



## **“Scopes Wasn’t the First”: Nebraska’s 1924 Anti-Evolution Trial**

(Article begins on page 2 below.)

This article is copyrighted by History Nebraska (formerly the Nebraska State Historical Society).  
You may download it for your personal use.

For permission to re-use materials, or for photo ordering information, see:

<https://history.nebraska.gov/publications/re-use-nshs-materials>

Learn more about *Nebraska History* (and search articles) here:

<https://history.nebraska.gov/publications/nebraska-history-magazine>

History Nebraska members receive four issues of *Nebraska History* annually:

<https://history.nebraska.gov/get-involved/membership>

Full Citation: Adam Shapiro, ““Scopes Wasn’t the First’: Nebraska’s 1924 Anti-Evolution Trial,” *Nebraska History* 94 (2013): 110-119

Article Summary: “Darwin and Genesis fought out a battle in District Judge Broady’s court in Lincoln,” reported the *Fremont Tribune* on October 22, 1924, “and . . . Genesis lost and Darwin won.” Nebraska had its own anti-evolution trial nearly seven months before the famous Scopes trial opened in Tennessee. But how did the Nebraska case remain obscure while the Tennessee case became a national sensation?

### Cataloging Information:

Names: John Scopes, Charles Darwin, William Jennings Bryan, Charles W. Bryan, David S Domer, William A Klink, Charles William Taylor, Frank R Beers, Herbert Spencer, Charles Hodge

Place Names: Dayton, Tennessee; Rising City, Butler County, Nebraska

Keywords: evolution, Midland College, slander, Genesis, eugenics, (physical) disability, Four Minute Men, Siman Act, United Lutheran Church in America (ULCA)

Photographs / Images: “Another Pied Piper” (illustration) from *Seven Questions in Dispute*, by William Jennings Bryan; Charles W Bryan and William Jennings Bryan; Fremont College (later Midland College); inset article about the Nebraska anti-evolution trial settlement (*Fremont Tribune*, October 22, 1924; Rising City school building; First English Evangelical Lutheran Church, Rising City; Bryan at the Scopes trial, July 1925

# SCOPES WASN'T THE FIRST

## *Nebraska's 1924 Anti-Evolution Trial*

BY ADAM SHAPIRO



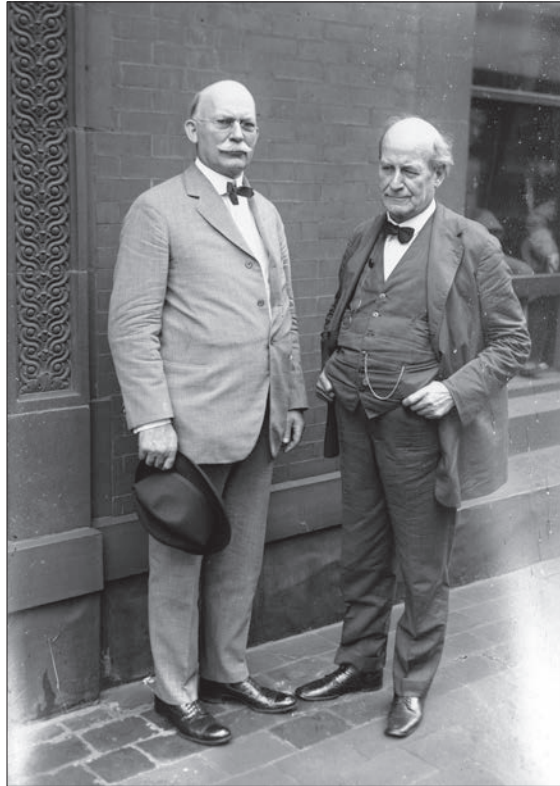
ANOTHER PIED PIPER

The waning days of the 1924 presidential campaign found William Jennings Bryan back in his former home state of Nebraska. On Friday evening, October 17, 1924, The Commoner, as newspapers called him, spoke to an audience of hundreds at the high school auditorium in Fremont. It was one of many campaign stops he made across the state. In fact, he had already made two appearances in smaller towns earlier in the day.<sup>1</sup> It was a frenzied tour by train. By the next morning he would be fifty miles south, in his former hometown of Lincoln. That Saturday night, he would address thousands in a “packed house at the Lincoln auditorium.”<sup>2</sup>

Bryan told Nebraskans of his worry that votes might be split between the Democratic ticket and the third-party candidacy of “Fighting Bob” LaFollette, handing an easy electoral victory to the Republican nominee, Calvin Coolidge. It was the fear of losing the votes of Western farmers that had prompted the Democratic Party to nominate William’s brother, Nebraska governor Charles W. Bryan, to be their vice-presidential candidate. William himself had been dispatched on a speaking tour to Colorado, Nebraska, and Kansas, which was what had brought him to Lincoln seventeen days before the election.

