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The Pragmatist and the Purist: Religion and Internal Framing Struggles within the Creationist Movement

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Abstract Social movements are often discussed in terms of being monolithic and unified but this is not the reality of the world we live in. Instead social movements are made up of many different parts, generally working toward vaguely similar goal. But what happens when the overall goal is the same but the parts disagree on the best strategy to get there? In the creationist movement, comprised of varied and competing social movement organizations, there have generally been two sides at odds with each other. One side has favored a pragmatic legal approach; recognizing the constraints that past legal defeats have placed on the chance of success of future policy litigation. Understanding this, they have adopted a practical approach to policy proposals and the framing they use in court, focusing on science and academic freedom while purposefully distancing themselves from the any appearance that they are religiously motivated. On the other side are groups insisting on ideological purity. These groups claim that any policy and legal frame should be based on religion, even if the federal courts have seemingly closed this legal rational. For them, being true to the cause and biblical literalism is most important. There is a tension that exists between these two sides as they attempt to defend these policies in court. This paper finds that the pragmatic side of the creationist movement tries to manage, constrain, and conceal the religious parts within the movement, often with limited success. The pragmatists have found success in getting policies framed in a legally neutral way but when the courts review those policies they are vulnerable to the rhetoric of the religious ideologues of the movement. The paper ends by offering three considerations that movements must weigh in adopting the opposition's framing.

Keywords Social Movements, Religion, Law, Creationism, Intelligent Design

1. Introduction

On June 2005, the Dover, Pennsylvania school board voted to have the school superintendent enter 9th grade science classrooms and read a statement to the effect that evolution was a theory, not fact, and that there were "gaps" for which it could not explain. The statement then went on to say that intelligent design is a rival theory and that if students want to explore this other theory the book "Of Pandas and People" is available [1].

Intelligent design burst into the public consciousness on August 1, 2005 when President George W. Bush, when asked about the teaching of intelligent design in public schools, said that both evolution and intelligent design should be taught "so people can understand what the debate is about" [2]. Based on this one brief comment, and the situation in Dover, Pennsylvania, the national media's coverage of the intelligent design movement exploded. This on act brought to the forefront the legal debate over evolution that had been brewing since the 1980s when the Supreme Court invalidated attempts to introduce creation science in the classrooms as a scientific alternative to evolution.

This instance of trying to introduce intelligent design into the science classroom and the ensuing legal challenge highlighted several issues related to legal framing. First, it showed the considerations that social movements must make when adopting an opponents framing, ensuring that this frame comports with the identity of the movement. Secondly, it also shows the dangers of using an opposition's frame when parts of the movement are not willing or able to go along with the new framing. This tension between the legal pragmatist and the ideological purist aspects boiled over in the intelligent design case as proponents attempted to distance themselves from any expressed connection to religion.

This paper adds to our understanding of legal framing by examining how the intelligent design movement attempted to coopt the science frame from the evolutionists and the difficulty they faced. Using the literature on social movement and legal framing as well as that on diffusion in social movements, I examine the considerations and limitations that social movements face in trying to construct a frame that is salient in a particular arena, the courtroom in this case, as well as being acceptable to the broader movement adherents. With this case I show that the

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intelligent design movement made a specific choice to distance themselves from religious framing as well as actively reject support from those that would not fall in line with this framing. The consequence of adopting their opponents framing is considered with respect to the viability of the legal frame in court. Finally, I show the issues that movements face when adopting the frames of their opponents which include making sure it is salient in the legal setting, will be actually help them against their opponent, and making sure that this new framing aligns with the beliefs of movement members. The legal arena has placed real constraints on the way the creationism and intelligent design movement can present themselves in court, they have done their best to operate within these limitations but sometimes this has come at the cost of losing some of its core supporters. The attempted change in framing by the intelligent design movement was a consequence of past legal defeats and done as a prophylactic measure to assure future success. As a result of this change it produced its own consequence, that of a broad schism within the creationist movement that the movement must manage.

1.1. Frames, Consequences, and the Law

The study of social movement frames has overlooked the existence and consequences of framing done in the courtroom. Social movements in America have a long history of turning to the courts for redress and while they are not always successful the courts have offered one possible pathway to movement success when other political options were closed. From the early civil rights case of *Brown v. Board of Education* to recent legal decision overturning California's Proposition 8 the courts have been one important avenue for advancing social movement claims [3]. Sometimes the courts do not always provide the desired solution, as was the case in *Bowers v. Hardwick*, but legal movements continue to turn to the courts despite this risk because the chance of a big payoff is so great if the decision ends up going their way [4] [5]. It can be long and difficult for a movement, especially a minority movement, to affect change in legislative or administrative policy but over the span of a single court case they could get a policy implemented that could have taken decades by other means.

