the Tennessee and U. S. Constitutions, and whether the law was so uncertain, as one of the Justices thought, that it could not be constitutional, would be left unsettled. Mr. Colton's warning went unheeded; the Supreme Court's recommendation for *nolle prosequi* was carried out, and the anti-evolution law remains today both a fact and an uncertainty.

"It shall be unlawful for any teacher in any of the universities, teachers' colleges, normal schools or other public schools of this state which are supported, in whole or part, by the public school funds of the state, to teach any theory that denies the story of the divine creation of man as taught in the Bible, and to teach instead that man descended from a lower order of animals. Any teacher violating this section shall be guilty of a misdemeanor and fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense."

Thirty-five years after the Scopes trial, this law still exists. Although it has been enforced only once, it still has an effect both in Tennessee and in the world.

First, it interferes with the teaching of biology in the high schools and grade schools of the state. Of course, general science and biology courses do include many of the facts of biology, but

a major fact, so recognized by most biologists, is omitted. The fact of evolution, which shows the relatedness of all living things, is fundamental to our understanding of life; yet this fact is prudently forgotten by most teachers in the public institutions of learning in Tennessee. While it is extremely unlikely that Tennesseans would desire or countenance another Scopes trial, the law exists, and it can certainly be used as a threat or admonition against teachers who want to teach the changing truth of science.

Second, the law seems to support Fundamentalist religion, which insists on a literal interpretation of the Bible as fact. The leaders of most denominations are willing to accept evolution. As was pointed out even in 1925, during the argument and appeal of the Scopes case, belief in Divine Creation is not denied by the evidence of evolution, or the gradual descent of man and other animals from a common origin. Modern churchmen have called evolution God's way of fulfilling His plan. Fundamentalism rejects this view as does the anti-evolution law. Although the Tennessee Constitution enjoins the State from preferring or supporting one religion as against another, nevertheless, the anti-evolution law, by prohibiting the spread of information which offends a particular sect, Fundamentalism, does support one view of Christianity against all other views. The State supports and prefers, in this respect, a particular religion.

Third, this law renders aid to the enemies of Democracy. As recently as 1958, according to R. H. Shackford, a newspaper columnist, the Scopes trial formed part of an exhibit in Moscow ridiculing the United States for its alleged suppression of science by religion. While we cannot take very seriously accusations of thought-control by the communists (except in so far as they themselves are recognized experts on the subject of suppression of thought and speech), it weakens our case for democracy that we have anywhere in the United States a law to prevent the teaching of a scientific fact. Such a law has no place in a Free America.

The Tennessee anti-evolution law will probably be repealed by the 1960-61 State Legislature. There are individuals and groups throughout the state which have been working quietly for repeal. These people have urged legislators to recognize the harm that this law does, harm to the teaching of science, harm to the ideals of Democracy, and harm to the reputation of Tennessee. Several candidates for the legislature have expressed willingness to introduce a measure to repeal the anti-evolution law. Realistically, however, it must be admitted that Fundamentalism has strong influence throughout the State and Fundamentalists may be expected to use political pressure to preserve a law that favors their particular creed.

Resistance to a move for repeal may be expected also from some individuals who mistakenly believe that the law is already a dead letter, and who suppose that bringing the issue before the legislature again will unnecessarily call unfavorable attention to Tennessee. These people are loyal to their State in a way which would be practical if what they assume were true. If the Scopes trial were forgotten, and if the law were not enforced, complete silence about the anti-evolution law might be the course of wisdom. But the Scopes trial was made the subject of a tourist attraction, "Scopes Trial Day," on July 21, 1960, at Dayton, Tennessee. John T. Scopes returned for the event, which was climaxed by a premier showing of the film "Inherit the Wind". This film in very dramatic, controversial fashion brings to life the great as well as the ridiculous moments of the famous trial. During the coming year as the film is shown all over America, it will cause millions to ask "Is the anti-evolution law still on the books?" Tennessee cannot evade the question. Our anti-evolution law becomes a public matter.

Therefore it would seem appropriate for the Tennessee Academy of Science once again to act, as it did in 1925, on behalf of freedom of thought and teaching. Then the Academy employed an attorney to represent its interest, to join in the argument during the trial and to file a brief as friend of the court during the appeal. The eloquent report which that attorney, Mr. Colton, made to his client in the pages of this Journal, includes these words:

"It is of vital importance to science that in the teaching of history, biology, archaeology, anatomy and kindred sciences, the truth be taught in accord with the best scientific knowledge of our time and that there be no suppression of the scientific truth because of its supposed conflict with partisan religious dogma. There is nothing in the Christian religion that demands any such suppression of the truth: Christ came to bring truth—light, not darkness."

In 1925, the Academy protested in vain the suppression of truth by law. In 1960 the Academy has a unique opportunity to protest again, this time successfully, and to share in a growing movement to restore freedom of thought and speech to the teachers and schoolchildren of Tennessee.