The long arc of Bryan’s public life and his career in national politics had begun in Lincoln over thirty years earlier when he was elected to represent the area in the U.S. Congress. It would end in little more than nine months’ time with his death on July 26, 1925—just after the end of the Scopes antievolution trial in Dayton, Tennessee. By 1924, the three-time Democratic nominee for U.S. President was also America’s best-known antievolutionist. His 1922 book *In His Image* had attracted the ridicule and rebuttal of some of the nation’s most prominent biologists and also sold widely and gained a following among Fundamentalists. In 1923, he successfully guided a resolution reaffirming the “truth of the Bible” through the General Assembly of the Presbyterian Church in the U.S.A. He had already successfully inspired Florida (where he had moved in 1913) to pass a resolution condemning the teaching of evolution in schools.<sup>3</sup> Bryan had even gained the ear of textbook publishers who were just beginning to adapt their books to mollify the antievolution movement.<sup>4</sup>

But Bryan didn’t talk about evolution in his speeches that October. The teaching of evolution was an issue in some states, but it was not a federal matter and it did not figure in the national election. And yet it’s ironic that no one asked him about



Nebraska Governor Charles W. Bryan and his brother, William Jennings Bryan. Library of Congress.

evolution when he spoke that Saturday in Lincoln because less than half a mile away America’s first antievolution trial had just concluded a few hours earlier. In district court presided over by Jefferson Hoover Broady (the son of Bryan’s first campaign manager), a schoolteacher accused of being “mentally and morally unfit” to teach because he believed in “Darwinism” had just won a civil lawsuit against his slanderers.

The civil lawsuit of David S. Domer against William A. Klink and eight residents of Rising City, Nebraska (in Butler County, about forty miles northwest of Lincoln) is an enigma. It has been completely unknown to historians and received almost no public attention or press coverage when it happened. There’s a stark contrast between the public spectacle that took place just nine months later with the Scopes trial in Tennessee and this earlier case that had much the same potential.

This suggests that there were important differences in the way that the evolution controversy was understood in Nebraska in 1924 and Tennessee in 1925 and that the trope of an “evolution trial” as a convenient way to understand these cases (and the many that have come later) is not unchanging. Indeed, the anonymity of *Domer v. Klink et al.* shatters one of the pervasive myths about the later Tennessee trial. In 1925, participants in the Scopes

**LEFT:** Illustration from William Jennings Bryan’s book, *Seven Questions in Dispute* (New York: Fleming H. Revell, 1924), p. 124. Though Bryan was not involved in Nebraska’s *Domer v. Klink* case, Domer’s opponents saw evolution as Bryan did.



trial and the journalists reporting on it tended to describe the trial not in terms of the local politics or peculiarities of Tennessee, but as the natural expression of an unavoidable conflict between Darwin and the Bible. They gave the impression that the epic debate between science and religion had to turn into a great public debate. Even though the Scopes trial's creators went out of their way to promote the event, and celebrity figures like Clarence Darrow and William Jennings Bryan co-opted the court case in order to engage in a public debate, there was still a consensus, forged by that trial's creators, that the media attention and the spectacle were inevitable.<sup>5</sup>

What happened in Lincoln was quite different. In 1922, Domer was the superintendent of the Rising City school. He applied for a new job teaching English at Midland College, a small school in Fremont affiliated with the United Lutheran Church in America. William Klink was the pastor of the ULCA-affiliated church in Rising City at the time, and along with eight other members of the congregation, wrote a letter to the dean and president of Midland, alleging that Domer would bring the school into disrepute, in part because he was a Darwinist. Domer lost the job. The following year, Domer sued for damages because of the loss of salary and his continued difficulties finding a job in the state due to the damage to his reputation. The jury awarded him \$5,675.

This is not a story about William Jennings Bryan. Indeed there's no evidence that he was ever made aware of the Domer case. And of course, no one in Lincoln that October (not even Bryan) could have anticipated what was to come to Tennessee nine

months later. And yet the specter of Bryan and the Scopes trial hovers over an investigation into this earlier court case. Knowing how an antievolution trial could unfold, it's impossible for us today to look at *Domer v. Klink et al.* and not ask: why did it not become a famous public spectacle?

## An Unqualified Slander The Making of an Evolution Trial

It's an anachronism to look at David Domer's lawsuit as if it were some sort of alternate-reality Scopes trial that somehow didn't become a national phenomenon. Despite the ubiquity of court cases in the United States that have taken place since Scopes, in 1924, there was no prior evidence that a courtroom could be a suitable venue to contest the alleged conflict between science and religion. Despite the fact that the journalists covering the Tennessee case (and many of the trial's participants) cultivated a sense that something like Scopes's indictment was inevitable since the day Darwin's *Origin of Species* was published in 1859, the Scopes trial likely wouldn't have occurred without the influence of particular developments in education policy in Tennessee.

This sense that an evolution trial was not inherently something worthy of spectacular publicity is reinforced by the fact that the only newspaper that mentioned Domer's trial before it took place failed to mention evolution at all. The October 16, 1924, edition of the *Fremont Tribune* reported that Domer was suing the defendants "charging that they were responsible for an alleged slanderous letter which caused him to lose a lucrative position as an instructor at Midland College." The substance of the slander was not acknowledged.

