declaration of the right of the free exercise of religion, and a prohibition (as we have seen) of all religious tests. Thus, the whole power over the subject of religion is left exclusively to the state governments, to be acted upon according to their own sense of justice, and the state constitutions; and the Catholic and the Protestant, the Calvinist and the Arminian, the Jew and the Infidel, may sit down at the common table of the national councils, without any inquisition into their faith, or mode of worship." [7]

"Probably," Story also wrote, "at the time of the adoption of the constitution and of the amendment to it, now under consideration, the general, if not the universal, sentiment in America was, that Christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation." [8] The object, then, of the religion clauses in this view was not to prevent general governmental encouragement of religion, of Christianity, but to prevent religious persecution and to prevent a national establishment.[9]

Not until the Supreme [10] Court held the religion clauses applicable to the states in the 1940s did it have much opportunity to interpret them. But it quickly gave them a broad construction. In *Everson v. Board of Education*,[11] the Court, without dissent on this point, declared that the Establishment Clause forbids not only practices that "aid one religion" or "prefer one religion over another," but also those that "aid all religions." With respect to the Free Exercise Clause, it asserted in *Wisconsin v. Yoder* [12] that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."

More recent decisions, however, evidence a narrower interpretation of the religion clauses. Indeed, in *Employment Division, Oregon Department of Human Resources v. Smith* [13] the Court abandoned its earlier view and held that the Free Exercise Clause *never* "relieve[s] an individual of the obligation to comply with a 'valid

---

[7] Id. at 1873.

[8] Id. at 1868.

[9] For a late expounding of this view, *see* T. Cooley, General Principles of Constitutional Law in the United States 224–25 (3d ed. 1898).

[10] Cantwell v. Connecticut, 310 U.S. 296 (1940) (Free Exercise Clause); Everson v. Board of Education, 330 U.S. 1 (1947) (Establishment Clause).

[11] 330 U.S. 1, 15 (1947). Establishment Clause jurisprudence since, whatever its twists and turns, maintains this view.

[12] 406 U.S. 205, 215 (1972).

[13] 494 U.S. 872, 879 (1990).