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CHURCH & STATE IN AMERICAN HISTORY (ADVANCED GRADUATE SEMINAR)

The objectives of this course are: to study the historical context of America's contemporary debate over the proper relation of church and state; to analyze the seminal theories that have characterized historically the interpretation of the religion clauses of the constitution; and to become familiar with the uses of legal documents for historical research and theological reflection.

REQUIRED TEXTS

1. Alley, Robert S., *School Prayer: The Court, the Congress, and the First Amendment*. (Reserve Books, 1994) #0879758430 \$28.
 2. Beckwith, Francis, *Law, Darwinism, & Public Education: the Establishment Clause & the Challenge of Intelligent Design*. (Rowman & Littlefield, 2003) #0742514315 \$25.
 3. Dreisbach, Daniel L., ed., *Religion and Politics in the Early Republic: Jasper Adams and the Church-State Debate* (Univ. of Kentucky Press, 1996) #0813108802 \$17
 4. Kramnick, Isaac, and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (Norton & Co. 1997) #039331524X \$13
 5. Levi, Edward, *Introduction to Legal Reasoning* (Univ. of Chicago Press, 1962). #0226474089 \$9
 6. Long, Carolyn N., *Religious Freedom and Indian Rights: The Case of Oregon v. Smith* (Chapel Hill: UNC Press, 2000) ISBN 0 7006 1064 2, \$14.95
 7. Weitz, Mark A., *Clergy Malpractice in America: Nally v. Grace Community Church of the Valley* (UNC Press, 2001) ISBN 0 7006 1126 6, \$12.95
 8. Wuthnow, Robert, *The Restructuring of American Religion* (Princeton, 1990) #0691020574 \$20
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COURSE REQUIREMENTS

A. Class Discussion (33% of grade)

This course emphasizes reading, textual analysis, and discussion. Therefore, 33% of your grade will be based on a close and critical reading of the course materials as demonstrated during active participation in class. This part of your grade has three components:

1. Participation in weekly class discussion (13% of grade)

Your grade and will be assessed on the following criteria:

- Verbally demonstrates understanding of the point of the reading (close reading)
- Builds upon comments of others or guides discussion in a productive direction (constructive engagement)
- Makes and articulates the connections between one week's readings and previous assignments or other relevant source (critical reading)

During the first few weeks of the semester, as indicated in the syllabus, you will be asked to write single-page responses to your reading of assigned texts. These short essays are designed to assist you in participating in the class discussion. They will not be given a letter grade, but will contribute to your participation grade for the course and are to be turned in to me at the end of the relevant class period. You may be asked to share your short essay with the class.

2. Discussion Leadership (10% of grade)

During the second half of the semester, you will be asked to help frame the class discussion. This will entail taking five to ten minutes to identify issues for discussion and to remind us how these issues relate to our on-going conversation on church and state. The attached reference sheet -- *A Way of Analyzing Texts* -- may be of use to you in this regard. In addition, I recommend the University of Toronto's *Critical Reading Towards Critical Writing* at <http://www.utoronto.ca/writing/critrdg.html>.

3. Paper Presentation (10% of grade)

You will be asked to make a 10-minute presentation of your paper project (see Section B below) and be a lead respondent on another's paper during class between Oct. 14 and 23. This requirement will be assessed on the following criteria:

- Presents thesis and conclusion without repeating the entire paper and with an invitation for assistance on a specific aspect of the paper project.
- Comments constructively on another's paper, demonstrating both an understanding of the presentation made and offering helpful comments on the specific question raised by the presenter.

Both of these criteria will be discussed in detail at a later date.

B. Paper (33% of grade) -- Due: Oct. 27

M.Div., M.A., and M.T.S. students are to write an eight-page analytic paper which references at least two extracurricular sources. Ph.D. students are to write a twelve-page analytic paper which references at least four extracurricular sources. The object of the paper is to prepare you for later course work regarding the role of history in legal interpretations of church state relations in the U.S. You may write on a subject of your choice related to this topic or on one of the following:

- Take a position on whether Jefferson (or in the alternative, Madison) was for separation, accommodation, or some third relationship between church and state. Be sure to define your terms and base your analysis on your reading of historical texts.
- Consider the influence of the founders' experience of religion on their definition of the proper relation between church and state.