This presentation of the case as a slander trial persisted in the other newspapers that reported Domer's victory. October 20's *Lincoln State Journal* reported that Domer had prevailed in a slander suit "charging that [the defendants] conspired to ruin his good name by circulating a petition attacking his ability as an instructor."<sup>6</sup> The same story appeared condensed in the *Omaha World-Herald* the following day, with the headline "Award Teacher \$5,675 for Slur on Ability."<sup>7</sup> The only newspaper that mentioned the fact that evolution had been at issue in the case at all was the *Fremont Tribune*, which had also been the only paper to run a pretrial article on the case. Unlike its earlier article, which had only described the lawsuit as a matter of slander, the *Tribune's* post-trial article began: "Darwin and Genesis fought out a battle in District Judge Broady's court in Lincoln, and, contrary to the

In 1919 the Fremont College campus became Midland College. NSHS RG3347-2-55.



expectations from the picture of Nebraska standards of philosophy which are current in more populated centers, Genesis lost and Darwin won.”<sup>8</sup>

This lede is suggestive of the opening of *Inherit the Wind*, the Scopes trial-based play and film (1955 and 1960, respectively) in which a town of caricaturized religious bigots put a young teacher on trial for teaching evolution. It evokes the trope of science-religion conflict, and suggests that the main focus of Domer’s trial was in fact a battle between Darwin and Genesis. But this interpretation seems at odds with the more staid accounts in the other papers, which did not mention evolution at all. It also contradicts an account of the trial the *Tribune* gave in a June 1925 article, which cast a retrospective eye back at the Domer trial as the Scopes trial was about to start. In this later account, the paper insinuates that Domer did not attempt to defend Darwin at all, that he had spoken and written about evolution as “an academic study,” but only to describe “the opinions of others.”<sup>9</sup>

The accounts are inconsistent, and the trial records themselves give only a little more information. They do not include the letter that the Reverend William Klink and the other Rising City Lutherans sent to Midland College, nor do they include a transcript of testimony that might give further evidence of the extent to which “Darwin and Genesis fought a battle.” In the defendants’ response to the initial lawsuit, they mention Domer’s profession of “Darwinism,” so it’s not the case that Domer (or anyone else reading publicly filed documents) did not know that evolution questions could be raised in court. Advance notice that an evolution trial was possible was in fact available. The accusation of Darwinism was not an in-court surprise.<sup>10</sup>

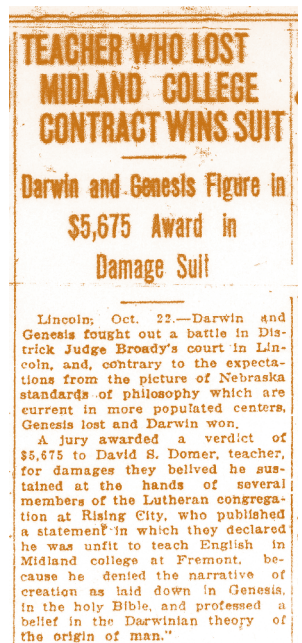
But they also accused David Domer of other disqualifying attributes, including claiming that he had written a “no-fund check.”<sup>11</sup> Domer’s lawsuit also claims that the defendants’ letter to Midland also made reference to “a certain compromising photograph” (though there’s no further indication of how a teetotaling grandfather in his 50s was depicted in an unsavory manner). From the original complaint, it’s clear that what Domer regarded as slanderous and damaging to his reputation was not that he espoused evolution, but that he was accused of being unfit to teach. From this perspective, descriptions of the trial as a slander trial, as opposed to an evolution trial, seem much more justified.

It was his qualifications as a teacher that Domer’s legal case appeared to defend—not his

beliefs on science. Though record of what he said on the witness stand is not known, the very fact that Charles William Taylor testified on Domer’s behalf is indicative that they were focused on establishing his teaching credentials, rather than defending Darwinism itself, or Domer’s views on evolution. At the time, Taylor was the professor of school administration and the director of the University High School at the University of Nebraska at Lincoln. In 1927, Taylor would go on to become the state Superintendent of Public Instruction.<sup>12</sup> Some of the other witnesses to testify for the plaintiff were teachers at schools in Nebraska where Domer had taught prior to coming to Rising City. The defendants’ case also appears to have focused on the question of whether Domer was a fit teacher, not defending antievolution. Testifying for them was Frank R. Beers, the assistant normal training inspector for the state.<sup>13</sup> Previously, Beers had served as the superintendent of schools in David City (the Butler County seat, about ten miles northeast of Rising City.)<sup>14</sup> Between Taylor and Beers, two of the most credentialed experts on teacher qualification in the whole state were put on opposing sides of a trial. Perhaps that in itself ought to have been considered newsworthy. A typical slander trial would not have invoked such expertise.

