

REPORT FROM THE Center

Fall Symposium to Explore Church and State in Colonial Virginia

The Center's Fall 2007 Symposium will address **"From Jamestown to Jefferson: The Evolution of Religious Authority in Colonial Virginia."**

Virginia was the first American colony to have an established church, and became the first state to adopt a statute on religious freedom. This Symposium will explore a range of themes related to Virginia's historic journey, including such questions as: How did this journey transform the relationship between church and state? What was the Church's social and moral influence during this period? How were "heretics" and dissenting religious groups treated? What role did religion play in the daily lives of the colonists? What lessons from Virginia's experience are relevant today?

This Symposium is intended to make a contribution to the 400th anniversary celebrations of the Jamestown landing

and the founding of the Virginia Colony. Rather than focus on Jamestown itself, however, it addresses more broadly the role of religion in the life of the people during the colonial period. The speakers for this Symposium are nationally known scholars who will explore this theme from a range of perspectives. In order to better coordinate with the Jamestown celebrations, the Symposium is being held during the fall semester, an exception to the Center's normal pattern of offering Spring Symposia.

The Symposium begins on Thursday, Sept. 6, and continues through Thursday, Nov. 8. Following the Center's normal format, each program will consist of a public lecture followed by audience



discussion, and each will be offered twice: once at 11 a.m. and again at 7:30 p.m. in the Boyd Dining Center at Virginia Wesleyan College. All are free and open to the public; no reservations are required. The schedule of specific speakers and topics can be found in the Calendar of Events on page 8 and on the Center's Web site.

This Symposium is supported in part by a grant from the Virginia Foundation for the Humanities.

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REFLECTIONS FROM THE DIRECTOR



Virginia's New Religious Freedom Law

In 2007, the Virginia General Assembly enacted a law intended to strengthen religious freedom in Virginia. The law, H 3082, provides (with some exceptions) that no branch of state or local government may "substantially burden a person's free exercise of religion" unless the burden is "essential to further a compelling governmental interest" and is "the least restrictive means" of furthering that interest. This means that the government must have a very strong reason for adopting a law or policy that interferes with religious free exercise.

But why is this law needed at all? Isn't free exercise of religion adequately protected by the First Amendment to the U.S. Constitution? The short answer is "No."

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Clarence Darrow

Center Director Paul Rasor performed the one-man play “Clarence Darrow,” by David W. Rintels, at the Hofheimer Theatre in April. In his program notes, Rasor noted that while Darrow (1857-1938) was best known for his roles in highly publicized cases like the Scopes “monkey” trial and the Leopold-Loeb murder case, his deeper contribution to American justice lay in his championing of the rights of working people and the poor, his defense of political dissenters, and his fervent opposition to the death penalty. “He is rightly remembered for his compassion, his eloquence, and—not least—his wit,” Rasor noted.

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Until 1990, when someone claimed that the government – state or federal – improperly interfered with her First Amendment free exercise rights, the U.S. Supreme Court applied the so-called “strict scrutiny” test to evaluate the claim. This is the most demanding of the tests used in litigation involving fundamental constitutional rights, and it is basically the same as the standard adopted in the new Virginia law: the government must show a “compelling interest” and the law must be “narrowly tailored” or be “the least restrictive means” available to achieve that interest.

Despite this rigorous standard, during the last half-century the Supreme Court has upheld religious free exercise claims in

only two instances. In a series of cases going back to 1963, the Court ruled that individuals who left their jobs for religious reasons could not be denied unemployment compensation. And in a 1972 case, the Court ruled that the Amish could claim a free exercise exemption from compulsory school attendance laws for children over age 14. In legal terms, the governmental interest was not compelling enough in these cases to justify the burden placed on religious practice by enforcing the laws.

However, in every other context in which someone sought an exemption from state or federal law on religious grounds – Sunday closing laws, tax laws, labor laws, military dress requirements, prison regulations – the Court refused. Still, the principle is important. The “strict scrutiny”

test forces the government to think about the impact its laws might have on religious practices, and it holds the government to a very high standard when it takes action that interferes with this basic right.

