

The Power of Metaphor:

Thomas Jefferson's "Wall of Separation between Church & State"

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This article is the second in a planned series of articles about the writing qualities and habits of our most eloquent American Presidents. My focus is on the lessons modern legal writers can learn from the Presidents. As a bonus, the stories about these Presidents and their writing are captivating.

Metaphors are powerful. A metaphor has the potential for tremendous good, such as perfectly summarizing and simplifying a difficult concept. But any metaphor also has the potential for tremendous danger, such as oversimplifying or incorrectly summarizing a difficult concept. Some metaphors are so powerful that they remain the quintessential description of an abstract and complex ideal, despite attacks on their accuracy or helpfulness. This article examines one such powerful metaphor: Thomas Jefferson's metaphor describing the First Amendment religion clause as "building a wall of separation between Church & State."¹ Perhaps no metaphor about church-state relations has been more powerful, more

* © Julie A. Oseid 2010. Associate Professor of Law, University of St. Thomas School of Law, Minneapolis, Minnesota. This is the traditional place for an author to thank everyone who has helped during the research and writing of the article. In a twist on tradition, I thank two people I have never met, and who do not even know I am writing about Thomas Jefferson's "wall of separation" metaphor. First, Daniel L. Dreisbach's work in this area has been absolutely invaluable to me. He has told the story about this metaphor with more depth and eloquence than any other scholar. Second, Charles A. Miller's thorough analysis of Jefferson's use of nautical metaphors helped me understand how Jefferson used metaphor when writing and speaking. Thank you, Daniel L. Dreisbach and Charles A. Miller, for helping me on the delightful path of discovery about Jefferson and his metaphors. I also thank two people I have met: Michael R. Smith and Chad Oldfather. Michael Smith's work on the role of metaphor in law and the different types of metaphor is inventive and thorough. Chad Oldfather's article about the five functions of metaphor in legal analysis and discourse was essential to my understanding of metaphor in legal writing. I also thank my creative, intelligent, and diligent research assistant Franz Vancura. He never once flinched when I sent him on a new research quest. Thanks to Dean Stephen Easton and Professor Robert Kahn for helpful suggestions during editing. Finally, thank you to all my excellent editors: Professors Melissa Weresh, Sara Gordon, Linda Berger, and Ian Gallacher, and the two anonymous reviewers.

¹ See App. 6 (Ltr. from Thomas Jefferson, Pres. of the U.S., to the Danbury Baptist Assn. (Jan. 1, 1802)). Dreisbach's transcriptions of the Danbury Baptist correspondence are included in his book. Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation between Church and State* 142–48 (N.Y.U. Press 2002) [hereinafter Dreisbach, *Thomas Jefferson and the Wall of Separation*].

controversial, or more lasting. Jefferson wrote the metaphor in a January 1, 1802 letter to the Danbury Baptist Association of Connecticut, in part to assure the Danbury Baptists that he agreed with them “that religion is a matter which lies solely between Man & his God.”² Jefferson also intended to use the letter to explain his refusal to follow the prior Presidential practice of declaring days of fasting and thanksgiving, but that section of the letter was deleted before it was sent to the Danbury Baptists.³

Scholars, judges, and lawyers will long debate the accuracy of the metaphor. Learned minds take opposing views on the issue of whether the “wall of separation” metaphor is accurate in almost any sense. Some contend there is no “wall” at all.⁴ Others dispute what the wall separates.⁵ I leave the debate about whether Jefferson’s “wall of separation” metaphor is a brilliant, flawed, complex, or simplistic metaphor for the First Amendment religion clause to Constitutional scholars and historians.

Instead, this Article has other goals: to examine how Jefferson’s understanding of metaphor differed from the modern understanding of the use of metaphor in a legal context, to study how Jefferson came to use the “wall of separation” metaphor, to consider how the metaphor developed into a doctrinal metaphor substituting for the language and meaning of the First Amendment religion clause, and to glean lessons for legal writers from Jefferson’s “wall of separation” metaphor.

In Part I, I contend that Jefferson wrote the “wall of separation” metaphor in the way he was classically trained to use metaphor: as a stylistic device to clarify and illuminate a difficult abstract concept. This classical understanding of the use of metaphor is contrasted with current thought about the role of metaphor in the law. Jefferson would likely be

2 *Id.*

3 Jefferson revealed this intent in a letter he wrote to Attorney General Levi Lincoln while he was drafting the January 1, 1802 letter. See App. 4 (Ltr. from Thomas Jefferson, Pres. of the U.S., to Atty. Gen. Levi Lincoln (Jan. 1, 1802)).