There has been social movement scholarship looking at social movements that go to court [6] [7] (see also review in Edelman, Leachman, and McAdam [8]) but the extra-legal consequences of an SMO's legal framing once a case is decided has been ignored. When scholars think of legal framing it often comes back to how movements frame their issue to the broader constituencies outside of court. Work in this vein has looked at the ways that SMOs have conceptualized their grievance in terms of a rights claims and how that has helped to further the movement's goals [9] [10] [11] [12]. Social movements that have done this are found to be more successful than movements that do not attempt this or are unable to legitimately claim those rights [13]. The courts are not the only place to make rights claims and research has shown that the appeal to rights in other settings is a useful tactic for social movements [14].

While recognizing how rights claims have become an important frame for social movements claims, our understanding of legal framing in the courtroom is underdeveloped as a field [15] [16]. In conceptualizing legal framing movement scholars have not looked at one of the key sites of legal framing, the courts. Instead they have focused on the legal framing done in state legislatures and within movements trying to mobilize [17-19]. Scholars of social movement framing have not explored this specific type of framing. Law and society scholarship has devoted more of their attention to legal framing but our understanding of how framing comes about and it's influence over time and across settings is still being developed.

The legal system has its own unique norms and language that is favored and reified. Frames and language that could serve a social movement well on the street or be effective in lobbying could have no standing in front of a judge [20]. Arguments before the court must be presented in specific terms and formats, claims must be made through appeals to specific laws, past precedent, and constitutional rights in order for a movement to even attempt to have credibility [21] [22] [23]. Previous work has found that the legal institution places several restrictions on the type of frames that are salient and acceptable in the legal setting. In their research on the creationist and evolutionist movements, Stobaugh and Snow [24] show that the level and type of court matters for which frames are acceptable. They find that it is necessary of movements to frame their case around the issue with the lower courts but as the cases make their way up through the court system on appeal they must emphasize a constitutional frame. They also show that the court values certain frames over others, in particular, the courts favors science frames over religious frames as long as the science claims are viewed as legitimate.

We know that social movement can have a variety of consequences, both intended and unintended [25]. These can range from having its demands met to influencing the broader culture to media attention to rousing an opposing movement [26-29]. While the issue of consequences of social movement framing has not been as thoroughly analyzed as other issues relating to movement framing what work that has been done has shown that they do matter [30]. We know they matter in a direct way for policy outcomes [31] and are an important part of gaining media attention [32]. Frames can also have unintended consequences. This was exemplified by Anita Bryant's campaign against the LGBT community which actually ended up mobilizing gay and lesbian activism [33] [34]. Specifically, how does legal framing done in one case affect future events? In the battle over evolution the scientific community's legal briefs consistently try to tie the current iteration of the creationist movement back to their previous frames. Frames and movements do not just disappear after a court case is decided

but instead they live on with consequences beyond their intended purpose. In addition, there are often unintended consequences of framing. How does engaging in a pragmatic legal framing strategy affect the broader movement?

Despite all we know about movements in the court little is know about the consequences of the movement frames used in the legal setting. We know which frames are likely to be constructed [35] and we know which frames have been successful in the past but as I will show that these frames do not only exist in the vacuum of the courtroom, instead, the frames that are crafted for the legal setting often spillover to the rest of the world and end up having consequences for the social movements, some of them intended and other not. This paper attempts to show the consequences of framing, specifically the unintended consequences of legal framing.

1.2. Diffusion and Oppositional Effects

An important issue to consider is that of frame diffusion because the rules in the legal arena make it likely to occur as movements engage framing contests with one another over multiple iterations [36]. What is most surprising about the diffusion literature relating to framing is the lack of it generally, and related to legal framing specifically. In their review piece Benford and Snow point out that "few framing scholars have considered diffusion issues" [37]. Because there are so few studies done on the issue of frame diffusion Benford and Snow were left to "extrapolate" diffusion theorizing from the general social movement arena. Snow and Benford did address this issue [38], finding that frames were often used when diffusion occurred in order to make adopted processes resonant with a different cultures or situations, but to date there has been a woeful lack of attention paid to frame diffusion. Since frames are dynamic and evolving, the absence of attention to the process of their formation from other framing sources is surprising.