Taylor and Beers were not only experts in teacher qualification in the state in general, they were both in a position to speak to Domer’s specific credentials. Domer had attended the state normal school at Peru, and enrolled at the University of Nebraska at Lincoln in the summer of 1916, earning a bachelor’s degree and a permanent state teaching certificate in 1921.<sup>15</sup> He became a member of the university’s chapter of Phi Delta Kappa, the society of professional educators.<sup>16</sup> (Professor Charles Taylor was one of the Nebraska chapter’s charter members in 1914.)<sup>17</sup>

Even though the pretrial documents included reference to Domer being a “Darwinist,” it’s understandable that this case wasn’t an evolution trial at first. In part this may be because Domer appears not to have defended Darwinism in the trial. Certainly, there was no expert witness testifying for the compatibility of evolution and religion. The plaintiff strategy was to establish that Domer was a qualified teacher, and that the defendants’ claims to the contrary were false and slanderous. To that end, Domer’s lawyers focused on his background and experience in education—not his positions on evolution. In reply, it seems, the defense maintained that despite this, they were right in claiming that the man was “unfit.”



*Fremont Tribune*, October 22, 1924.





**Rising City students still attended the town's old 1887 school building when David S. Domer was superintendent. The building was replaced in 1926.** From *Reflections of Rising City* (Rising City, NE: The History Committee, 1978), p. 140.

### Understanding Unfitness

Given his educational and professional background, it's difficult to claim that Domer was not *qualified* to be a teacher. But the accusatory letter (as related in the lawsuit) declared that he was "unfit, morally and mentally" to teach. According to an October 22, 1924, *Fremont Tribune* article, "The reasons set out for the unfitness of Professor Domer were that he professed a disbelief in Genesis, a belief in Darwin's theory, and that he wrote 'no fund checks.' . . . It was set out by the signers of the petition that if he were allowed to teach at the college, a large number of students who professed a belief in Genesis would leave. They declared he would bring the church into disrepute."<sup>18</sup> This is a complex accusation. Writing "no fund checks" (a charge Domer denied at the trial) does not seem to be directly related to driving out Genesis-believing students.

Yet it was this potentially illegal behavior that might have allowed the language of "unfitness" to

be invoked. In Nebraska, unlike many other states, illegal actions were a basis for classifying a person as "unfit." The language of "fitness" evokes a doctrine of evolution in its own right, particularly as it was applied by advocates of eugenics (who sought to segregate or sterilize the morally or mentally "unfit.") Although most U.S. states had some eugenic laws on the books in this era, Nebraska (whose law was enacted in 1915) was one of only three states where eugenic sterilization was explicitly seen as a punitive provision, inflicted upon certain criminals as well as those deemed "feeble-minded." The punitive use of sterilizations more explicitly made use of the label of the term "unfit," and so the accusation that he was morally unfit may have been seen as an allusion to this behavior.<sup>19</sup> The language of unfitness also may have been directed at Domer's physical disabilities, as a childhood illness left him unable to walk without a cane for his entire adult life. The Rising City Lutherans made brief allusion to Domer's physical unfitness in their letter, but focused more substantially on the moral and mental unfitness to teach at Midland College. Nonetheless, Domer recounted that earlier in his career, his reputation as a teacher depended in part on his ability to prove physically fit to the task.<sup>20</sup> Drawing a connection between physical fitness and moral and mental fitness was not uncommon in the early twentieth century.

While his disability (and his age, already in his late forties) kept him from active military service during World War I, Domer contributed to the war effort by volunteering as a "Four Minute Man." An organization of speakers organized under the Committee on Public Information, it solicited volunteers to give four-minute talks at schoolhouses, theaters, and other public venues to build up support for the war effort and to encourage the purchase of Liberty Bonds.<sup>21</sup> Based in Weston, in Saunders County (about thirty miles due east of Rising City), Domer served as a local co-chairman and recruited additional speakers to deliver talks.<sup>22</sup>

While Domer's participation in the Four Minute Men shows willingness, if not fitness, to support the war effort, it also put him squarely on one side of the often-contentious relationship between German-Nebraskans and other state residents. These tensions were exacerbated during the war through the activities of the state and county Councils of Defense.<sup>23</sup> Soon after the war, this sentiment manifested itself in the form of the Siman Act, which explicitly prevented the use of modern foreign languages in grade school, and was particularly targeted at German-American communities.<sup>24</sup> It