For paper grading criteria, see the last sheet of this syllabus. Please note that papers are due on the date indicated. Late papers will be penalized one-third of a grade per day.

C. Take Home Final (33% of grade)

The final third of your grade will be based on your completion of a "take home" test. A study guide will be made available as the course progresses. Grading criteria are as follows:

- Follows exam instructions, including proper length
- With generous accounting for the limited time period allowed for completing the test, a modified version of paper criteria will be applied, including especially:
 - Clarity of thesis
 - Proper use of course materials as evidence of the thesis; and
 - Coherent argument which considers contrary evidence and positions.

** Please note that Ph.D. students with a specific research interest in the subject of this course may write a 25-page research paper instead of writing a short paper and a take home exam. You must still discuss your paper topic in class between Oct. 14 and 23, as described above. The paper will constitute 66 percent of your grade. If you choose this option, you must discuss your paper topic with me no later than September 30.

Finally, persons with diagnosed disabilities or handicapping conditions which inhibit the full performance of any course assignment should notify me immediately and accommodations will be made gladly. Delaying such notification until immediately prior to or after the due date of an assignment will result in no accommodation until subsequent assignments. Please note also that the Vanderbilt honor code applies to all work done in this course. See Vanderbilt University Student Handbook: Policies and Regulations in Co-Curricular Matters, pp. 7-9.

READING AND ASSIGNMENT SCHEDULE

UNIT 1 HISTORICAL BACKGROUND (17TH-20TH C)

Aug. 28 Course Introduction

- * "The Statute of Virginia for Religious Freedom," in Peterson & Vaughn, *Virginia Statute for Religious Freedom*., xvii-xviii (Reserve)
- * "The Bill of Rights" (Web)
- * Recommended: Alley, *School Prayer*, 1-89

Sept. 2 First Amendment

Peterson & Vaughan, *Virginia Statute for Religious Freedom* (Reserve):

- * Ch. 2, Gaustad, "Colonial Religion and Liberty of Conscience" 23-42
- * Ch. 3, Pocock, "Religious Freedom & the Desacralization of Politics" 43-74
- * Ch. 4, Buckley, "The Political Theology of Thomas Jefferson" 75-108
- * Ch. 6, Isaac, "'The Rage of Malice of the Old Serpent Devil'" 139-170

Assignment: The variety of opinions in collections of essays makes for thought-provoking reading but a diffuse focus for class discussion. Let's try to get the benefit of the reading and minimize the risk to discussion by using this set of essays not only for their substantive content, but for what they tell us about the historical reasoning process. Please write a one-page answer to one of the following questions:

- * " What are the characteristics of the religious world being investigated by these historical essays?
- * " What kind of government defines this period? What are its assumptions about God, humans, and civil society?
- * " What questions matter to these writers? This may require you to identify their "conversation partners" or the arguments that serve as the catalyst for the essayists own opinions. While both sides of the scholarly debate are sometimes restated, often you will have to find the opposing position by identifying the writers' assumptions.

While you read, please pay attention to which events and sources matter to these essayists.

Sept 4: New Republic

- * Dreisbach, ed., *Religion and Politics in the Early Republic*, pp. 39-122

Assignment: Write a one page response to your reading that includes a description of Jasper Adams' concerns or, in other words, why he wrote this essay. Add another paragraph describing which of his arguments you find most persuasive and which the least. Be prepared to say why in class.