This approach to free exercise law changed dramatically in 1990. In the case of *Employment Division v. Smith*, the Supreme Court abandoned the strict scrutiny test and held that “the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability.” This means that as long as the government does not target a particular religion, a law or policy cannot be challenged on free exercise grounds no matter how big a burden it imposes on one’s religious practices. In other words, the Court rejected the very possibility that the First Amendment

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RELIGIOUS FREEDOM

in the News



Darrow addresses the Scopes jury.

might require a religious exemption in appropriate cases. Free exercise claims must now be framed in terms of some other constitutional right, such as freedom of speech or equal protection of the laws.

In 1993, Congress responded by enacting the Religious Freedom Restoration Act (RFRA). The RFRA revived the strict scrutiny test for free exercise cases, and was clearly intended to overrule the *Smith* decision.

However, in 1997, the Supreme Court ruled that Congress exceeded its authority when it enacted the RFRA, and that the RFRA therefore could not constitutionally be applied to state laws. It did continue to apply to federal laws, however, and in 2006 the Supreme Court applied the RFRA to permit a religious exemption from federal drug laws.

This meant that federal laws and policies that substantially burdened religious practice had to satisfy the strict scrutiny/compelling interest standard, because this was the test required by the RFRA. State laws, however, did not have to satisfy this high standard, because the RFRA did not apply to them. And since most claims alleging an infringement of free exercise rights have involved state law, this left a gaping hole in the protection of religious freedom.

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As a follow-up to the Center's Spring 2007 Symposium on Religion and Science in the Public Schools, these recent stories illustrate the range of religion issues that can arise in the public schools. (All stories are from the Religion Clause Blog.)

Stories involving actions by teachers:

Court Upholds Principal's Removal of Religious Material From Bulletin Board

On May 2, 2007, the U.S. Fourth Circuit Court of Appeals upheld the actions of a York County (VA) principal who removed religious-themed material a Spanish teacher had posted on his classroom bulletin board. The court rejected the teacher's claim that his First Amendment free expression rights were violated by the principal's actions.

Teachers Pray for Students' Success, Create Controversy

After school hours on a Friday night in February 2007, the principal and several staff members decided to pray for the success of Brooksville (FL) Elementary School students on the FCAT—Florida's achievement tests. They offered Christian prayers and anointed the students' desks with prayer oil. Some teachers mistook the episode for vandalism because on Monday morning the desks were still greasy from the oil. After some complaints and a conversation with the superintendent, the principal said that future prayer meetings would be held off campus.

Stories involving school assignments:

Court Rejects Challenge to Teaching Children Respect for Gay Couples

A federal district court has rejected claims by parents opposed to a Lexington (MA) school's use in kindergarten of books that portray homosexual couples in a positive manner. In its Feb. 23, 2007 opinion, the court ruled that parents do not have the right to restrict what a public school may teach and that "teachings which contradict a parent's religious beliefs do not violate their First Amendment right to exercise their religion."

8th Grader's Book Report Creates Church-State Issue

During the spring of 2007, an eighth grade teacher in a Kentucky middle school assigned each student to write a book report on a book of the student's choice. Alex Thomas wrote his report on the Bible's Book of Acts. The teacher videotaped the students reading their reports and began broadcasting them to the school during morning announcements. However, the school principal ended the broadcasts saying that broadcasting young Thomas' report might violate the Establishment Clause. Thomas' mother says that this violates her son's constitutional rights. She said, "I feel that Christian kids should be allowed to speak about their faith and not be ashamed," and that the school should have merely attached a disclaimer to the reports instead of ending the broadcasts.

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Student's Religious Objections End Teacher's Creative Essay Assignments

A Lake Stevens (WA) high school teacher got in trouble this year for assigning creative essays to his students. Gary McDonald asked his students to write an essay comparing "World on the Turtle's Back"—an Iroquois creation myth—with other creation stories and to discuss how that story, and how the creation account in Genesis, reflect the four functions of myth. One student complained that the assignment was offensive to her Christian beliefs. McDonald's principal reprimanded him and told him to eliminate material he had added to standard assignments in the textbook. McDonald says he was trying to prepare students for the study of Arthur Miller's "The Crucible," based on the Salem witch trials.

Stories involving student activities:

Elementary School Violated 4th Grader's Speech Rights in Barring Religious Fliers

A federal district court in New York ruled on March 30, 2007 that a local school district violated a fourth-grader's First Amendment speech rights by refusing to permit her to hand out Christian religious fliers to her classmates during non-instructional times. The court found that the fliers would not cause substantial disruption, and that the school's policy requiring advance approval of student handouts was unconstitutional because it had no objective criteria under which determinations would be made.