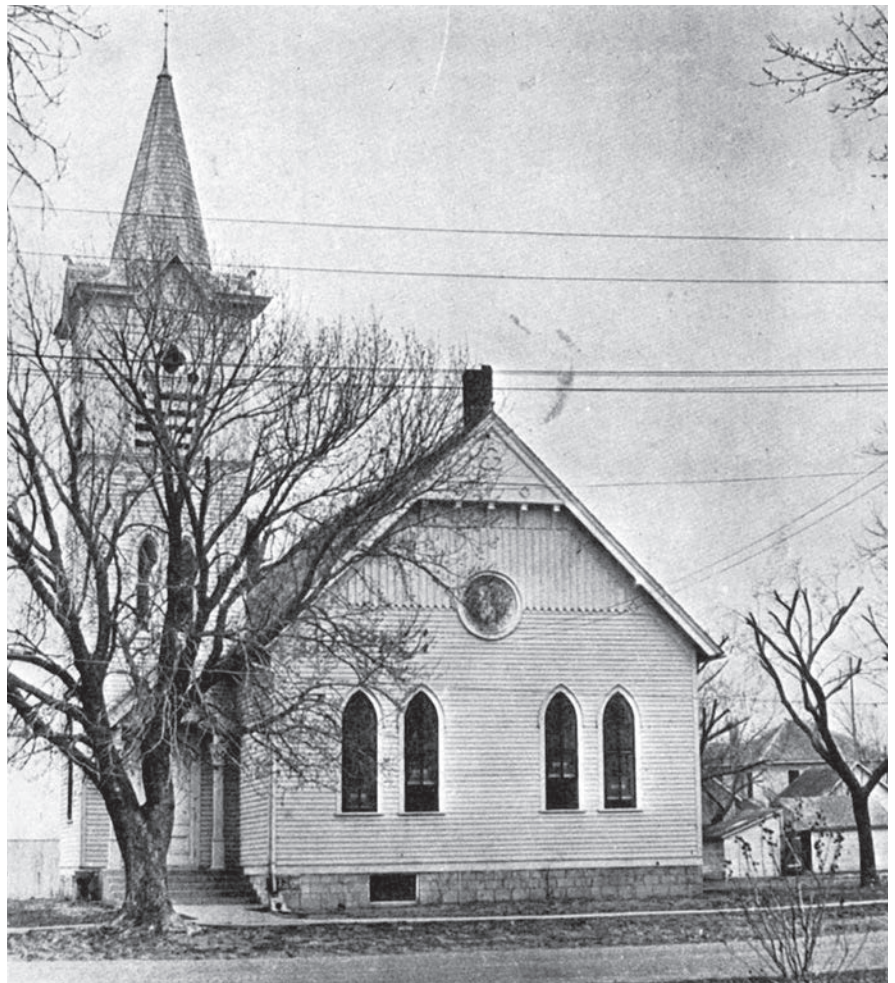
was overturned in the landmark Supreme Court Ruling *Meyer v. Nebraska* in 1923, but Domer ran the Rising City Schools and applied for the job at Midland while the law was still in effect.<sup>25</sup> It was German Lutherans associated with the Missouri Synod who initiated the first lawsuits against the Siman Act.<sup>26</sup> By contrast, some have argued that the 1918 consolidation of some German-American Lutheran synods into the United Lutheran Church in America was undertaken with an emphasis on Americanization, including emphasizing English, and that the relocation of Midland from Kansas to Fremont in 1919 (which included an expansion of its course offerings into more secular topics as well) was critical to that process.<sup>27</sup> On one hand, it may appear that hiring a man like Domer with his patriotism and educational background would suit this professed aim at becoming more “American.” On the other, Domer was not a Lutheran, and although he was also of German stock, his family was Pennsylvania German and had spoken quite a different non-English dialect in his childhood home.<sup>28</sup> Moreover, the idea that the ULCA was primarily focused on Americanization in this period oversimplifies the realities of daily life in individual congregations. Midland served as an intellectual hub for German Lutherans in Nebraska and nearby states, and it trained a substantial number of ministers and teachers who went on to serve in the region; consequently, it had to balance the conflicting interests of the laity and alumni who supported it. That the president of the Alumni Association was one of the nine signers of the letter against Domer, and the fact that the congregation of Rising City had held several fundraising campaigns for the college, undoubtedly influenced the college’s decisions.

All of which raises the question of how important Domer’s alleged “Darwinism” really was to Midland’s decision to rescind his contract, or to the Rising City nine’s decision to write against his appointment. Was the real issue that Domer was a Darwinist, whose unfit behaviors allowed the Rising City Lutherans to oppose him? Was it that being a Darwinist itself was what rendered him unfit, or was it that Domer’s other behaviors (either his purported no-fund checks or his perceived support of anti-German measures) had created resentment, and the label of Darwinism was an added accusation to motivate the school to act?

The answer is likely a combination of these possibilities, but Darwinism, or belief in evolution, had a complex history in this setting. In the histories of 1920s American antievolution, Lutherans are

rarely given much attention (and what little there is, is devoted to the Missouri Synod, which was not the denomination of the defendants in this trial).<sup>29</sup> And Nebraska has only been mentioned with regard to evolution controversies as the home of antievolution’s champion William Jennings Bryan, who had in fact moved to Florida well before he began his crusade against “Darwinism.” It also appears that officials at Midland were unconcerned with the evolution question before this petition against Domer, which raises questions as to why the people of Rising City would have thought it worth mentioning as a basis for disqualification. In fact, evolution was explicitly covered in the college’s zoology classes at the same time that Domer had been dismissed from the school (although the course description does not state whether this covered *human* evolution).<sup>30</sup> It seems likely that “Darwinism” was not taken to mean evolution in general, but rather a specific anti-religious interpretation of the evolution of species, particularly to human beings. But in that narrower sense,

**First English Evangelical Lutheran Church, Rising City, undated photo. The building burned down in 1939.** From *Reflections of Rising City* (Rising City, NE: The History Committee, 1978), p. 130.





it's not clear that Domer thought of himself as a "Darwinist."

