# Fortas: Opinion of the Court

MR. JUSTICE FORTAS delivered the opinion of the Court.

## I

This appeal challenges the constitutionality of the "anti-evolution" statute which the State of Arkansas adopted in 1928 to prohibit the teaching in its public schools and universities of the theory that man evolved from other species of life. The statute was a product of the upsurge of "fundamentalist" religious fervor of the twenties. The Arkansas statute was an adaptation of the famous Tennessee "monkey law" which that State adopted in 1925.[[1]](#footnote-1) The constitutionality of the Tennessee law was upheld by the Tennessee Supreme Court in the celebrated *Scopes* case in 1927.[[2]](#footnote-2)

The Arkansas law makes it unlawful for a teacher in any state supported school or university "to teach the **[p. 99]** theory or doctrine that mankind ascended or descended from a lower order of animals," or "to adopt or use in any such institution a textbook that teaches" this theory. Violation is a misdemeanor and subjects the violator to dismissal from his position.[[3]](#footnote-3)

The present case concerns the teaching of biology in a high school in Little Rock. According to the testimony, until the events here in litigation, the official textbook furnished for the high school biology course did not have a section on the Darwinian Theory. Then, for the academic year 1965-1966, the school administration, on recommendation of the teachers of biology in the school system, adopted and prescribed a textbook which contained a chapter setting forth "the theory about the origin . . . of man from a lower form of animal." **[p. 100]** Susan Epperson, a young woman who graduated from Arkansas' school system and then obtained her master's degree in zoology at the University of Illinois, was employed by the Little Rock school system in the fall of 1964 to teach 10th grade biology at Central High School. At the start of the next academic year, 1965, she was confronted by the new textbook (which one surmises from the record was not unwelcome to her). She faced at least a literal dilemma because she was supposed to use the new textbook for classroom instruction, and presumably to teach the statutorily condemned chapter; but to do so would be a criminal offense, and subject her to dismissal.

She instituted the present action in the Chancery Court of the State, seeking a declaration that the Arkansas statute is void and enjoining the State and the defendant officials of the Little Rock school system from dismissing her for violation of the statute's provisions. H. H. Blanchard, a parent of children attending the public schools, intervened in support of the action.

The Chancery Court, in an opinion by Chancellor Murray O. Reed, held that the statute violated the Fourteenth Amendment to the United States Constitution.[[4]](#footnote-4) The court noted that this Amendment encompasses the prohibitions upon state interference with freedom of speech and thought which are contained in the First Amendment. Accordingly, it held that the challenged statute is unconstitutional because, in violation of the First Amendment, it "tends to hinder the quest for knowledge, restrict the freedom to learn, and restrain the freedom to teach."[[5]](#footnote-5) In this perspective, the Act, **[p. 101]** it held, was an unconstitutional and void restraint upon the freedom of speech guaranteed by the Constitution.

On appeal, the Supreme Court of Arkansas reversed.[[6]](#footnote-6) Its two-sentence opinion is set forth in the margin.[[7]](#footnote-7) It sustained the statute as an exercise of the State's power to specify the curriculum in public schools. It did not address itself to the competing constitutional considerations.

Appeal was duly prosecuted to this Court under 28 U.S.C. § 1257(2). Only Arkansas and Mississippi have such "anti-evolution" or "monkey" laws on their books.[[8]](#footnote-8) There is no record of any prosecutions in Arkansas **[p. 102]** under its statute. It is possible that the statute is presently more of a curiosity than a vital fact of life in these States.[[9]](#footnote-9) Nevertheless, the present case was brought, the appeal as of right is properly here, and it is our duty to decide the issues presented.

## II

At the outset, it is urged upon us that the challenged statute is vague and uncertain, and therefore within the condemnation of the Due Process Clause of the Fourteenth Amendment. The contention that the Act is vague and uncertain is supported by language in the brief opinion of Arkansas' Supreme Court. That court, perhaps reflecting the discomfort which the statute's quixotic prohibition necessarily engenders in the modern mind,[[10]](#footnote-10) stated that it "expresses no opinion" as to whether the Act prohibits "explanation" of the theory of evolution or merely forbids "teaching that the theory is true." Regardless of this uncertainty, the court held that the statute is constitutional.