4 See *infra* Part IV.C (discussing alternative metaphors).

5 Felix Frankfurter noted, “[A]greement, in the abstract, that the First Amendment was designed to erect a ‘wall of separation between church and state,’ does not preclude a clash of views as to what the wall separates.” *McCullum v. Board of Education*, 333 U.S. 203, 213 (1948) (Frankfurter, J., concurring).

Some argue that the “wall of separation” is a broad statement applying to all levels of government. Daniel L. Dreisbach & John D. Whaley, *What the Wall Separates: A Debate on Thomas Jefferson’s “Wall of Separation” Metaphor*, 16 Const. Commentary 627, 628, 673–74 (1999) (John D. Whaley makes this argument). Others claim that the “wall of separation” separates only government from religion, but does not prohibit ecclesiastical authorities from engaging in all civil government formats. *Id.* at 628 (Daniel L. Dreisbach’s view). Still others point out that “the wall of separation” is a prohibition only on actions by the federal, but not the state, government. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 65–66 (Dreisbach notes that the First Amendment only governed relations between religion and the national government).

John Witte, Jr., offers five early American understandings of the “wall of separation”: protecting the church from the state; protecting the “liberty of conscience of the religious believer” from both church and state; protecting the state from the church; protecting individual state governments from federal government interference in local religious affairs; and protecting “society from unwelcome participation in and support for religion.” John Witte, Jr., *That Serpentine Wall of Separation*, 101 Mich. L. Rev. 1869, 1889–91 (2003).

surprised by the modern idea that a metaphor could become a substitute for a complex legal doctrinal concept.

Part II reviews how Jefferson used the “wall of separation” metaphor in the Danbury Baptist letter. This section describes the context and background of the Danbury letter, paying particular attention to Jefferson’s writing practices while he was drafting the letter. Jefferson carefully considered his audience, asked for advice from two Cabinet members, and revised the letter before sending it to the Danbury Baptists. Further, Jefferson wrote the letter to express his opinion about at least one church-state issue—whether Presidents should declare national days of thanksgiving.

Part III considers whether Jefferson’s understanding of the First Amendment religion clause was encapsulated entirely in the “wall of separation” metaphor. My suggestion is that Jefferson’s “wall of separation” metaphor was the beginning, but certainly not the end, of his position on the appropriate intersection between church and state. This part points to circumstances suggesting that Jefferson likely did not intend for the “wall of separation” metaphor to be his ultimate statement about church-state relations: Jefferson used the metaphor only one time; Jefferson wrote the metaphor in a letter; Jefferson was not the first to use the metaphor; and the metaphor gained stature long after Jefferson penned the words in 1802. This section concludes that the “wall of separation” metaphor started as a stylistic metaphor. Only much later, long after Jefferson wrote the Danbury Baptist letter, did the metaphor develop into a doctrinal metaphor representing the meaning of the First Amendment religion clause.

Part IV analyzes the lessons legal writers can learn from Jefferson’s “wall of separation” metaphor. Jefferson’s “wall of separation between Church & State” is so powerful that, at least in the minds of the American public and perhaps in the minds of most American lawyers, the language of the metaphor has replaced the language of the law.⁶ Further, the image created by the metaphor has defined our understanding about the relationship between religion and government in America.⁷ The metaphor has had such astonishing longevity because it meets all the requirements of an effective metaphor: it is simple, concrete, visual, creative, and concise. Further, Jefferson’s care in writing the metaphor should inspire us to take

6 Philip Hamburger, *Separation of Church and State* 1 (Harv. U. Press 2002) (“In the minds of many [Americans], [Jefferson’s words “separation between church and state”] have even displaced those of the U.S. Constitution, which, by contrast, seem neither so apt nor so clear.”).

7 Dreisbach & Whaley, *supra* n. 5, at 628 (“[T]he fact remains, however, that both the courts and the public at large have embraced the ‘wall’ metaphor as the primary emblem of American church-state relations.”).

care in crafting or borrowing metaphors for our own writing. Finally, consideration of the common attacks made on metaphors in the legal context, and made against the “wall of separation” metaphor specifically, will help us craft effective metaphors. We writers can learn one overarching lesson from Jefferson’s “wall of separation” metaphor: metaphor is powerful. Metaphors should be used with caution. Still, metaphors are so effective that they should be used. We may never create a metaphor with as much power as the “wall of separation” metaphor, but Jefferson’s use of the metaphor and his writing habits can inspire us to use effective metaphors in our writing.