The work that has been done on social movement diffusion has focused on several different aspects, including the spread of tactics from one location to another [39-41], the social and institutional networks that allow for diffusion [42] [43], the institutional and cultural realities that encourage or hinder diffusion between groups [44] [45], and to the connections between similar groups [46]. What we know about the process of diffusion comes from this small, but growing, body of scholarship.

Most scholarship presents a linear and purposeful process of diffusion, actor A discovers an innovative process and shares it with actor B, then actor B utilizes it and is successful. We know that the diffusion process is not that straightforward. Snow and Benford [47] highlight the sometimes-unintended nature of diffusion with their typology of diffusion. They illustrate how a transmitter and receiver can also engage in diffusion accidentally or unintentionally. Scholars must not just study diffusion as if it were done deliberately but must look at the mechanisms and process behind it to determine the motives of the transmitter and receiver. This idea of passing along innovations unintentionally is an important point that must be considered because it allows for the possibility of oppositional movements to diffuse frame innovations to their countermovement. Unfortunately, much of the work done has modeled diffusion as a process amongst allies [48] [49]. Many of these studies subscribe to the process that McAdam [50] elucidated where a group uses a successful tactic, it spreads through the SMO community, opponents eventually adapt, and the social movement must innovate again. This has created a situation where scholars have missed important opportunities to study movements that have borrowed tactics from oppositional movements. This "borrowing" could be done as a way to neutralize counter-framing activity; instead of responding to it they can just co-opt it [51].

This important aspect of frame diffusion between oppositional movements has not been fully theorized or examined in the literature. The literature has generally treated diffusion between movements as something positive that is often encouraged by the transmitting movements. What the literature has failed to address is the issue of diffusion between competing movements. The closet the social movement field has come to examining this phenomena is in its examination of tactical adaptation between oppositional movements [52]. While an important concept this idea of adaptation overlooks cases when a movement does not merely adapt to their opponent's frame but instead adopts their framing strategy. I argue that this diffusion process is critical to understanding how frames are constructed when a movement is engaged in a contentious framing battle.

While the diffusion process between competing movements has not been modeled, based on my previous examination of these cases and work done on unintentional cross-national diffusion by Snow and Benford [53] we have some clues as to how this process should occur. Snow and Benford find that in the case of the 1989 Chinese Democracy movement, the protestors borrowed heavily form the West but altered the elements to correspond with their own cultural values. This is important because it shows that adoption of movement framing does not need to be done without modification. In fact, I would argue that in the case of the diffusion of frames from those favoring evolution to movements opposing it, any diffusion will have to be adapted so that it does not violate or conflict with the core beliefs or principles of the movements. At the heart of every movement is a core set of beliefs and ideologies that must be protected. Any frame that is adopted from competing movement must be deployed in such a way that it does not violate the core identity of the movement but still enhances its chance of success.

Broad social movements are comprised of autonomous actors who do not always agree on framing, when this occurs it has been identified as a "frame dispute" [54]. These disputes present a weakness for a movement because if they are public they "reveal a movement's weakness and thereby provide opponents with a blueprint for launching attacks" [55]. These disputes turn into real conflict for the movement and can lead to conflict being difficult or impossible for the

movement [56]. The frame disputes can become so divisive that they lead parts of the same movement to actively oppose and resist the actions of other parts.

We need to understand the consequences of legal framing, including the unintended consequences. These can include the one side adopting the legal frames of their opponents to allies being alienated when one part of the movement adopts a frame that they cannot live with. Movements in the legal environment must negotiate all of these things.

2. Methods

Data for this project was collected as part of a larger project. I collected all available court documents pertaining to the precedent setting court cases, including legal briefs, court motions, and judicial decisions along with depositions and trial transcripts when available from 1925 to 2005 for the creationist cases. Most of these documents were accessed through Westlaw and LexisNexis Legal. Other documents were available through webpages relating to these cases or through public open access sites such as Findlaw and Wikipedia. The time periods were chosen because they encapsulate the precedent setting cases in these two movements. Precedent setting cases are important because any future policy or legal challenge must address the prior precedent. The legal documents were coded for the legal frame and issue that was presented. Across time these frames have shifted in response to legal defeat, type of court hearing the case, and in response to the oppositional framing present [57]. Using this data I explore further explore how each successive frame is adopted and adapted in order to not run afoul of previous cases but still advancing the wishes of the movement.