High Schoolers Demand to Pray in School Commons Area

In March 2007 a bitter dispute broke out in Vancouver (WA) over high school officials' attempts to accommodate a student prayer group. A group of students who are members of the Church of Truth—a congregation made up largely of Russian-speaking immigrants who came to the U.S. for religious freedom—insisted on praying in the busy school commons area. The school offered them a room where they could meet before classes, but the students refused. Eleven students were suspended. Liberty Counsel, a conservative advocacy organization affiliated with Liberty University, demanded that the suspensions be expunged from the students' records, and threatened to sue if they were not.

Suit Filed Over School's Objection to Jesus Halloween Costume

A federal lawsuit was filed in February 2007 against the Abington Township (PA) School District and a principal of one of its elementary schools over last year's Halloween activities. Students were to wear a costume if they wanted to take part in the school's parade and party. A fourth grader and his mother objected on Christian religious grounds to promoting Halloween and its pagan elements, and proposed that the student come to school dressed as Jesus. The principal said this would violate the school's policy against advocating religion—even though other students would dress as witches and warlocks. When the student appeared in the Jesus costume, the principal told him to remove his "crown of thorns" and not identify himself as Jesus. The lawsuit claims that the principal's action violated the student's free speech, free exercise of religion, due process and equal protection rights.

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How might states fill this gap? There are two possibilities. First, state courts are free to interpret their own state constitutions differently than the Supreme Court interprets the U.S. Constitution. All state constitutions contain clauses protecting religious free exercise, and several state supreme courts have ruled that these clauses require use of the strict scrutiny test. Second, states may enact their own religious freedom protection laws, or mini-RFRAs, as these are known, and impose the higher standard by statute. This is the path Virginia and about a dozen other states have chosen.

Several issues remain unresolved. First, if the Supreme Court of Virginia follows the pre-1990 pattern of the U.S. Supreme Court, religious free exercise claims may rarely be upheld despite the stricter test. Only time will tell. Second, might this law allow employers or landlords, for example, to discriminate against women or minorities on religious grounds? My own answer is no; surely enforcing anti-discrimination and other civil rights laws is a compelling interest sufficient to override any claimed "right" to discriminate in such cases. But the law would have been clearer if this had been stated directly.

Finally, how do those of us concerned with religious freedom respond to the charge that a constitutionally protected religious exemption from the law would create chaos? Should we be allowed, on religious grounds, to ignore laws we don't like? Is this what we mean by religious freedom? These are issues worth thinking about. ■

For more information on these and other stories see the CSRF Web site: www.vwc.edu/csrf.

RRR Rasor's Recommended Reading

Each of the presenters in the Center's Fall 2007 Symposium has written books that will permit deeper exploration of the Symposium's main themes. See story on page 1 and calendar on page 8.

Brent Tarter, *Dictionary of Virginia Biography*

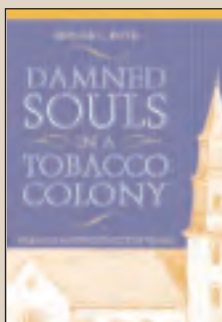
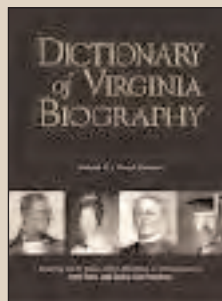
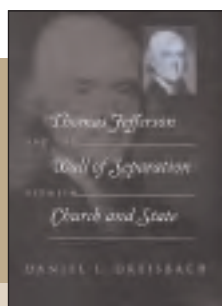
Edward L. Bond, *Damned Souls in a Tobacco Colony: Religion in 17th Century Virginia*

Monica Najar, *Evangelizing the South: A Social History of Church and State in the Upper South, 1765-1815* (available fall 2007)

Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry*

Thomas E. Buckley, *Church and State in Revolutionary Virginia, 1776-1787*

Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State*



BORROWING POLICY

All books in the CSRF collection are included in the College library's online catalog, and most are available to VWC faculty, students and other interested users. If you would like to borrow a book, simply come to the Center office, located on the first floor of Clarke Hall, during normal College business hours. If you are unable to come to the Center during these hours, please call the office at 757.455.3129, and we can make other arrangements. Specific policies can be found on the Center's Web site.