### Evolving into a "Darwinist"

In their response to Domer's initial lawsuit, Klink and the other defendants claimed that they knew Domer to be a "Darwinist" from the evidence of conversations he had had in the town of Rising City and from a series of articles in local newspapers outlining the theory of evolution. While the hearsay of oral testimony can't be corroborated, the *Rising City Independent* provides the first real evidence of Domer's alleged advocacy of Darwinism. The *Independent* published an article by Domer entitled "The Doctrine of Evolution," on April 27, 1922.

Although the article closes with the promise of a follow up, no article appears in the remaining run of the newspaper for that year. And although that article also refers to previous "studies," it is from the April 27 article that the defendants drew their

claims that Domer was irreligious and a Darwinist. The only evidence of Domer's evolution (aside from the irretrievable spoken word) is this one newspaper article.

But in that article Domer never mentioned "Darwin" or "Darwinism" by name. In fact the article in question begins with reference to "Evolution as promulgated by Herbert Spencer."<sup>31</sup> It then lays out a theory of universal evolution—the idea that the cosmos, from the formation of the solar system to the physical development of life on earth to the intellectual and moral development of the human species, has all progressed through the accumulation of gradual changes. Spencer's view of evolution as laid out in his *First Principles of a New System of Philosophy* (1862) did not include what many take to be the defining characteristic of "Darwinism": a process of natural selection that determines which changes will continue to develop and which will go extinct. In the 1870s and 1880s

A wire service photo of William Jennings Bryan and an unidentified man at the Scopes trial, Dayton, Tennessee, July 1925.  
NSHS RG3198-68-2





(when Domer was a schoolchild) there was a concerted effort in the United States to extol Spencer and to reduce the apparent influence of Darwin. This came to a head in 1882 when Spencer toured the United States.<sup>32</sup>

It's not inconceivable that Domer would be a Spencerian, or at least that he grew up learning to associate the idea of "evolution" with Spencer rather than Darwin. Of course, the two were not mutually exclusive by any means. Perhaps the most outspoken advocate for Spencer in the United States, *Popular Science* founder Edward L. Youmans, made the point quite clearly in some of his early articles, in which he described Darwin's work as a specific instance of a general theory that Spencer had already worked out. It is also with Spencer that the characterization of evolution as a *doctrine* seems most readily applied.<sup>33</sup> This portrayal might not do sufficient credit to either Darwin or Spencer, but it does help explain why someone like Domer, who came of age in the United States in the 1880s, would not have seen "evolution" and "Darwinism" as identical concepts.

Opponents of Darwinism of the 1870s were careful to distinguish it from the more general doctrine of evolution. In his 1874 book, *What is Darwinism?*, Presbyterian theologian Charles Hodge wrote that "Darwinism includes three distinct elements." The first two are evolution and natural selection. "And third, and by far the most important and only distinctive element of his theory, that this natural selection is without design, being conducted by unintelligent physical causes. Neither the first nor the second of these elements constitute Darwinism; nor do the two combined."<sup>34</sup> Ultimately, Hodge answers his eponymous question with the conclusion, "it is atheism."<sup>35</sup>

In the 1920s, William Jennings Bryan took up a position similar to Hodge's. In fact, *In His Image* begins with a lengthy citation from Hodge.<sup>36</sup> Yet by the 1920s, the distinction drawn between "evolution" and "Darwinism" was less carefully drawn than it was in the 1870s. In part, this can be attributed to a decline in Spencer's influence in the sciences, but what was probably more important was the role of popular accounts of science associating evolution with the personage of Charles Darwin. As Constance Clark describes, "When scientists used the term Darwinism, they customarily referred to natural selection, but in the public debate, Darwin had attained iconic status."<sup>37</sup>

Ironically, it may be that Domer's exposure to Spencer's philosophy was precisely what did qualify him to be a teacher. Spencer's influence in the

realm of pedagogy continued long after it waned in other fields. Spencer's theories of child development and the development of the child mind continued to inform schools of education (though it was by no means accepted uncritically). Domer probably did accept Darwin's theories of biological evolution of species, but given the tone of his article in the *Rising City Independent*, it's likely that he understood them in the way *Popular Science* portrayed them back in his own youth, as a part of Spencer's larger theories of evolution as a phenomenon that encompassed all of nature. But Domer's Spencerian view was completely obscured when his trial was rediscovered in 1925, and made retroactively continuous with the trial of John Scopes.

In part, it appears that Klink and the other Rising City Lutherans equated Domer's (Spencerian) evolutionism with "Darwinism" and then used the accusation of Darwinist effectively with Midland school officials who might have objected to Darwinism even as they unproblematically taught "evolution." It's this same process of shifting between narrower and broader understandings of Darwinism and evolution that also allowed people in 1925 to look back at *Domer v. Klink* and retrospectively recast this slander trial as an anti-evolution trial.

### Making America's First Antievolution Trial

"Evolution Winner in Nebraska," proclaimed a headline in the *Chattanooga Daily Times* on June 5, 1925. Slightly less than nine months after Domer's victory in the Lincoln courtroom, the newspaper—which had been devoting considerable space to the upcoming trial of a Tennessee schoolteacher charged with violating the state's antievolution law—mentioned that an evolution trial had already taken place. "Nebraska has already fought out in its courts the question of evolution that the state of Tennessee is raising so much row about. And Darwin won." As described in Tennessee, Domer lost his job "because he taught Darwinism."<sup>38</sup> Of course Domer never taught Darwinism; he never taught anything at Midland College and in any case had been hired to teach English, not science. He had also taught English in the Rising City school. The details were lost in the larger narrative, that the Nebraska trial was a precursor to the upcoming case of John Scopes.