In addition to the legal documents I also gathered proposed legislation and school board policies across the time period. These consisted of full text of school board proposals and policies and bills and legislation when available and media descriptions of them when the actual text was not available. In addition to the policies I also gathered newspaper coverage of relating to creationism, creation science, and intelligent design as well as case specific articles from *The New York Times*, *Washington Post*, *Chicago Tribune*, *Los Angeles Times*, and the *Wall Street Journal*. These papers were chosen because they are papers of record that have come to serve a national audience. I also searched for other periodicals that contained interviews with movement participants as well as reviewed several monographs related to the creationism and intelligent design movements.

From all of these sources I was able to ascertain the legal frame that was being implemented before, during, and after each legal case. I was also able to identify any tension that might exist between creationist supporters and the new legal framing of the movement. I begin by showing how the legal frames used by the creationist movement have shifted across time. Then I present the issues that the movement faced with the rejection of the religious frames and the division that it brought to the movement. Finally, I consider what this means for our understanding of legal framing.

3. Findings

The Supreme Court's 1969 *Epperson* ruling eliminated over forty years of anti-evolution policy in an instant. Policymakers immediately attempted to find a policy that would not violate the judicial decision but would also include creationism instruction to counter evolutionary teaching. Two different policies were adopted in order to introduce doubt and uncertainty about the validity of evolution. The first was to require textbooks to highlight that evolution is "just a theory" and "not a fact" and that there are other theories out there that also try and explain human origins. The other tactic was to require equal time or balanced treatment of creationism and its derivatives whenever evolution was taught. This meant that if evolution were taught in the classroom another theory, often creationism or creation science, would either also be introduced or required to have the same amount of instructional attention. An early version of this type of law was passed in Tennessee; it required that evolution be balanced with creationism but a federal court, in *Daniel v. Waters*, ruled it unconstitutional because it gave preferential treatment to a religious doctrine [58]. This forced policymakers to find another theory to present alongside evolution; they found it through the recommendation of Wendell, a Yale Law student, and his proposal of teaching creation science with evolution. Seizing Bird's strategy, Arkansas and Louisiana both quickly adopted balanced treatment acts requiring that if evolution were taught creations science would also be taught as well [59]. As expected these laws were both promptly challenged in federal court.

The first of these cases decided was *McLean v. Arkansas* which concerned Arkansas's balanced treatment act. The balanced treatment policy was a response to the *Epperson* and *Daniel* decisions which, respectively held, that evolution could not be banned from public schools and that creationism was religious and could not be taught with evolution, cases. In response to these two decisions policies in Arkansas and Louisiana were adopted that required creation science to be taught along with evolution. Lawmakers used the previous framing of the creationist movement to frame their new policy; in this case it was the framed as the right of the state to set the curriculum. When it was time to head into court and defend these policies the movement, represented by Bird and state attorneys, actively utilized this new frame.

While the policy was crafted relying on a failed legal frame, the institutional norms and requirements of the judicial arena dictated that a new frame be adopted to defend the policy in court. The Supreme Court in the *Epperson* case had flatly rejected the frame that states could dictate their

curriculum in any way they saw fit even if it violated the constitution. Because the curriculum frame had failed and given the deference and importance that past precedent has in the courts trying to win in court with a failed frame was not the best strategy for the defenders of the Arkansas law. Instead, they constructed a new legal frame around the notion of "academic freedom." This frame was the very one that the evolutionist had used in the prior *Epperson* case to argue for the rights of teachers to be able to teach all credible scientific theories.

The notion of academic freedom was so important to their case that they brought in Dr. Larry Parker, a professor of Curriculum and Instruction at Georgia State University, to testify about it. Parker's testimony argued for the importance of academic freedom for both the teacher and the student. For the teacher, he spoke about the need to be able to present things outside of the normal curriculum, especially when their was student interest, but there was a fear that it was not safe to do so because of the climate created by the scientific community. This legal framing is the same one that was used by the evolutionists in the *Epperson* case. They evolutionists argued that teachers need to be able to present all valid scientific theories but they were scared to because of the policy requirements. In that case they just wanted the freedom to teach what they thought was appropriate and in the current case the teachers and experts argued that the identical freedom was necessary.