Sept 9 Christian State: Blasphemy

- * Ch. 7, Noonan, "Quota of Imps," in Peterson & Vaughn, *Virginia Statute*, 139-170. (Reserve or Prometheus)
- * Gordon, "Blasphemy and the Law of Religious Liberty in Nineteenth-Century America," *American Quarterly* 52, no. 4 (December 2000): 682-720.
- * *People v. Ruggles*, 8 Johns, 290 (1811)
- * *Updegraph v Commonwealth*, 11 Serg. & R. (Pa) 394 (1824)

Sept 11 Christian Nation: Polygamy

- * Ch. 5, Banning, "James Madison . . . and the Crisis of Republican Convictions," in Peterson & Vaughn, *Virginia Statute*, 109-138 (Reserve)
- * Wilson, John F., "Some Comparative Perspectives on the Early Mormon Movement and the Church-State Question, 1830-1845," *Journal of Mormon History* 8(1981): 63-77 (Reserve)

- * Firmage, Edwin B., "The Judicial Campaign against Polygamy and the Enduring Legal Questions," *BYU Studies* 27 (Summer 1987); 97-117 (Reserve)
- * Excerpt from *Reynolds v. U.S.* 98 U.S. 145 (1878)
- * Excerpt from *Davis v. Beason* 133 U.S. 333 (1890)

Assignment: Write a paragraph summarizing the basis for the Supreme Court's decision in *Reynolds*. Include a sentence or two on whether you agree with the Court's distinction between action and belief. Be prepared to explain in class s the basis for your conclusion.

Sept 16 Second Disestablishment

- * Wuthnow, *Restructuring of American Religion*, 1-131

Sept 18 No Class

Sept. 23 Liberal State

- * Wuthnow, *Restructuring of American Religion*, 132- 240, 297-322

Questions to guide your reading (Not an assignment, but merely a reading aid):

- How did government change in the 20th century and what was the affect of this change on religion, according to Wuthnow?
- What besides the changing role of government, for Wuthnow, affected the evolution of religion in the post-World War II era?
- What are some of the characteristics of post-60's religion that for Wuthnow result from these influences?
- Who are the late twentieth-century antagonists in Wuthnow's drama of shaping and re-shaping of American Religion? Why?
- In tracking change in religion since the 1940s, Wuthnow raises questions regarding parachurch organizations. Are there any ways in which 20th century parachurch organizations differ from 19th century ones? How does this relate to the bigger picture of what's happening to religion or what religion wants in the 20th century?

UNIT II *INTRODUCTION TO CASE LAW*

Sept. 25 Managing Pluralism

- * Ch. 8, Strout, "Jeffersonian Religious Liberty and American Pluralism," in Peterson & Vaughn, *Virginia Statute*, 201-229 (Reserve or Prometheus)
- * *Everson v. Board of Education* (1947)

Assignment: Using the Everson decision, answer briefly (no more than one page) one of the following questions:

- * Summarize the basis for the majority's opinion by making a list of ideas that Justice Black said persuaded him to decide the way he did.

- * Make a list of the reasons why another judge disagreed with Justice Black. You will want to make a note of why Justice Jackson and Justice Rutledge disagreed with each other enough to write separate dissents.

Whichever question you choose, be sure to note the role of history in the justices' reasoning.

Sept. 30 Legal Reasoning (Part A - the art of comparison)

- * Levi, *Introduction to Legal Reasoning*, 1-9, 57-67
- * Web Browse Federal Courts an Overview
- * Web Browse The U.S. Legal System
- * Recommended: Findlaw case summary -- "Financial Assistance to Church-Related Institutions"

N.B. Levi uses the Commerce Clause of the U.S. Constitution to explain how judges apply the same law to different factual circumstances. Please remember as you read Levi's analysis that, for the purposes of this class, you do not need to understand the Commerce Clause or the substance of the Court's interpretation of it. Rather, you are reading Levi to understand the process of judicial interpretation. So, please pay more attention to the way the Court works with the law and the facts, than to the specific law and facts themselves. For example, Levi identifies several questions that guide the Supreme Court's reasoning in a given case under the Commerce Clause. These include: what kind of item can be defined as commercial; what activities are solely within the states' jurisdiction as opposed to those that cross over into the realm of federal domain as "commerce"; and to what extent does the federal government's power to regulate include the power to prohibit? Do not try to learn the answers to these questions; just note the origin and changing application of the questions themselves. Note especially the social influences on the Court's answers to these questions, such as, the Depression and Roosevelt's New Deal. Just as importantly, note that Levi identifies several factors in any given case that bear the interpretive burden of the Supreme Court's analysis. These are defined by "common words" that become uncommonly important for the Court. Some of these words are "moral pestilence;" "direct" as opposed to "indirect"; and "manufacture" or items "of domestic concern."