BOOKS RECEIVED

Over the past few months the Center has been able to expand its holdings of classic and older out-of-print volumes, thanks to VWC library book sales, gifts, and other sources. We also continue to add newer titles to our collection.

Selected Older Titles:

- BARTH, KARL, *Protestant Thought in the Nineteenth Century* (1969)
 BRAWLEY, BENJAMIN, *A Social History of the American Negro* (1970)
 DAWSON, CHRISTOPHER, *The Formation of Christendom* (1967)
 FROMM, ERICH, *The Sane Society* (1955)
 HARTSHORNE, CHARLES AND WILLIAM L. REESE, *Philosophers Speak of God* (1953)
 HEILBRONER, ROBERT L., *The Worldly Philosophers: The Lives, Times and Ideas of the Great Economic Thinkers* (1967)
 JAMES, WILLIAM, *The Will to Believe, and Other Essays in Popular Philosophy* (1960)
 KEGLEY, CHARLES W., *The Theology of Paul Tillich* (1952)
 LOCKE, JOHN, *On Politics and Education* (c. 1680; Classics edition, 1947)
 MAY, ROLLO, *Love and Will* (1969)
 MEAD, GEORGE HERBERT, *Mind, Self & Society* (1962)
 REVEL, JEAN-FRANCOIS, *Without Marx or Jesus* (1970)
 SCHLEIERMACHER, FRIEDRICH, *On Religion: Speeches to Its Cultured Despisers* (1799; Harper edition 1958)
 TILlich, PAUL, *Dynamics of Faith* (1956)
 WHITEHEAD, ALFRED NORTH, *Science and the Modern World* (1925)
 WILLS, GARY, *Inventing America: Jefferson's Declaration of Independence* (1978)

Newer titles:

- BELLAH, ROBERT, *The Good Society* (1991)
 HEDGES, CHRIS, *American Fascists: The Christian Right and the War on America* (2006)
 HUNTER, JAMES DAVISON, *Culture Wars: The Struggle to Define America* (1991)
 PUTNAM, ROBERT, *Bowling Alone: The Collapse and Revival of American Community* (2000)

NEXUS

Highlights

Finding Passion in Faith

Religious faith is not simply about belief and doctrine, or even morality and ethics. Beneath these elements lies something deeper, something that can generate passion and commitment. The **2007-2008 Nexus Interfaith Dialogue Series** will explore how this deeper faith element touches and motivates us in the spiritual, emotional, aesthetic, and social dimensions of our shared religious lives. The series of four panel discussions begins on Monday, Sept. 10, 2007 and continues through next March. Fall dates and program times are listed in the calendar on page 8.

The specific program themes are as follows:

Connecting to the Divine (Sept. 10)

What in your faith practice makes you feel most deeply connected to the divine?

How does this connection nurture you in your day-to-day life?

Where do you experience passion in your relationship with the divine?

Faith and Beauty (Oct. 29)

What do you find beautiful in your faith?

How does your faith help you see and create beauty in your life?

What rituals or practices connect you with beauty?

Faith and Justice (Feb. 11)

How does your faith motivate your justice work in the world?

How does your faith inspire your compassion for others?

What does "justice" look like for you?

Faith and Despair (March 31)

How does your faith help you respond to burn-out or despair?

Have there been times when your religious passion has waned?

What rituals or practices help you restore it?

DIRECTOR'S ACTIVITIES

Center Director Paul Rasor had several conferences, speaking engagements and other off-campus activities during the winter, spring and summer months.

HIGHLIGHTS:

January 9, 2007: Spoke to the Virginia Cluster of Unitarian Universalist Ministers, in Richmond, Va., on liberal religious identity.

January 19-20, 2007: Served as a judge for the American Collegiate Moot Court Association's National Competition, held at Regent University.

January 27-29, 2007: Gave a workshop on liberal theology to the Metro New York Unitarian Universalist Ministers Association at Murray Grove Retreat Center, New Jersey.

February 19, 2007: Interviewed on Cox Cable Television by Jim Bergdoll for "Focus on Faith" program.

March 27, 2007: Led a public discussion of the documentary film *Flock of Dodos*, which addresses the controversy over evolution and intelligent design, at the Naro Cinema in Norfolk, Va.

April 12-15, 2007: Performed the one-man play *Clarence Darrow*, by David W. Rintels, at VWC Hofheimer Theatre.