As for the issue of students' academic freedom, Parker argued that it was just as import as their teacher's freedom and tied the issue of academic freedom to the quality of education that a student receives. Parker advanced this point in his testimony by arguing:

Parker said that an especially important element in the quality of a learning experience [or learning process] is the "extent of inquiry" that is involved. "if the learner can be an active part of the learning process ... the learning is greatly strengthened," he said. The extent of inquiry and the activeness of the student are greatly increased if the educational process asks the student divergent questions, questions which demand that the student consider alternative possible answers. Education works best, he said, when it challenges the students to "comparative analysis," asking students to "compare and analyze divergent questions leads to a great increase in divergent answers and learning." Asked what he thought would be the impact of Act 590, Parker said, "I believe that implementation of Act 590 would allow the classrooms to be stimulating, thought-provoking" places where "students can be involved in analyzing." Schools should be places where students are taught how to think, not told what to think," Parker said [60].

He explains that for students to get the most out of learning they need to be exposed to all theories and then critically analyze them, it is not appropriate to teach one theory and expect them to blindly accept it. By not respecting the notions of academic freedom and the students right to learn all available theories the schools would be doing a disservice to the students and actually harming their ability to learn.

The federal court did not buy the framing that the creationist were using and overturned the Arkansas law on the grounds that creation science was not scientific and was, in fact, a religious theory and therefore violated the constitutional prohibition against the establishment of religion [61]. The state of Arkansas and creationist supporters did not appeal the ruling because they thought that the Louisiana case, *Edwards v. Aguillard*, which was also heading to trial at the same time was a better case to take to the Supreme Court because the statute in Louisiana was more vaguely worded and depended less on defending the scientific merits of the creation science [62]. Instead, of trying to tackle the scientific merits of creationism or creation science, which the courts had shown hostility towards, the Louisiana bill was shorter and its expressed purpose was the "protecting of academic freedom" [63].

The movement focused on the academic freedom frame in their briefs filed with the Supreme Court. They attempt to shift the focus away from a battle over science and make it about academic freedom, a frame that had previously been successful for the evolutionists when the issue was before the Supreme Court. Several individual SMOs attempted to focus the lens on the issue of academic freedom while not focusing too much attention on the question of what is scientific or not. A brief filed jointly by the Christian Legal Society and the National Association of Evangelicals tried to focus the attention of the justices on the academic freedom academic frame:

The Balanced Treatment Act states that its purpose is to protect academic freedom. Note that the statute does not prescribe any time be spent on presentation of origins. Most importantly, it leaves the determination of whether to discuss the topic of origins as well as the determination of what constitutes balanced treatment to the judgment of the classroom teacher, who determines the information and instruction "necessary and appropriate to provide insight into both theories". The legislative record supports the fact that academic freedom, the concern that students in the public schools in Louisiana be receiving a balanced view of an important topic of education, was certainly a secular purpose motivating the statute. [64].

They reassert that the underlying purpose of the policy is to protect academic freedom of the students in an attempt to sway the court into accepting that there was no religious motivation for the policy.

Other movement briefs reinforce this focus on the secular purpose of the bill in promoting academic freedom. This is important because a law can led to religious consequences or entanglements but if that law has a secular purpose then the court can uphold the law despite these religious consequences. The Catholic League for Religious and Civil Rights attempts to frame the issue of academic freedom as a secular purpose, even as the outcome of introducing a biblically based version of creation that it endorses, as the outcome:

Louisiana's Balanced Treatment Act does not violate the

Establishment Clause. An examination of the Act's language clearly reveals that the Act has a secular purpose of promoting academic freedom through increasing public school students' exposure to varied theories of origins. The Act requires discussion of only scientific evidence and is not a veiled attempt to introduce religious matters into a classroom. Although the secular purpose of promoting academic freedom by increasing student exposure to varied theories of origins is apparent from the face of the Act, the court of appeals failed to find this purpose. The court of appeals' impermissible failure to find this purpose stems from the fact that the court of appeals focused upon showing that the Act failed to conform to the court of appeals' conception of what academic freedom should be. Because the court of appeals never considered the validity of the Balanced Treatment Act's true secular purpose of promoting academic freedom through increasing student exposure to various theories of origins, its conclusion that the Act's language revealed an absence of secular purpose was erroneous [65].

The briefs by the supporters of the law repeatedly used the academic freedom frame and identified its secular purpose to justify its constitutionality. This framing was right out of the evolutionist playbook in the *Epperson* case, which was the prior case that set the precedent the court was evaluating. This framing was relatively easy for the movement to adopt because while the policy was framed in terms of the state setting the curriculum the state legislature accomplished this through setting the a "balanced treatment" of the different perspectives. This made it straightforward for constituents of the movement to accept this framing, or at the very least, to not be put-off by it.