This same theme was picked up by other national newspapers. The *Los Angeles Times* begged the question of Domer's own beliefs with a headline, "Evolutionist Wins Award," also characterizing those who had slandered him as "fundamentalists."<sup>39</sup>

Adam R. Shapiro is Lecturer in Intellectual and Cultural History at Birkbeck - University of London. He is the author of *Trying Biology: The Scopes Trial, Textbooks, and the Antievolution Movement in American Schools* (Chicago, 2013).

Research for this article was supported by an NSHS Research Grant. Funding was provided by the Gladys Marie Lux Education Endowment and the Tom and Marilyn Allen Fund, both administered by the Nebraska State Historical Society Foundation.

Even Nebraska newspapers adopted this narrative, with the *Fremont Tribune* calling Domer's trial an "evolution case," and lamenting that the state might have had the limelight now focused on Tennessee.<sup>40</sup>

Perhaps most interesting is the account given by the *New York Times*, which was owned by *Chattanooga Times* owner Adolph Ochs. Their article ran a few days after the Tennessee paper's did and it repeats some of the same factual errors. The *Chattanooga* paper commented that evolution's victory in the Domer case might challenge "the expectations from the picture of Nebraska standards of philosophy which are current in more populous centers."<sup>41</sup> Its New York sister paper drew a more explicit contrast. "Nebraska, too, is not the South. It has a warmer welcome for new ideas."<sup>42</sup>

While out-of-state interpretations of the trial varied—from claims that Nebraska was rife with fundamentalism for having fired Domer, to claims that it was a modernist contrast to the South for having ruled in Domer's favor—the comparison with Tennessee rested on the assumption that *Domer v. Klink* was in fact an evolution case, a "quietly held" version of the Scopes trial. Perhaps because of what happened in Tennessee, the public understanding of an "antievolution trial" (an understanding that has allowed commentators to describe several later trials as reincarnations of Scopes) became solidified. But this understanding was at variance with how people in 1924 Lincoln had understood their own trial. That's not to say that the Lincoln case was not an antievolution trial, but rather that the trope of the antievolution trial itself is a historical artifact, not some timeless archetype, to link back (as Scopes supporters did) to the trials of Galileo and Socrates. Domer's slander trial became America's first antievolution trial—but only after the second one, *Tennessee v. Scopes*, taught the world what the idea of an antievolution case meant.

## NOTES

*I would like to thank David Bristow and the two anonymous reviewers for their comments and feedback on this article, and the Library at Midland University, which opened its archives to me. I would also like to thank the Nebraska State Historical Society for providing a travel grant to support this research.*

<sup>1</sup> "William Jennings Bryan will Speak in City Tomorrow," *Fremont Tribune*, Oct. 16, 1924, 11; "Commoner Speaks to Large Crowds," *Lincoln State Journal*, Oct. 18, 1924, 7.

<sup>2</sup> "Many Hear Bryan Speak," *Lincoln State Journal*, Oct. 19, 1924, 1.

<sup>3</sup> Edward J. Larson, *Trial and Error: The American Controversy over Creation and Evolution*, Third Edition (Oxford: Oxford University Press, 2003), 53-55.

<sup>4</sup> Adam R. Shapiro, *Trying Biology: The Scopes Trial, Textbooks, and the Antievolution Movement in American Schools* (Chicago: University of Chicago Press, 2013).

<sup>5</sup> Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate over Science and Religion* (Cambridge, MA: Harvard University Press, 1998); Shapiro, *Trying Biology*.

<sup>6</sup> "Large Award for School Teacher," *Lincoln State Journal*, Oct. 20, 1924, 2.

<sup>7</sup> *Omaha World-Herald*, Oct. 21, 1924, 2.

<sup>8</sup> "Teacher who lost Midland College Contract Wins Suit: Darwin and Genesis Figure in \$5,675 Award in Damage Suit," *Fremont Tribune*, Oct. 22, 1924, 2.

<sup>9</sup> "Nebraska had Evolution Case Quietly Held," *Fremont Tribune*, June 29, 1925, 8.

<sup>10</sup> "Answer to Amended Petition in the District Court of Lancaster County Nebraska," Clerk's Transcript, *David S. Domer v. William A. Klink et al.* Case file 24643, Nebraska Supreme Court, RG 69 (box 446), Nebraska State Historical Society, Lincoln, Nebraska, 15.

<sup>11</sup> Ibid.

<sup>12</sup> Nebraska Department of Public Instruction, *Courses of study for the elementary schools of Nebraska* (Lincoln: Lincoln School Supply Company, 1927).

<sup>13</sup> Department of the Interior, Bureau of Education, *Educational Directory, 1922-1923* (Washington, DC: Government Printing Office, 1923), 8.