On the other hand, counsel for the State, in oral argument in this Court, candidly stated that, despite the State Supreme Court's equivocation, Arkansas would interpret the statute "to mean that to make a student aware of the theory . . . just to teach that there was **[p. 103]** such a theory" would be grounds for dismissal and for prosecution under the statute, and he said "that the Supreme Court of Arkansas' opinion should be interpreted in that manner." He said:

"If Mrs. Epperson would tell her students that 'Here is Darwin's theory, that man ascended or descended from a lower form of being,' then I think she would be, under this statute, liable for prosecution."

In any event, we do not rest our decision upon the asserted vagueness of the statute. On either interpretation of its language, Arkansas' statute cannot stand. It is of no moment whether the law is deemed to prohibit mention of Darwin's theory or to forbid any or all of the infinite varieties of communication embraced within the term "teaching." Under either interpretation, the law must be stricken because of its conflict with the constitutional prohibition of state laws respecting an establishment of religion or prohibiting the free exercise thereof. The overriding fact is that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group.[[11]](#footnote-11)

## III

The antecedents of today's decision are many, and unmistakable. They are rooted in the foundation soil of our Nation. They are fundamental to freedom.

Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, **[p. 104]** and practice. It may not be hostile to any religion or to the advocacy of no-religion, and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.[[12]](#footnote-12)

As early as 1872, this Court said: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones,* 13 Wall. 679, 80 U. S. 728. This has been the interpretation of the great First Amendment which this Court has applied in the many and subtle problems which the ferment of our national life has presented for decision within the Amendment's broad command.

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. Our courts, however, have not failed to apply the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry and of belief. By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.[[13]](#footnote-13) On the other hand, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools," *Shelton v. Tucker,* 364 U. S. 479, 364 U. S. 487 (1960). As this **[p. 105]** Court said in *Keyishian v. Board of Regents,* the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom." 385 U. S. 385 U.S. 589, 385 U. S. 603 (1967).

The earliest cases in this Court on the subject of the impact of constitutional guarantees upon the classroom were decided before the Court expressly applied the specific prohibitions of the First Amendment to the States. But, as early as 1923, the Court did not hesitate to condemn under the Due Process Clause "arbitrary" restrictions upon the freedom of teachers to teach and of students to learn. In that year, the Court, in an opinion by Justice McReynolds, held unconstitutional an Act of the State of Nebraska making it a crime to teach any subject in any language other than English to pupils who had not passed the eighth grade.[[14]](#footnote-14) The State's purpose in enacting the law was to promote civic cohesiveness by encouraging the learning of English and to combat the "baneful effect" of permitting foreigners to rear and educate their children in the language of the parents' native land. The Court recognized these purposes, and it acknowledged the State's power to prescribe the school curriculum, but it held that these were not adequate to support the restriction upon the liberty of teacher and pupil. The challenged statute, it held, unconstitutionally interfered with the right of the individual, guaranteed by the Due Process Clause, to engage in any of the common occupations of life and to acquire useful knowledge. *Meyer v. Nebraska,* 262 U. S. 390 (1923). *See also Bartels v. Iowa,* 262 U. S. 404 (1923).

For purposes of the present case, we need not reenter the difficult terrain which the Court, in 1923, traversed without apparent misgivings. We need not take advantage of the broad premise which the Court's decision **[p. 106]** in *Meyer* furnishes, nor need we explore the implications of that decision in terms of the justiciability of the multitude of controversies that beset our campuses today. Today's problem is capable of resolution in the narrower terms of the First Amendment's prohibition of laws respecting an establishment of religion or prohibiting the free exercise thereof.