The Supreme Court did not accept this new framing and decided that the purpose of the Louisiana balanced treatment act was religious and that creation science was not scientific. This meant that creation science, which the creationist had hoped would gain them access to the science classroom following the rejection of creationism as an appropriate alternative in the 1970s, was no longer a viable option and the movement would need to find another alternative.

They found that alternative in the theory of intelligent design. This theory, created and advocated by Berkeley law professor Phillip Johnson, attempts to explain how life came to be. It looks at humans and other living creatures as complex organisms and posits that complexity is proof of a creator, even if we do not know who or what did the creating [66]. This theory tried to do two things; first, it tried to avoid acknowledging any sort of religious bias or association by never naming who the creator is under this theory. In fact, intelligent design advocates often refuse to even speculate on this for fear of having the theory labeled as religious. The second thing that the theory tried to do through its vagueness on who was the designer was to allow for Christians and firm creationists to support the theory because they could simply attribute the designer role to their god. This policy would have to withstand certain legal challenges and the intelligent design supporters had hoped that they had constructed a theory that could do that while being palatable to religious constituents.

The intelligent design proponents attempted to adopt the science frame that had served the evolutionist well and was clearly salient with the court [67]. They had previously tried to incorporate a science frame, a frame they presented along with the academic freedom frame, in the *McLean* creation science case but the court rejected it for still being religious. This newly adopted frame had to achieve two purposes. The first being that it had to adopt the strict standards of the science frame used by their opponents. This was important because their previous framing had failed because the court saw through the rhetoric and could easily tell that the underlying motivation for the creation science frame was religion. The struggle here was that of trying to fit a square peg in a round hole, intelligent design and science were two different things entirely but the proponents were going to try and push it through. The number one concern was that they keep religion out of the picture. They sought to do this by being very careful to never mention god or identify a creator. Instead, they argued that evolution was one possible theory but contained gaps and intelligent design was a different theory that explained what evolution could not. In instances where a school board member would mention America being a Christian nation or trying to get creationism back in school the movement would react quickly to distance itself from those statements [68]. They did not want the taint of religion anywhere near their carefully constructed frame. In fact, the Thomas Moore Law Center representing the Dover, Pennsylvania, petitioned the court to throw-out statements made by individual school board members [69].

They also appealed to the standards and processes of science to try and adopt the science frame in court. Knowing they would be expected to meet the science standard, intelligent design proponents worked to get published in peer-reviewed journals in an attempt to claim credibility. In court briefs they invoked the method of science:

Courts are ill-suited to resolve debates over the validity of controversial scientific theories. In particular, the scientific theory of intelligent design should not be stigmatized by the courts as less scientific than competing theories. The advance of scientific knowledge depends on uninhibited, robust investigation seeking the best explanation. Over time, new evidence and new perspectives on existing evidence may require the modification of existing theories or even the abandonment of previously accepted theories that have lost their explanatory power. The method of identifying intelligent causes is well established in many scientific fields. As a result, Amici assert that the hypothesis of intelligent design can be an appropriate topic for discussion in a curriculum that addresses biological origins as well as for investigation in the laboratory. Efforts to ban the scientific theory of intelligent design from the classroom, whether by a narrow definition of science or by a discriminatory attack on the personal motives of the scientists conducting scientific

research into intelligent design, should be rejected by the Court [70].

The appeal to the science frame was seen in this and other briefs through the repeated refrain that intelligent design is scientific and based on natural evidence. These were the same scientific claims that the evolutionists made in the previous court cases and now the opposition has adopted them. They attempted to bolster their claims by pointing to peer reviewed work and other attempts to be part of the scientific community. In section 4 of the Discovery Institute's brief they made this explicit:

In spite of efforts by critics of intelligent design to exclude them, scientists and philosophers advocating the theory of intelligent design have developed their theory and the empirical case for it in peer-reviewed publications; many of these publications are reviewed in Exhibit A (pp. 51-56), and include:

- articles in mainstream peer-reviewed scientific journals;
- articles in peer-reviewed philosophical journals;
- books published by prestigious university presses and trade presses; and
- articles in peer-edited or peer-reviewed scientific books and in scientific conference proceedings [71].