<sup>14</sup> *Beatrice Daily Sun*, Mar. 18, 1913, 13; "Frank R. Beers died today," *Ames Daily Tribune*, Apr. 4, 1967, 6.

<sup>15</sup> David Domer Transcript, University of Nebraska Archives, Lincoln, Nebraska.

<sup>16</sup> Paul M. Cook, *Phi Delta Kappa Directory, 1931* (Chicago: Phi Delta Kappa, 1931), 159.

<sup>17</sup> "Phi Delta Kappa Chapter History (Omicron Chapter)" <http://pdk.unl.edu/ch15History.html> (accessed Oct. 28, 2012).

<sup>18</sup> "Teacher who lost Midland College Contract Wins Suit," 2.

<sup>19</sup> J. Hered, "Nebraska Sterilization Law," *Journal of Heredity*, 7, no. 5 (1916): 238; Frederick W. Brown, "Eugenic Sterilization in the United States. Its Present Status," *Annals of the American Academy of Political and Social Science*, 149, pt. 3 (May 1930): 22, 26. Brown also cites: R. A. Gibbons, "The Treatment of the Congenitally Unfit and of Convicts by Sterilization," *Eugenics Review*, 18 (July 1926): 100-109, in which Brown describes: "defines 'unfit' as those whose behavior and conduct make them unable to conform to the ordinary conveniences of society, whether the acts are due to genuine mental weakness or merely to moral delinquency. Uses prison statistics to support the argument."

<sup>20</sup> A partial memoir of Domer's early life is given in: Thomas Woody, "Country Schoolmaster of Long Ago," *History of Education Journal*, 5 no. 2 (Winter, 1954): 41-53.

<sup>21</sup> Cedric Larson and James R. Mock, "The Four-Minute Men," *The Quarterly Journal of Speech*, 25, no. 1 (February, 1939): 97-112.

<sup>22</sup> *An Honor roll: containing a pictoria[l] record of the gallant and courageous men from Saunders County, Nebraska, U.S.A., who served in the Great War, 1917-1918-1919* (Wahoo, NE: Wahoo Democrat, 1919), 149.

<sup>23</sup> Burton W. Folsom, *No More Free Markets or Free Beer: The Progressive Era in Nebraska, 1900-1924*, (Lanham, MD: Lexington Books, 1999), 144-50; Robert N. Manley, "The Nebraska State Council of Defense and the Nonpartisan League, 1917-1918," *Nebraska History* 43 (1962): 229-52.

<sup>24</sup> Frederick C. Luebke, "Legal Restrictions on Foreign Languages in the Great Plains States, 1917-23," in Luebke, *Germans in the New World: Essays in the History of Immigration* (Champaign, IL: University of Illinois Press, 1999), 31-50.

<sup>25</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923).

<sup>26</sup> *Nebraska District of Evangelical Lutheran Synod, etc., v. McKelvie et al.* (Nebraska) 187 N. W. 927 (1922).

<sup>27</sup> John R. Freese, "Symbols amid xenophobic policies: German Lutheran immigrants in Nebraska and the Siman Act of 1919," *Journal of Research on Christian Education*, 8 no. 2 (Fall 1999), 147-78.

<sup>28</sup> Woody, "Country Schoolmaster of Long Ago."

<sup>29</sup> Ronald L. Numbers, *The Creationists: From Scientific Creationism to Intelligent Design*, expanded edition (Cambridge, MA: Harvard University Press, 2006).

<sup>30</sup> *Midland College Bulletin*, 1922-23, 20, no. 3 (May 1, 1922), 15. Courtesy of the Midland University archives.

<sup>31</sup> D. S. Domer, "The Doctrine of Evolution," *Rising City Independent*, Apr. 27, 1922.

<sup>32</sup> Barry Werth, *Banquet at Delmonico's: Great Minds, the Gilded Age, and the Triumph of Evolution in America* (New York: Random House, 2009), 259-97.

<sup>33</sup> "Herbert Spencer and the Doctrine of Evolution," *Popular Science Monthly*, 6 (November, 1874), 20-48; J. E. Cairnes, "Social Evolution," *Popular Science Monthly*, 6 (March, 1875), 604-12.

<sup>34</sup> Charles Hodge, *What is Darwinism?* (New York: Scribner, Armstrong and Co., 1874), 48.

<sup>35</sup> *Ibid.*, 177.

<sup>36</sup> William Jennings Bryan *In His Image* (New York: Fleming H. Revell, 1922), 1.

<sup>37</sup> Constance A. Clark, *God – or Gorilla: Images of Evolution in the Jazz Age* (Baltimore: Johns Hopkins University Press, 2008), 50.

<sup>38</sup> "Monkey Talk Hits Book Publisher; Evolution Winner in Nebraska," *Chattanooga Daily Times*, June 5, 1925, 1.

<sup>39</sup> "Evolutionist Wins Award," *Los Angeles Times*, June 9, 1925, 2.

<sup>40</sup> "Nebraska had Evolution Case Quietly Held."

<sup>41</sup> "Evolution Winner in Nebraska."

<sup>42</sup> "Mr. Scopes Wasn't the First," *New York Times*, June 11, 1925, 18.

