

his Maker, and the duties resulting from those relations, are the most interesting and important to every human being and most incumbent upon his study and investigation.³⁵

Jefferson then went so far as to suggest that the various sects establish religious schools on the confines of the university.

It would not have made sense in 1791, any more than it does today, to say that the No Establishment Clause prevents relationships—even cooperative relationships—between state and church. It is instead clear that an essential purpose of the clause was to prevent governmental transgressions upon *religious liberty*. It was fear of this and not fear of religion which prompted the drafting of the first version of the clause. Madison's first draft reveals this, the context plainly being one of respecting rights of conscience. Jefferson's "Bill for Establishing Religious Freedom," exposing the meaning of the clause, stressed that *religious liberty* required that no man should be compelled to support "any religious worship, place, or ministry whatsoever."³⁶

Far, therefore, from being a mechanical formula, prescribing automatically a void between religion and the state, it was the original common understanding of the No Establishment Clause, that it existed, in the main, for the protection of religious liberty. Indeed, it was therefore properly seen as a pro-religion clause and not as an anti-religion clause. Such protection, it is plain, existed to preclude (a) the setting up of an official church; (b) approaching the equivalent thereof by giving any sect such a degree of preference that government would have provided a powerful inducement to the people to belong to such preferred sect. The clause was never intended to exclude religion from the democratic processes and the political forum, nor to prevent the sects from taking advantage of these in peaceful competition for lawful benefits. The No Establishment Clause attacked preference by law. Certainly it was never understood to mean that religious institutions which perform public services are disqualified to receive compensation for them through the governmental organs of the society which has benefited by the services.

Throughout the nineteenth century this was the accepted view of the matter. Story's views have been noted. Cooley, in his treatise, *Constitu-*

³⁵ 19 Writings of Thomas Jefferson 414 (Memorial ed. 1904).

³⁶ 12 Hening, Statutes at Large 84, 86 (1785). The original draft of the bill, with indications of the deletions made by the Virginia Assembly, is given in 1 Stokes, Church and State in the United States 392-94 (1950).