I. Comparing Jefferson’s Understanding of Metaphor to the Modern Understanding of Metaphor in the Law

A metaphor is defined as “the application of a word or phrase to an object or concept it does not literally denote, suggesting comparison to that object or concept.”⁸ The Greek etymology of metaphor is “carrying over” or “to stand for.”⁹ Metaphors permeate our language. Metaphors are not simply rhetorical devices but are fundamental to the way we think.¹⁰ George Lakoff and Mark Johnson note, “[W]e define our reality in terms of metaphors and then proceed to act on the basis of the metaphors.”¹¹ Our human language itself is a set of metaphors, and we understand with the help of that language.¹² Cognitive theory describes metaphor as “a way of thinking and knowing, the method by which we structure and reason, and it is fundamental, not ornamental.”¹³ Metaphor, as a critical way of thinking, is just as important to lawyers as it is to others. Legal metaphors are “indispensable pieces of the legal culture, not merely tolerated, but needed.”¹⁴

To Jefferson, “a metaphor stood for something it did not state, carrying over the meaning of one word or phrase to the meaning of

⁸ Webster’s American Dictionary 504 (2d College ed., Random House, Inc. 2000).

⁹ Charles A. Miller, *Ship of State: The Nautical Metaphors of Thomas Jefferson* 4 (U. Press of Am., Inc. 2003).

¹⁰ See Michael R. Smith, *Levels of Metaphor in Persuasive Legal Writing*, 58 Mercer L. Rev. 919, 921 (2007) [hereinafter Smith, *Levels of Metaphor*].

¹¹ George Lakoff & Mark Johnson, *Metaphors We Live By* 158 (U. Chi. Press 1980).

¹² James E. Murray, *Understanding Law as Metaphor*, 34 J. Leg. Educ. 714, 718 (1984) (citing Owen Barfield, *Poetic Diction: A Study in Meaning* 140–41 (McGraw-Hill Book Co. 1964)).

¹³ Linda L. Berger, *What is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law*, 2 J. ALWD 169, 170 (2004).

¹⁴ Thomas Ross, *Metaphor and Paradox*, 23 Ga. L. Rev. 1053, 1076–77 (1989).

something else.”¹⁵ The “wall of separation” metaphor follows the normal metaphoric comparison between something concrete and a more abstract idea.¹⁶ This section reviews Jefferson’s classical education, his understanding of the use of metaphor, and how Jefferson’s understanding of metaphor compares to our current understanding.

A. Jefferson’s Classical Education Influenced His Understanding of Metaphor

Historians study the lives of American Presidents and search for important influences on each President. The inquiry often starts with the early life of the President, as scholars delve into family influences, religious training, and education or the lack of any of these. The search continues as scholars study the life of the President as he became an adolescent and young man.

Thomas Jefferson was primarily influenced by his classical education. Charles A. Miller reviews how Jefferson’s classical education informed Jefferson’s understanding of metaphor.¹⁷ Jefferson began his study of Greek and Latin at the age of nine. He entered the College of William & Mary at the age of seventeen. He heard lectures on rhetoric from Dr. William Small, who brought the Scottish Enlightenment to Virginia. He then studied law under the apprenticeship of George Wythe, who was also a classical scholar.¹⁸ Jefferson read and admired Aristotle, Homer, Epicurus, and Tacitus.¹⁹ Charles A. Miller notes, “Jefferson had few peers either for depth or breadth in classical learning and none for the mark that an education in the classics left on his life.”²⁰ Further, Jefferson believed that an accomplished lawyer must read and study, among other subjects, mathematics, astronomy, philosophy, history, politics, ethics, physics, rhetoric, oration, and poetry.²¹

15 Miller, *supra* n. 9, at 4.

16 *Id.*; see also Haig Bosmajian, *Metaphor and Reason in Judicial Opinions* 45–46 (S. Ill. U. Press 1992) (noting that we choose language from the concrete domain to discuss abstract concepts) (citing David Rumelhart, *Some Problems with the Notion of Literal Meanings*, in *Metaphor and Thought* 69 (Andrew Ortony ed., Cambridge U. Press 1979)).

