

*tional Limitations*, makes it clear that the principal function of the No Establishment concept is to insure religious liberty.<sup>37</sup> He states that certain things are not lawful under any of the American constitutions, among these:

Any law respecting an establishment of religion. The legislatures have not been left at liberty to effect a union of Church and State, or to establish preferences by law in favor of any one religious persuasion or mode of worship. *There is not complete religious liberty where any one sect is favored by the State and given an advantage by law over other sects.*<sup>38</sup>

## 2. *The Relevant Supreme Court Decisions*

### A. THE BRADFIELD, COCHRAN, AND EVERSON DECISIONS

*Bradfield v. Roberts*, *Cochran v. Board of Educ.*, and *Everson v. Board of Educ.* are the three decisions of the Supreme Court—and the only three—which directly concern *aid-providing* by government in the sense presented by the instant problem of federal aid to education in church-related schools.

*Bradfield v. Roberts*<sup>39</sup> lends support to the argument that federal aid to secular education in church-related schools, of the kind described herein on page 411 *supra*, would be constitutional. The Court there held that the appropriation by Congress of money to a Catholic hospital, as compensation for the treatment and cure of poor patients under a contract, did not constitute an appropriation to a religious society in violation of the No Establishment Clause. The Court noted that the hospital was owned by a corporation and that, legally speaking, the corporation was secular and nonsectarian and subject solely to the control "of the government which created it." However, the Court also noted that the hospital was conducted under the auspices of the Roman Catholic Church. "The meaning of that allegation," said the Court, "is that the church

<sup>37</sup> The Court in a recent case, in the context of discussing standing to sue, stated that "the writings of Madison, who was the First Amendment's architect, demonstrate that the establishment of a religion was equally feared because of its tendencies to political tyranny and subversion of civil authority." *McGowan v. Maryland*, 366 U.S. 420, 430 (1961). Later in the same case the Court quoted Madison's comment on his original draft of the first amendment (which was not adopted by the Congress): "Mr. Madison 'said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. . . .'" *Id.* at 441.

<sup>38</sup> Cooley, *Constitutional Limitations* 469 (2d ed. 1871).

<sup>39</sup> 175 U.S. 291 (1899).