There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma. In *Everson v. Board of Education,* this Court, in upholding a state law to provide free bus service to school children, including those attending parochial schools, said: "Neither [a] State nor the Federal Government can pass laws which aid one religion, aid all religions, or prefer one religion over another." 330 U. S. 1, 330 U. S. 15 (1947).

At the following Term of Court, in *McCollum v. Board of Education,* 333 U. S. 203 (1948), the Court held that Illinois could not release pupils from class to attend classes of instruction in the school buildings in the religion of their choice. This, it said, would involve the State in using tax supported property for religious purposes, thereby breaching the "wall of separation" which, according to Jefferson. the First Amendment was intended to erect between church and state. *Id.* at 333 U. S. 211. *See also Engel v. Vitale,* 370 U. S. 421 (1962); *Abington School District v. Schempp,* 374 U. S. 203 (1963). While study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment's prohibition, the State may not adopt programs or practices in its public schools or colleges which "aid or oppose" any religion. *Id.* at 374 U. S. 225. This prohibition is absolute. It forbids alike the preference of a religious doctrine or the prohibition **[p. 107]** of theory which is deemed antagonistic to a particular dogma. As Mr. Justice Clark stated in *Joseph Burstyn Inc. v. Wilson,* "the state has no legitimate interest in protecting any or all religions from views distasteful to them. . . ." 343 U. S. 495, 343 U. S. 505 (1952). The test was stated as follows in *Abington School District v. Schempp, supra,* at 374 U. S. 222:

"[W]hat are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution."

These precedents inevitably determine the result in the present case. The State's undoubted right to prescribe the curriculum for its public schools does not carry with it the right to prohibit, on pain of criminal penalty, the teaching of a scientific theory or doctrine where that prohibition is based upon reasons that violate the First Amendment. It is much too late to argue that the State may impose upon the teachers in its schools any conditions that it chooses, however restrictive they may be of constitutional guarantees. *Keyishian v. Board of Regents,* 385 U. S. 589, 385 U. S. 605-606 (1967).

In the present case, there can be no doubt that Arkansas has sought to prevent its teachers from discussing the theory of evolution because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man. No suggestion has been made that Arkansas' law may be justified by considerations of state policy other than the religious views of some of its citizens.[[15]](#footnote-15) It is clear **[p. 108]** that fundamentalist sectarian conviction was and is the law's reason for existence.[[16]](#footnote-16) Its antecedent, Tennessee's "monkey law," candidly stated its purpose: to make it unlawful

"to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a **[p. 109]** lower order of animals.[[17]](#footnote-17) "

Perhaps the sensational publicity attendant upon the *Scopes* trial induced Arkansas to adopt less explicit language.[[18]](#footnote-18) It eliminated Tennessee's reference to "the story of the Divine Creation of man" as taught in the Bible, but there is no doubt that the motivation for the law was the same: to suppress the teaching of a theory which, it was thought, "denied" the divine creation of man.

Arkansas' law cannot be defended as an act of religious neutrality. Arkansas did not seek to excise from the curricula of its schools and universities all discussion of the origin of man. The law's effort was confined to an attempt to blot out a particular theory because of its supposed conflict with the Biblical account, literally read. Plainly, the law is contrary to the mandate of the First, and in violation of the Fourteenth, Amendments to the Constitution.

The judgment of the Supreme Court of Arkansas is

*Reversed.*

1. Chapter 27, Tenn. Acts 1925; Tenn.Code Ann. § 49-1922 (1966 Repl. Vol.). [↑](#footnote-ref-1)
2. Scopes v. State, 154 Tenn. 105, 289 S.W. 363 (1927). The Tennessee court, however, reversed Scopes' conviction on the ground that the jury, and not the judge, should have assessed the fine of $100. Since Scopes was no longer in the State's employ, it saw "nothing to be gained by prolonging the life of this bizarre case." It directed that a nolle prosequi be entered, in the interests of "the peace and dignity of the state." 154 Tenn. at 121, 289 S.W. at 367. [↑](#footnote-ref-2)
3. Initiated Act No. 1, Ark. Acts 1929; Ark.Stat.Ann. §§ 80-1627, 80-1628 (1960 Repl. Vol.). The text of the law is as follows:

   "§ 80-1627. -- Doctrine of ascent or descent of man from lower order of animals prohibited. -- It shall be unlawful for any teacher or other instructor in any University, College, Normal, Public School or other institution of the State, which is supported in whole or in part from public funds derived by State and local taxation to teach the theory or doctrine that mankind ascended or descended from a lower order of animals and also it shall be unlawful for any teacher, textbook commission, or other authority exercising the power to select textbooks for above mentioned educational institutions to adopt or use in any such institution a textbook that teaches the doctrine or theory that mankind descended or ascended from a lower order of animals."

   "§ 80-1628. -- Teaching doctrine or adopting textbook mentioning doctrine -- Penalties -- Positions to be vacated. -- Any teacher or other instructor or textbook commissioner who is found guilty of violation of this act by teaching the theory or doctrine mentioned in section 1 hereof, or by using, or adopting any such textbooks in any such educational institution shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding five hundred dollars, and upon conviction shall vacate the position thus held in any educational institutions of the character above mentioned or any commission of which he may be a member." [↑](#footnote-ref-3)
4. The opinion of the Chancery Court is not officially reported. [↑](#footnote-ref-4)
5. The Chancery Court analyzed the holding of its sister State of Tennessee in the Scopes case sustaining Tennessee's similar statute. It refused to follow Tennessee's 1927 example. It declined to confine the judicial horizon to a view of the law as merely a direction by the State as employer to its employees. This sort of astigmatism, it held, would ignore overriding constitutional values, and "should not be followed," and it proceeded to confront the substance of the law and its effect. [↑](#footnote-ref-5)
6. 242 Ark. 922, 416 S.W.2d 322 (1967). [↑](#footnote-ref-6)
7. "Per Curiam. Upon the principal issue, that of constitutionality, the court holds that Initiated Measure No. 1 of 1928, Ark.Stat.Ann. § 80-1627 and § 80-1628 (Repl.1960), is a valid exercise of the state's power to specify the curriculum in its public schools. The court expresses no opinion on the question whether the Act prohibits any explanation of the theory of evolution or merely prohibits teaching that the theory is true; the answer not being necessary to a decision in the case, and the issue not having been raised."

   "The decree is reversed, and the cause dismissed."

   "Ward, J., concurs. Brown, J., dissents."

   "Paul Ward, Justice, concurring. I agree with the first sentence in the majority opinion."

   "To my mind, the rest of the opinion beclouds the clear announcement made in the first sentence." [↑](#footnote-ref-7)
8. Miss.Code Ann. §§ 6798, 6799 (1942). Ark.Stat.Ann. §§ 80-1627, 80-1628 (1960 Repl. Vol.). The Tennessee law was repealed in 1967. Oklahoma enacted an anti-evolution law, but it was repealed in 1926. The Florida and Texas Legislatures, in the period between 1921 and 1929, adopted resolutions against teaching the doctrine of evolution. In all, during that period, bills to this effect were introduced in 20 States. American Civil Liberties Union (ACLU), The Gag on Teaching 8 (2d ed., 1937). [↑](#footnote-ref-8)
9. Clarence Darrow, who was counsel for the defense in the Scopes trial, in his biography, published in 1932, somewhat sardonically pointed out that States with anti-evolution laws did not insist upon the fundamentalist theory in all respects. He said:

   "I understand that the States of Tennessee and Mississippi both continue to teach that the earth is round and that the revolution on its axis brings the day and night, in spite of all opposition."