17 Miller, *supra* n. 9, at 2–6.

18 *Id.* at 7; see also David N. Mayer, *The Constitutional Thought of Thomas Jefferson* 3–11 (U. Press of Va. 1994) (describing Jefferson’s classical and legal educations and listing many of the texts Jefferson studied).

19 Miller, *supra* n. 9, at 7.

20 *Id.* (citations omitted).

21 Morris L. Cohen, *Thomas Jefferson Recommends a Course of Law Study*, 119 U. Pa. L. Rev. 823, 824 (1970) (summarizing the letter written by Jefferson at Monticello on August 30, 1814, and addressed to General John Minor and intended for John Minor’s eldest son, also named John, who was 17 years old). Jefferson also made the following recommendations for dividing the day into study times: before 8 a.m.—physical studies, ethics, religion, and natural law; 8 a.m. to noon—law; noon to 1 p.m.—politics; afternoon—history; dark to bedtime—belles lettres, criticism, rhetoric, and oratory. *Id.* at 824, 840–44 (schedule from printed copy based on Jefferson’s handwritten manuscript). Jefferson often wrote to young men with advice

Among the Greek philosophers, Jefferson most admired Aristotle.²² Jefferson seemed to agree with Aristotle that metaphor did not have a place in philosophical argument, but it could be used in poetry and legal argument as an ornament and to persuade.²³ In the *Poetics*, Aristotle said that “[metaphor] alone cannot be learned from others and its use is a sign of genius, for to use metaphors well is to see resemblances.”²⁴ Jefferson also likely read Quintilian, who wrote that metaphor was “by far the most beautiful of tropes.”²⁵ Miller points out that John Locke’s views on metaphor had the greatest influence on Jefferson.²⁶ In his *Essay Concerning Human Understanding*, Locke warned that metaphor and figures of speech could be dangerous and deceptive but also acknowledged that readers enjoy metaphor.²⁷ Miller concludes:

Like Jefferson, Locke risked being inconsistent. But Locke wrote the creed that is also Jefferson’s. A clear distinction exists between the requirements for seeking truth and the requirements for public persuasion and literary beauty. It is a distinction that goes back to Aristotle. Jefferson is in the tradition of both the ancient thinker and the modern.²⁸

The 18th Century thinkers did not change Jefferson’s understanding of the proper use of metaphor.²⁹ Jefferson used his metaphors in the controlled, classical sense.

about reading and education. *Id.* at 826. In another letter to a young man he recommended a series of classical readings. Even with this rigorous schedule, Jefferson pointed out the value of physical activity:

Give about two of them [hours] every day to exercise; for health must not be sacrificed to learning. A strong body makes the mind strong . . . Never think of taking a book with you [on walks]. The object of walking is to relax the mind. You should therefore not permit yourself even to think while you walk. But divert your attention by the objects surrounding you. Walking is the best possible exercise. Habituate yourself to walk very far.

Id. at 826–27 (citing 8 *The Papers of Thomas Jefferson* 407 (J.P. Boyd ed., 1950)).

²² Miller, *supra* n. 9, at 18.

²³ *Id.* at 19.

²⁴ Aristotle, *Poetics* 59a4 (Allan H. Gilbert, *Literary Criticism: Plato to Dryden* 103 (Alfred Gudeman trans., Am. Bk. Co. 1940)).

²⁵ Miller, *supra* n. 9, at 20 n. 21 (citing *Institutio Oratio*, VIII.6.4, VIII.6.44).

²⁶ *Id.* at 23. Other scholars note that Locke also influenced Jefferson’s views on religious toleration. Mayer, *supra* n. 18, at 158–59.

²⁷ John Locke, *An Essay Concerning Human Understanding*, bk. III, ch. X (Peter H. Nidditch ed., Oxford U. Press 1975); Miller, *supra* n. 9, at 24.

²⁸ Miller, *supra* n. 9, at 24.

²⁹ *Id.* at 25–30. Miller also notes that Jefferson commonplace (copied sections into a personal notebook) lines from John Milton’s work. Miller surmises, “In contrast to most seventeenth and eighteenth century literature, which was so unlike his own practice, Jefferson must have been relieved to find the classically controlled nautical imagery of Milton, where he could see his own future style.” *Id.* at 29. Jefferson kept three commonplace books: a literary commonplace book, a legal commonplace book, and an equity commonplace book. Mayer, *supra* n. 18, at 6.

