

The prime purpose of the clause as then universally understood, was to prohibit the Congress from creating a national church or from giving any sect a preferred status.³⁰ This is clear from the language of the original draft of the first amendment submitted by Madison to the House of Representatives:

The civil rights of none shall be abridged on account of religious belief or worship, *nor shall any national religion be established*, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.³¹

Professor Corwin comments:

That is, Congress shall not prescribe a national faith, a possibility which those states with establishments of their own . . . probably regarded with fully as much concern as those which had gotten rid of their establishments.³²

The clause contains, of course, no such wording as "separation of church and state" or "wall of separation of church and state."³³ Used according to its historical intentment, "separation of church and state" is a concept familiar to all from the time of the adoption of the first amendment. The term "wall of separation of church and state" finds its way into the opinions of the Supreme Court almost a century later in the case of *Reynolds v. United States*.³⁴ There the phrase was quoted from the well-known letter of Thomas Jefferson to the Danbury Baptists, the phrase plainly being employed in *Reynolds* in the same sense in which it was employed by Jefferson, namely, to show that the No Establishment Clause deprived Congress of power to prescribe religious practices. That Jefferson did not consider the clause to erect a wall which would prevent all relationship between government and religion is plain from his report to the President and Directors of the Literacy Fund of the state-supported University of Virginia in 1822:

It was not however, to be understood that instruction in religious opinion and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations which exist between man and

³⁰ Although there is some evidence that some considered the clause also as a protection of the right of the several states to maintain official church establishments.

³¹ 1 Annals of Congress 434 (1789-91). (Emphasis added.)

³² Corwin, *The Supreme Court as National School Board*, 14 *Law and Contemp. Prob.* 11, 12 (1949).

³³ Justice Frankfurter, in his concurring opinion in the Sunday Law Cases, states: "But the several opinions in *Everson* and *McCullum*, and in *Zorach v. Clauson*, 343 U.S. 306, make sufficiently clear that 'separation' is not a self-defining concept." *McGowan v. Maryland*, 366 U.S. 420, 461 (1961).

³⁴ 98 U.S. 145 (1878).