

COPE commentary on Arnold H. Loewy, *The Wisdom and Constitutionality of Teaching Intelligent Design in Public Schools, First Amend. Law Rev.*, 5 (2006) 82.

In this defense of teaching intelligent design (teleology), Arnold Loewy makes the same fundamental mistake made by the *Kitzmiller* court, but reaches a different result. Both Loewy and *Kitzmiller* Judge Jones implicitly define religion as just theistic – so that all teleology is religious, while the competing materialistic idea is not. Using this classification, he claims that a systematic suppression of teleology evidences “hostility” toward “religion.” He claims that hostile effect violates the Establishment Clause.

However, he is incorrect in claiming that the suppression is “hostile to religion.” Religion as defined by the Supreme Court includes atheism and other non-theistic religions that deny teleology and depend on materialism. Hence, the suppression of teleology is only hostile to theistic religion, not all religion. The suppression actually endorses one non-theistic religious view over a theistic view. That is not hostility; that is evangelism.

The reason the distinction is important is that a valid claim of state endorsement of a particular religious view such as Atheism is clearly actionable, while a claim of hostility is pragmatically unworkable. The claim of hostility is problematic because it is based on a flawed theistic-only definition of religion. That discriminatory definition puts the competing teleological and materialistic views into two different classes. Teleology is relegated to the disfavored religious class that may not be promoted by the state, while the materialistic is placed in the “secular” class that may be systematically endorsed by the state.

This dual classification makes hostility claims under the Establishment Clause pragmatically unworkable. This is because promotion of the competing idea classified as secular starts with a presumption of legality, while promotion of the idea classified as religious is presumed illegal. If the effect of the presentation of the secular idea is only incidentally hostile to the religious view, then it is deemed OK as the Establishment Clause does not ban hostile religious effects that incidentally result from the promotion of valid secular state activities. It is almost always possible to show valid secular effects, given the narrow theistic definition of religion. As a consequence, claims of hostility against theistic views using a narrow theistic definition of religion are advanced in dicta but not in holdings. For this reason Loewy does not cite any cases that actually hold in favor of a hostility claim by a theist under the Establishment Clause.

Use of an inclusive definition of religion completely alters the result. With an inclusive definition, the issue is not whether the state is promoting God. Instead the legal question is whether the state is addressing a religious issue and then taking sides in favor of one of the competing religious views. Origins science deals with two ultimate religious questions: where do we come from and what is

the nature of life? Teleology and materialism are the principal competing views. The former supports theistic religions and the latter non-theistic and deistic religions. If a U.S. state may not endorse the idea that life is created, neither may it endorse the idea that it is just an occurrence that emerged from materialistic processes.

Loewy's article is also premised on an ignorance of fact. Loewy implicitly assumes that materialistic evolutionary theory is based on objectivity, when it actually is grounded in a materialistic preconception called methodological naturalism (MN). That doctrine absolutely excludes any tolerance of a teleological perspective. This is precisely the "hostile" effect which Loewy believes unconstitutional. However, he fails to understand or mention that MN exists, and that it is the tool that systematically, not just incidentally, suppresses teleological friendly evidence. Thus, what is actually unconstitutional is the effect of applying MN not only to the explanations provided to students, but also as a tenet of education to suppress an objective presentation about competing explanations that have profound religious effects in the school classroom.

Nevertheless, Loewy has put his finger on the core problem. A systematic exclusion of intelligent design or teleology from public education is constitutionally problematic under any thoughtful analysis.