The classical works Jefferson read were replete with nautical metaphors, and he used nautical references more often than any other reference for his metaphors.³⁰ Among nautical references, Jefferson used variations on the ship of state metaphor most frequently.³¹ That metaphor, like the “wall of separation” metaphor, did not originate with Jefferson, but was used in many classical works.³² Miller states that Jefferson’s nautical metaphors were his most constrained metaphors, perhaps because they derived from these classical works.³³ Miller examines several of Jefferson’s non-nautical metaphors, although not the “wall of separation” metaphor, and concludes that these metaphors “are more striking, more extended . . . more passionately felt . . . [and] are at times philosophical.”³⁴

The main point to be learned from Jefferson’s classical education is that he was fully aware of the dangers of metaphor because all the classicists he admired pointed out those dangers. He recognized that metaphor could stand in the way of truth.³⁵ He thus used his metaphors for style and persuasion, but not as substitutes for complex abstract ideas.

B. Current Understanding of the Uses of Metaphor in the Law

Michael Smith points out that the role of metaphor in the law frequently has been a topic of legal scholarship in recent years, but “many of these works seem to talk past one another.”³⁶ Smith attributes this disconnect to a failure on the part of scholars to acknowledge or recognize that they are often talking about different types of metaphor.³⁷ The problem also likely stems from our changing understanding about the appropriate use of metaphor. Miller points out, “Until a century or so ago . . . and certainly in Jefferson’s mind, metaphor was strictly a rhetorical device, a ‘mere’ figure of speech.”³⁸ Smith suggests that currently there are four basic types of metaphor which correspond to the four basic components of any legal argument: (1) doctrinal metaphors (the legal principles governing an issue);³⁹ (2) legal method metaphors (the tools of analysis applied to the governing principles);⁴⁰ (3) stylistic metaphors (the writing style of an advocate who is presenting the legal argument);⁴¹ and (4) inherent metaphors (the inherent language itself).⁴² Doctrinal and stylistic

30 Miller, *supra* n. 9, at 2.

31 *Id.* at 12.

32 *Id.* at 11–17.

33 *Id.* at 56.

34 *Id.* at 43.

35 *Id.* at 31.

36 Smith, *Levels of Metaphor*, *supra* n. 10, at 944.

37 *Id.*

38 Miller, *supra* n. 9, at 4.

39 Smith, *Levels of Metaphor*, *supra* n. 10, at 920–21.

40 *Id.* at 920, 928–29.

41 *Id.* at 920, 932.

42 *Id.* at 920, 942.

metaphors are relevant to a discussion of the “wall of separation” metaphor.

A doctrinal metaphor is a metaphor that expresses doctrinal law, the rules and principles governing a legal issue, in the form of a metaphor.⁴³ Doctrinal metaphors are the most powerful but also the most dangerous.⁴⁴ When a doctrinal metaphor is present, substantive legal rights are described not in literal terms, but in metaphoric terms.⁴⁵ Metaphor is attractive and useful because it “give[s] names to nameless things.”⁴⁶ We use metaphors because of “the insufficiency of the other ways of understanding”⁴⁷ Yet the danger of metaphor is that “[o]nce the particular reality is seen through the metaphor, nothing is quite the same [W]e have seen a particular and new reality We are in this sense changed.”⁴⁸ Benjamin Cardozo cautioned, in his often-quoted warning about doctrinal metaphors, “Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.”⁴⁹ The potential problem with doctrinal metaphors is that they can reduce a complex concept, like church-state relations, to a metaphor, and metaphor is not capable of capturing all the nuances, complexities, and dimensions of the original concept.⁵⁰ This is one common criticism about the “wall of separation” metaphor.⁵¹ The United States Supreme Court admitted, “Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.”⁵²

The second relevant type of metaphor for analyzing the “wall of separation” metaphor is the stylistic metaphor. Smith explains that the doctrinal metaphor addresses what is said, but the stylistic metaphor relates to how it is said.⁵³ Smith cautions that stylistic metaphors should not be dismissed as mere ornamentation without legitimate rhetorical power.⁵⁴ Instead, stylistic metaphors serve several rhetorical functions and can be powerful.⁵⁵ Smith emphasizes the following rhetorical functions of “stylistic metaphors”:

43 *Id.* at 921.

44 *Id.* at 923.

