

THE LEGAL PROBLEMS WITH TEACHING INTELLIGENT DESIGN

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During the last decade the theory of creationism has once again become a focal point of battles in the public schools and boards of education across the country. The scientific theory of evolution is being attacked in a variety of different contexts. In Kansas and Ohio the battle has been fought over demands to exclude evolution from the state science standards and curriculum guidelines. In Texas, these issues have arisen in disputes over state authorization of biology textbook purchases. In many other local communities (such as Cobb County, Georgia and Dover, Pennsylvania) creationism has been an issue in debates over textbook disclaimers and the more basic matter of what should be taught in the science classes of local public schools. The issue has even come before Congress in the form of the unsuccessful Santorum Amendment, which would have mandated that all schools receiving federal funds teach the new version of creationism. Almost a century after the famous "monkey trial" of John Scopes, the United States is still having to deal with the conflict between empirically based science education and derivatives of the Biblical story of creation.

The most recent version of creationism is oriented around the teaching of so-called "intelligent design" theory. Intelligent design theory differs from earlier models of creationism by avoiding the biblical literalism that was common during the Scopes era. Intelligent design proponents do not leave themselves open, as earlier creationists did, to a detailed challenge about the precise contours of the day on which God created the earth. But two central claims of earlier creationist theories remain at the core of intelligent design: First, the claim that biological entities in the physical world have not evolved naturally from lower-order to higher-

order beings, and second, the claim that a supernatural intelligence intervened in the natural world to dictate the nature and ordering of all biological species. The question is whether the recent rearticulation of creationist theory renders that theory sufficiently non-religious to satisfy the requirements of the First Amendment.

The recent proposals to incorporate intelligent design into the public school curriculum and science standards are part of the third generation of creationism legislation. The Supreme Court has already held the first two generations of creationist legal mandates unconstitutional on the ground that they constituted an impermissible establishment of religion in violation of the Establishment Clause of the First Amendment. The first generation of creationism statutes prohibited public schools from teaching evolution. The Supreme Court struck down these statutes in 1968. The second generation of creationism statutes required schools to give creationism "equal time" by teaching creationism whenever evolution was taught. The Supreme Court struck down these statutes in 1987.

The notion of intelligent design that is the basis for the third generation of creationism proposals is both simpler and more imprecise than the version of creationism advanced in the first two generations of creationist legislation. These characteristics are products of a conscious desire by creationism proponents to present the religious concept of creation in a secular package that somehow can fit within the constitutional framework used by the Supreme Court in its previous creationism decisions.

Unlike the first and second generations of creationism, the third generation of "intelligent design" creationist theory contains few affirmative propositions other than the basic conclusion that the natural world was created by an "intelligent designer." Much of intelligent design theory is devoted to negative attacks on the evidence supporting evolutionary theory,

but with little or no suggestion of a comprehensive alternative scientific paradigm. The third generation creationists have largely abandoned their predecessors' support for the more outrageous creationist claims, such as that a single divinely ordained flood can explain the entire geological structure, or the demonstrably absurd claim that the earth is only a few thousand years old. They are left with the simple proposition that a supreme being (i.e., God) created the earth.

It is impossible to avoid the conclusion that the Supreme Court's previous decisions prohibiting the teaching of creationism in public schools also apply to the new version of creationism. In its previous creationism decisions, the Supreme Court ruled that creationist legal mandates violated the Constitution because they were motivated by religion, were based on hostility to scientific theories perceived as contrary to the tenets of particular religious sects, and relied on the actions of a supreme being as the central feature of an essentially religious legal mandate.

The theory of intelligent design is not significantly different. When intelligent design theory is analyzed under the constitutional framework used by the Court to invalidate earlier creationist mandates, it is evident that legal requirements to teach intelligent design cannot satisfy the constitutional standard set forth in the Supreme Court's prior decisions. Every major aspect of intelligent design supports this conclusion: The absence of objective scientific support for intelligent design, the strong links between intelligent design and fundamentalist religious groups, the use of intelligent design to limit the dissemination of scientific theories that are perceived as contradicting religious teachings, and the fact that the irreducible core of intelligent design theory is what the Court has called the "manifestly religious" concept of a

supreme being. The incorporation of intelligent design into public schools and state science curricula is therefore not only bad science; it is illegal.