May 20, 2007: Preached at the ordination of Rev. Jennifer Emrich to the Unitarian Universalist ministry, at the Unitarian Universalist Congregation of Castine, Maine.

June 21, 2007: Gave the distinguished Murray Lecture at the Unitarian Universalist Association 2007 General Assembly, entitled "Universalism and the Sectarian Element in Liberal Religion," in Portland, Ore.



Terry Lindvall to Speak on Religious Satire

On Thursday, Feb. 28, 2008, at 11 a.m.
(repeated at 7:30 p.m.),
Dr. Terry Lindvall, C.S. Lewis Chair of
Communication and Christian Thought
at Virginia Wesleyan, will give a talk

entitled "Heaven as Hell: The First Amendment as a Refuge for Religious Scoundrels." Lindvall describes his talk as follows: "From Luther's vulgar attacks on the papacy to Larry Flynt's satire of Jerry Falwell in *Hustler* magazine, religious humor has played a role in defining not only what is free speech, but what is civil behavior. This presentation will look at the history of religious satire and its place in the freedom of religious expression."

*"Passions of Christ" Woodcut
by Lucas Cranach, 1521*



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of Religious
Freedom needs
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Your gifts allow us to improve our programs, strengthen our library and other resources, and continue our work of promoting religious freedom.

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Calendar

OF EVENTS

SEPTEMBER

Thursday, Sept. 6, 2007: *Symposium session**

The First Decades of the Established Church

Brent Tarter, M.A., Program Manager and Editor of the Dictionary of Virginia Biography, Library of Virginia.

When did the Church of England become a viable established church in colonial Virginia? How was the church's legal and political authority played out in the hard realities of colonial life?

Saturday, Sept. 10, 2007

One Love Festival

An evening of music and the spoken word demonstrating unity in diversity. Performers welcome.

See Web site: www.hamptonroadsnetworkfornonviolence.org
7-11 p.m., Boyd Dining Center

Monday, Sept. 10, 2007

NEXUS Interfaith Dialogue: Finding Passion in Faith

Connecting to the Divine

7:30-9:30 p.m., Boyd Dining Center

Thursday, Sept. 20, 2007: *Symposium session**

Lived Religion in Colonial Virginia

Edward L. Bond, Ph.D., Professor of History, Alabama A&M Univ.

What was the role of religious belief and practice in the daily lives of the colonists? What was the relationship of popular piety to established church authority?

OCTOBER

Thursday, Oct. 4, 2007: *Symposium session**

The Role of "Dissenting" Churches

Monica Najar, Ph.D., Associate Professor of History, Lehigh University.

What social and religious influences contributed to the emergence of dissenting groups? What was the impact of English and colonial law on dissenting churches? What role did women play in dissenting movements?

Thursday, Oct. 18, 2007: *Symposium session**

Unorthodox Religions in Colonial Virginia

Philip D. Morgan, Ph.D., Harry C. Black Professor of History, Johns Hopkins University.

What was the legal and social status of Roman Catholicism, witchcraft, slave religions, Native American traditions, and other "outsider religions"? What issues of authority, control and law influenced the official response to these groups?

Thursday, Oct. 25, 2007: *Symposium session**

The Virginia Statute for Religious Freedom

Thomas E. Buckley, S.J., Ph.D., Professor of Modern Christian History, Jesuit School of Theology at Berkeley/Graduate Theological Union.

What realities of the Virginia situation allowed the statute to emerge here? What were the main political, legal and theological arguments over the statute? How did it affect the nature of religious authority?

Monday, Oct. 29, 2007

NEXUS Interfaith Dialogue: Finding Passion in Faith

Faith and Beauty

7:30-9:30 p.m., Boyd Dining Center

NOVEMBER

Thursday, Nov. 8, 2007: *Symposium session**

Virginia's Contributions to the Enduring Themes of Religious Liberty in America

Daniel L. Dreisbach, J.D., D.Phil., Professor, Department of Justice, Law and Society, American University School of Public Affairs.

What are the enduring themes of religious liberty in the American experience, and how did Virginians help shape these themes?

What lessons can we learn today from the past struggle to create a regime of religious liberty in Virginia and the new nation?

All are free and open to the public; no reservations required.

** All Symposium programs are presented at Virginia Wesleyan College, Boyd Dining Center at 11 a.m., and repeated at 7:30 p.m.*



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