   The Story of My Life 247 (1932). [↑](#footnote-ref-9)
10. R. Hofstadter & W. Metzger, in The Development of Academic Freedom in the United States 324 (1955), refer to some of Darwin's opponents as

    "exhibiting a kind of phylogenetic snobbery [which led them] to think that Darwin had libeled the [human] race by discovering simian, rather than seraphic, ancestors." [↑](#footnote-ref-10)
11. In Scopes v. State, 154 Tenn. 105, 126, 289 S.W. 363, 369 (1927), Judge Chambliss, concurring, referred to the defense contention that Tennessee's anti-evolution law gives a "preference" to "religious establishments which have as one of their tenets or dogmas the instantaneous creation of man." [↑](#footnote-ref-11)
12. Everson v. Board of Education, 330 U. S. 1, 330 U. S. 18 (1947); McCollum v. Board of Education, 333 U. S. 203 (1948); Zorach v. Clauson, 343 U. S. 306, 343 U. S. 313-314 (1952); Fowler v. Rhode Island, 345 U. S. 67 (1953); Torcaso v. Watkins, 367 U. S. 488, 367 U. S. 495 (1961). [↑](#footnote-ref-12)
13. See the discussion in Developments in The Law -- Academic Freedom, 81 Harv.L.Rev. 1045, 1051-1055 (1968). [↑](#footnote-ref-13)
14. The case involved a conviction for teaching "the subject of reading in the German language" to a child of 10 years. [↑](#footnote-ref-14)
15. Former Dean Leflar of the University of Arkansas School of Law has stated that "the same ideological considerations underlie the anti-evolution enactment" as underlie the typical blasphemy statute. He says that the purpose of these statutes is an "ideological" one which

    "involves an effort to prevent (by censorship) or punish the presentation of intellectually significant matter which contradicts accepted social, moral or religious ideas."

    Leflar, Legal Liability for the Exercise of Free Speech, 10 Ark.L.Rev. 155, 158 (1956).See also R. Hofstadter & W. Metzger, The Development of Academic Freedom in the United States 320-366 (1955) (passim); H. Beale, A History of Freedom of Teaching in American Schools 202-207 (1941); Emerson & Haber, The Scopes Case in Modern Dress, 27 U.Chi.L.Rev. 522 (1960); Waller, The Constitutionality of the Tennessee Anti-Evolution Act, 35 Yale L.J.191 (1925) (passim); ACLU, The Gag on Teaching 7 (2d ed., 1937); J. Scopes & J. Presley, Center of the Storm 45-53 (1967). [↑](#footnote-ref-15)
16. The following advertisement is typical of the public appeal which was used in the campaign to secure adoption of the statute:

    "THE BIBLE OR ATHEISM, WHICH?"

    "All atheists favor evolution. If you agree with atheism, vote against Act No. 1. If you agree with the Bible, vote for Act No. 1. . . . Shall conscientious church members be forced to pay taxes to support teachers to teach evolution which will undermine the faith of their children? The Gazette said Russian Bolshevists laughed at Tennessee. True, and that sort will laugh at Arkansas. Who cares? Vote FOR ACT No. 1."

    The Arkansas Gazette, Little Rock, Nov. 4, 1928, p. 12, cols. 4-5.

    Letters from the public expressed the fear that teaching of evolution would be "subversive of Christianity," id. Oct. 24, 1928, p. 7, col. 2; see also id., Nov. 4, 1928, p. 19, col. 4, and that it would cause school children "to disrespect the Bible," id. Oct. 27, 1928, p. 15, col. 5. One letter read:

    "The cosmogony taught by [evolution] runs contrary to that of Moses and Jesus, and, as such, is nothing, if anything at all, but atheism. . . . Now let the mothers and fathers of our state that are trying to raise their children in the Christian faith arise in their might and vote for this anti-evolution bill that will take it out of our tax-supported schools. When they have saved the children, they have saved the state."

    Id. at cols. 4-5. [↑](#footnote-ref-16)
17. Arkansas' law was adopted by popular initiative in 1928, three years after Tennessee's law was enacted and one year after the Tennessee Supreme Court's decision in the Scopes case, supra. [↑](#footnote-ref-17)
18. In its brief, the State says that the Arkansas statute was passed with the holding of the Scopes case in mind. Brief for Appellee 1. [↑](#footnote-ref-18)