In addition to presenting their publishing track-record the brief also includes sections entitled "Both The Theory Of Intelligent Design And Neo-Darwinism Address A Scientific Question - How Did The 'Appearance Of Design In Living Systems' Arise - That Has Long Been Part Of Evolutionary And Historical Biology," "The Theory of Intelligent Design Employs Established Scientific Methods," "Empirical Evidence Supports the Theory of Intelligent Design," "Attempts to Define Intelligent Design As Inherently Unscientific Depend Upon Discredited, Arbitrary, Or Contentious Definitions Of Science," and "The Theory of Intelligent Design Does Not Postulate a Supernatural Creator and Is Distinct from Creationism" [72]. The science frame was prominently displayed in this and other briefs as well as the depositions and testimony given by supporters of the law.

The science frame had been extremely effective for the evolutionist and the intelligent design supporters sought to adopt this framing strategy for their own. They were almost singularly focused on the scientific nature of intelligent design. The only time religion was mentioned was when they were denying any religious affiliation or motivation and rejecting accusations to the contrary. Given the historic record where alternatives to evolution could easily be dismissed by claiming they were religious this aversion to religion makes sense given that it is a game ender for any alternative theory that cannot standup against this accusation in court.

3.1. Issues with Frame Adoption

The creation science movement had a relatively easy time adopting the academic frame used by their opponents. This frame was grafted onto the existing legal position in an attempt to capitalize on the salience that the frame had provided the evolutionists in the previous round. While the evolutionists argued against the extension of academic freedom to include the protection of teachers to teach a religious theory or the rights of students to learn a religious theory the constituents of creation science were happy to go along with this type of framing. And even though this frame transformation was ultimately unsuccessful it was still easily accomplished for the movement through the frame extension process articulate by Snow and his colleagues [73]. The movement did not have to change the nature of who they were or what they professed, all that was required for this alternative frame to be adopted was the leaders, in this case the movement's legal strategists, to say that this is how we are going to present the movement to the courts. There was nothing in the academic freedom frame that challenged the beliefs or identities of members, the only thing this new framing needed was someone to articulate it and draw connections for the members.

Not all frame transformations are as easy. In the case of the intelligent design movement, they needed a much more extensive and radical process to be able to adopt the science frame. While adopting a science frame made for good strategy in the courtroom the intelligent design movement needed to take care to not alienate their constituency. This is the second part of frame adaptation, utilizing an opponent's frame in a way that it will not violate your core beliefs. In the case of intelligent design the movement had to let creationists know that the still believed in god and that their claims to science and natural evidence did not change the underlying assumptions. After thirty years of legal defeats most opponents of evolution seemed willing to take the tradeoff of not mentioning god in order to support a theory that could conceivably challenge evolutions perceived monopoly in science classes. In making the point of the strategic necessity of staying out of biblical debates while making the case against Darwin, Phillip Johnson makes it clear to his audience where he stands on the biblical core of his beliefs:

So the question is: "How to win?" That's when I began to develop what you now see full-fledged in the "wedge" strategy: "Stick with the most important thing" — the mechanism and the building up of information. Get the Bible and the Book of Genesis out of the debate because you do not want to raise the so-called Bible-science dichotomy. Phrase the argument in such a way that you can get it heard in the secular academy and in a way that tends to unify the religious dissenters. That means concentrating on, "Do you need a Creator to do the creating, or can nature do it on its own?" and refusing to get sidetracked onto other issues, which people are always trying to do. They'll ask, "What do you think of Noah's flood?" or something like that. Never bite on such questions because they'll lead you into a trackless wasteland and you'll never get out of it [74].

As the push by the Discovery Institute to have school districts introduce intelligent design increased interviews like this one became increasingly rare. By then most people seemed to know that despite its claims to being science and non-religious it was in fact the next in the long line of

progeny from creation. Bill Buckingham, a member of the Dover school board, while professing to support a Christian nation and standing up for Jesus, actively lobbied the school district to include the teaching of intelligent design in the curriculum [75]. The Buckingham incident shows how adopting an opponents framing, especially one that could challenge a movement's core belief structure, opens itself up to supporters not always accepting or projecting the "right" frame. They provided fodder to the evolutionists when he and others talked about getting a biblically based alternative to evolution in the classroom because it allowed the evolutionists to undercut the scientific framing and claims made by the intelligent design proponents. They made it easy to see the religious nature of intelligent design, something that the movement had worked hard to hide.