Oct. 2 Legal Reasoning (Part B -- the results over time)

- * Levi, *Introduction to Legal Reasoning*, 67 -104.
- * Long, *Religious Freedom and Indian Rights*, 45-67.

Assignment: Based on Levi's description of the evolution of Commerce Clause law, consider what might be the questions and the words that seem to preoccupy the Supreme Court in First Amendment cases. Using Long's summary in Religious Freedom (at pages 45-67) and Reynolds, write one paragraph about the questions and make a list of at least three words that seem to bear the greatest burden in the Court's analysis. You might also want to look at Reynolds again.

UNIT III "LEGAL" USES OF HISTORY

Oct. 7 Historical Arguments for Separation

- * Kramnick & Moore. *The Godless Constitution*, 11-130

Oct. 9 Historical Arguments for Accommodation

- * Hamburger, Philip. *Separation of Church and State*, 1-17 & 391-492. (Reserve)

**October 13, no later than 10 a.m. email the first three paragraphs of your paper and a statement of your thesis to course list serve.

Oct. 14 3:00-5:00 Discussion of Papers - Thesis and opening 2 paragraphs

Oct. 20-21 Fall Break

** October 22 (Wednesday), no later than 10 a.m. email papers to course list serve

Oct 23 Discussion of completed papers

Assignment: Be prepared to situate your paper in the context of the broader question "what is the role of history in determining the relation of church and state in America?" [Note that your paper is not due until Oct. 27 at 5p.m. This gives you the option of editing it based on class comments.]

UNIT IV *MAPPING DEGREES OF SEPARATION . . . AND ACCOMMODATION.*

Oct 28 & 30 Prayer

- * Alley, *School Prayer*, pp. 91-234
- * Browse *Engel v. Vitale*, 370 U.S. 421 (1962) and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000)

Nov. 4 Creationism I

- * Beckwith, Law, *Darwinism, and Public Education*, pp. 1-90

Nov. 6 Creationism II

- * Beckwith, Law, *Darwinism, and Public Education*, pp. 90-177
- * Read *Edwards v. Aguillard* 482 U.S. 578 (1987)

Nov. 11 Religious Exemption I

- * Weitz, *Clergy Malpractice in America*, pp. 1-135
- * Recommended; *Nally v. Grace Community Church*, 47 Cal.3d 278, 763 P.2d 948, 253 Cal.Rptr. 97

Nov. 13 Religious Exemption II

- * Weitz, *Clergy Malpractice in America*, pp. 136-211
- * Marci Hamilton, "The Boston Grand Jury Report on Catholic Clergy Sexual Abuse" (Web)

Nov. 18 & 20 Burdens on Religious Exercise (Scott)

- * Long, *Religious Freedom and Indian Rights*, 1-44, 68-147

Nov. 25 & 27 Thanksgiving Break

Dec 2 Neutrality

- * Long, *Religious Freedom and Indian Rights*, 148-202
- * *Oregon v. Smith*, 494 U.S. 872 (1990)

Dec 4 Neutrality

- * Long, *Religious Freedom & Indian Rights*, 203-279
- * *Religious Freedom Restoration Act: Federal & State* (Web)

Dec. 9 Multiple Allegiances

- * Charles Lane, "High Court To Consider Pledge in Schools; Scalia Recuses Himself From California Case," *The Washington Post* (October 15, 2003, A01) (Web)
- * *Newdow v. U.S. Congress* 292 F.3d 597 (9th Circuit, 2002)
- * Excerpts from Justice Antonin Scalia's remarks on Jan. 12, 2003, at a Knights of Columbus event in Fredericksburg, Va. (Web)
- * Recommended: Vikram David Amar, "Why Did Justice Scalia Decline to Participate in the 'One Nation Under God' Case? Recusal Decisions and When they Should, and Should Not, Be Required" (Web)

Dec 12 Exam Review

- * Pat Boone, "Losing Liberty" from *Christianity Today* (September 27, 2003)