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[Home](#) > A Lawyer's Distortion of Huxley



[1]

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[Creationism](#) [3], [History](#) [4]

[Glenn Branch](#) [1]

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[A Lawyer's Distortion of Huxley](#) [5]



I have a number of lawyers among my friends and family, so I usually try not to indulge in jokes that broadly impugn the legal profession. (What's that? Well, if you insist. What's the difference between a lawyer and a catfish? One is a slimy, scum-sucking, bottom-dwelling scavenger—while the other is a fish.) And in fact, I have a lot of respect for the legal profession, instilled, in part, by interacting with the lawyers—Eric Rothschild, Steve Harvey, Vic Walczak, Richard Katskee, and all their colleagues—who so effectively represented the plaintiffs in *Kitzmiller v. Dover*. But I am willing to complain about lawyers who abuse their skills in the service of attacking evolution—like Phillip Johnson, Norman Macbeth, or, in the Scopes era, Philip Mauro (1859–1952). Here, from Mauro's *Evolution at the Bar* (1922), is a blatant distortion.

In chapter three of *Evolution at the Bar*, Mauro challenges the idea that paleontology provide evidence for evolution. He contends that even Thomas Henry Huxley (above)—whom he describes as one of the ablest evolutionists, “who openly devoted his great talents to the destruction of faith in Divine revelation”—conceded that there was no evidence for evolution in the fossil record. Accordingly, he quotes Huxley's address to the Royal Geological Society in 1870—“Palaeontology and the Doctrine of Evolution”—as follows:

“What then does an impartial survey of the positively ascertained truths of paleontology testify in relation to the common doctrines of progressive modification (*i.e.* Evolution), which suppose that modification to have taken place from more to less embryonic forms, from more to less generalized types, within the limits of the period represented by the fossiliferous rocks?” And he answers the question by saying, “I reply, *it negatives those doctrines*; for it either shows us no evidence of such modifications, or it demonstrates such modifications, or it demonstrates such modification as has occurred to have been very slight. The significance of *persistent types*, and the small amount of change which has taken place even in those forms which can be shown to have been modified, becomes *greater and greater* in my eyes, the longer I occupy myself with the Biology of the past[.]” (emphasis and parenthetical interpolation in original)

The quotation is problematic in a number of ways. For starters, the emphasis was added by Mauro; the italics are not to be found in the printed version of the address. And Mauro failed to indicate that he omitted about half of the next-to-last sentence (“and, as to the nature of that modification, it yields no evidence whatsoever that the earlier members of any long-continued group were more generalised in structure than the later ones”) or that the last sentence is separated from those preceding it by five paragraphs.

Those problems might be attributed to carelessness, but there is a further problem, which it is hard not to attribute to dishonesty. Huxley begins “Palaeontology and the Doctrine of Evolution” by harking back to—and quoting from—his 1862 address to the Royal Geological Society, “Geological Contemporaneity and Persistent Types of Life” (which, by the way, was the source of the “not proved and not provable” passage, which I have previously [discussed](#) [6]). The first two sentences quoted by Mauro are taken verbatim from the 1862 address. Immediately after Huxley quotes himself from 1862, he announces his project for the 1870 address: “revising these old judgments with such help as further knowledge and reflection, and an extreme desire to get at the truth, may afford me.” Could he have signaled the need to read further any more clearly?

When Huxley indeed reconsiders those sentences in his 1870 address, he writes, “there is much ground for softening the somewhat Brutus-like severity with which, in 1862, I dealt with a doctrine, for the truth of which I should have been glad enough to be able to find a good foundation.” With respect to the “Invertebrata and the lower Vertebrata,” he says, he is willing still to say that the evidence for evolution is not in, but with respect to the “higher Vertebrata,” he declares that there is “a clear balance in favour of the doctrine of the evolution of living forms one from another.” He then discusses a variety of lineages, settling on the evolution of horses as his best example; a few years later, after reviewing O. C. Marsh’s collection of fossil horses with him, he would deliver his famous [lecture](#) [7] in New York City on the evolution of the horse.

As for the final sentence quoted by Mauro, beginning, “The significance of persistent types,” it indeed represented Huxley’s views as of 1870, unlike the previous two sentences. A lot could be said about Huxley’s uncompromising stand on persistent types—involving the idea that certain kinds of life, such as crocodiles and ferns, displayed no evolutionary change—including the fact that he slowly divested himself of it through the second half of his career. Since Mauro was writing twenty-seven years after Huxley’s death, his abandonment of persistent types presumably wouldn’t have been breaking news. But more important is the fact that although persistence of types was not a good fit with the idea of evolution, it is not incompatible with it, so Huxley’s retention of it in 1870 was not evidence that he was uncomfortable with evolution, contrary to what Mauro implies.

The only possible excuse from the charge of lawyerly dishonesty against Mauro is laziness. Mauro quotes Huxley indirectly via “Th. Graebner, in ‘*Evolution*’”—by which he presumably means *Evolution: An Investigation and a Criticism* (1921) by Theodore Graebner, a contemporary Lutheran theologian I’ve [discussed](#) [8] before. In his book, Graebner quotes the same sentences from Huxley, without adding any emphasis although without indicating the omissions that Mauro failed to indicate, preceded by “Huxley ... quotes the following from an address before the same society in 1862.” That, too, is misleading, since the third sentence, beginning, “The significance of persistent types,” was new to Huxley’s 1870 address, but it isn’t as misleading as in Mauro’s book, where Huxley’s change of mind between 1862 and 1870 is ignored.

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[2] <https://ncse.com/printpdf/18342>

[3] <https://ncse.com/blog-tags/creationism>

[4] <https://ncse.com/blog-tags/history>

[5] <https://ncse.com/blog/2016/09/lawyer-s-distortion-huxley-0018342>

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