The other difficulty is that there are people that will refuse to go along with a movements reframing. In the case of intelligent design, there are still creationists out there that refuse to disavow their god for the sake of legal pragmatism. To them, any theory that does not stand up and declares their beliefs in a higher power is suspect. Despite the fact that intelligent design and the creationists are working towards the same goal, a removal of evolution from science classrooms, they are not able to play along with the new framing and actively speak out against it [76]. In fact, Ken Ham and other young earth creationists, those that believe in biblical literalism and the notion that the earth is only about 6,000 years old, view intelligent design as just as dangerous as evolution because it removes God from the process. For them, compromise on evolution is unimaginable no matter the pragmatic arguments that could be made on its behalf. There is an ideological purity that exists for this movement there is tension that arises when a movement frame is perceived to run counter to the movement identity.

4. Conclusions

When movements go to court there is a high likelihood that they will have more than one interaction in that setting. As this case shows, along with examples of the African American and LGBT movements, once an issue is adjudicated in the legal system future cases are destined to be settled by the courts. In each successive round movements must refine their framing strategies. Given the institutional constraints of the legal system this often means that movements are left adopting the framing strategy of their opponents. This act alone serves as an important consequence of a movement's legal activities, although an intended consequence for the prevailing movement. Stobaugh and Snow [77] have shown that to understand frame diffusion movements must be considered across time instead of at a single point. This paper has built on that call by furthering our understanding of the process of oppositional frame adoption by elucidating the considerations and constraints that movements face when adopting their opponent's legal frames, specifically, what are the constituent concerns of adopting the most viable legal framing. Having reviewed how the creationist and intelligent design movements, that have headed into court across most of the twentieth century and have made these opposition frames their own, I present a model of the considerations that movements must consider when adopting a legal frame from a hostile opposition.

There are three issues that must be accounted for, they are the salience of the frame in the legal setting (usefulness), will adopting it actually counteract one's opponent (defensiveness), and can the frame be adopted without violating the core beliefs and identity of the SMO or broader movement (legitimacy). Each movement must answer these questions for themselves but it is unlikely that all organizations will reach the same conclusions leaving some orgs within the same movement utilizing different frames that can be diametrically opposed to one another. When taken together these three factors explain when and why frames are adopted by from the opposition.

The first issue is the relative salience of the legal frame for the court. All frames are constructed to sway the court in identifying the problem from a specific perceptive (diagnostic framing) and to proscribe desired solutions (prognostic framing). If a frame was not successful in doing this then it is unlikely that a movement would expend resources adopting that frame for their own. In none of these cases did I find the court basing their decision on another frame that was not presented but it is possible. If the courts were to make a decision that sided with one side but did not use that framing then the opposition would have to consider if adopting the frame from the winning side would be worthwhile. This could conceivable happen in a case were the courts wanted to expand their ruling or did not like the questions brought before it. A recent example of this might be the *Citizens United* case which dealt with one group trying to air a documentary in the run-up to the election. Instead of ruling on the narrow issue presented the court issued a decision that turned campaign finance on its head. While this might have been a desirable outcome for Citizens United this was not the frame that they presented to the court.

Beyond considering the relative salience of the framing the movement must also decide if adopting the opposition's frames is the best way to counter their framing. Given the credibility that the courts had place in the frames of evolutionists, it made sense for the creationist supporters to adopt this sort of framing strategy. Of course, there might be a better framing strategy given different policies but in each round, much like a chess game, the movement must look at all possible strategies and assume what their opponents will do and select the best option to counter those actions in the next round. These constant interactions force movements to consider their best play.

Finally, when considering whether to utilize an opponent's framing their needs to be a consideration of just how will these frames align with the movement's beliefs and ideology. I have shown how the intelligent design movement

has tried to coopt the science frame, distancing themselves from the religious nature of their beliefs. When adopting these frames that were originally constructed to undercut the movement's claims it must be done carefully. A movement cannot adopt an enemy's frame without altering it. I find that the language of the frame is often left in tact, the science frame still talks about science but there are logical and semantic contortions that the movements must make in using a frame that was created by their opponent. For the intelligent design science framing this meant that they professed to be scientific and claimed to have believe in and use the scientific method but at the end of the day they would be unwilling to reject the notion of a god. Instead, they left the notion of designer or god undefined.

Across time frames will shift and evolve between movements in response to policies being adjudicated and the previous frames used. When considering the consequences of movements in court, the diffusion of successful framing to the challenger should be conceptualized as an outcome of movement framing. While these consequences are unintended and undesirable for the winning movement they do help drive and further the framing dynamic between oppositional movements.

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