45 *Id.*

46 Aristotle, *The Rhetoric of Aristotle* 188 (Lane Cooper trans., Appleton-Century-Crofts, Inc. 1932).

47 Ross, *supra* n. 14, at 1073.

48 *Id.*

49 *Berkey v. Third Ave. Ry. Co.*, 155 N.E. 58, 61 (N.Y. 1926) (referring specifically to “the mists of metaphor” surrounding the relationships between parent and subsidiary corporations).

50 Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* 209 (2d ed., Aspen Publishers 2008) [hereinafter Smith, *Advanced Legal Writing*].

51 See e.g. *Wallace v. Jaffree*, 472 U.S. 38, 107 (1985) (Rehnquist, J., dissenting) (“[The] ‘wall’ has proved all but useless as a guide to sound constitutional adjudication.”).

52 *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

53 Smith, *Levels of Metaphor*, *supra* n. 10, at 932.

54 *Id.*

55 *Id.*

The *logos* function of providing an analogy that helps communicate the substance of the writer's point,
 The *ethos* function of establishing the writer as a credible and intelligent source of information,
 The *pathos* functions of evoking favorable emotions, and
 The rhetorical style function of drawing attention and emphasis to the writer's point.⁵⁶

One critical final point about stylistic metaphors is that they can become doctrinal metaphors.⁵⁷ The path of the "wall of separation" from a stylistic metaphor to a doctrinal metaphor will be explored in Part III.

Jefferson's classical education meant that he did not conceive that metaphor could be used to completely replace an abstract idea. He would likely recoil from that modern development because he was trained to be wary of metaphor standing in the place of truth.

II. Jefferson's Use of the "Wall of Separation" Metaphor

Ian Bartrum has pointed out that legal argument and historical argument are not always compatible: "Legal argument is essentially binary—there is always a winning and losing side—and the lawyer and judge thus seek simplicity and finality. Historical argument, on the other hand, aims largely to reveal greater nuance, complexity, and depth."⁵⁸ This section looks at the historical facts surrounding Jefferson's "wall of separation" metaphor.

A. History before the Danbury Correspondence

The text of the First Amendment religion clause states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁵⁹ But Jefferson was not a delegate to the Constitutional Convention; he was not present during the drafting or adoption of the First Amendment.⁶⁰ Despite his physical absence from the

⁵⁶ *Id.* at 940 (citing Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* 204–06 (Aspen L. & Bus. 2002); see also Michael H. Frost, *With Amici Like These: Cicero, Quintilian and the Importance of Stylistic Demeanor*, 3 J. ALWD 5, 9 (2006) ("Classical rhetoricians understood and repeatedly stressed that all three modes of argument—*logos*, *ethos*, and *pathos*—were connected and inter-dependent.")

⁵⁷ Smith, *Levels of Metaphor*, *supra* n. 10, at 941.

⁵⁸ Ian Bartrum, *Of Historiography and Constitutional Principle: Jefferson's Reply to the Danbury Baptists*, J. Church & St. Adv. Access (May 28, 2009) (available at <http://jcs.oxfordjournals.org/cgi/content/full/csp001>).

⁵⁹ U.S. Const. amend I.

⁶⁰ See Mayer, *supra* n. 18, at ix; see also *Reynolds v. United States*, 98 U.S. 145, 163 (1879).

Constitutional Convention because he was serving in Europe as the ambassador to France,⁶¹ Jefferson's views on Constitutional issues are considered important. Jefferson scholar David Mayer noted, "Jefferson . . . properly may be regarded as one of the founders because of the central role he played in the key issues that surfaced during the first four decades of government under the Constitution—issues many of which persist to this day."⁶² Scholars and historians have focused on Jefferson's writings to determine his understanding of church-state relations. The Danbury letter is valuable for its potential to shed light on Jefferson's views.

One important consideration in evaluating Jefferson's views is the historical context of the 1800 Presidential race, often called the "Revolution of 1800."⁶³ Thomas Jefferson, Vice-President, defeated President John Adams in one of the most hotly contested races for the American Presidency.⁶⁴ During the election, the Federalists charged that Jefferson "was an immoral, deist, Jacobin infidel, bent on severing government from its necessary religious roots and essential clerical alliances."⁶⁵ The New England clergy, particularly the dominant Congregationalist ministers, led this attack.⁶⁶ Jefferson's Republican party countered that Jefferson was a Christian, "albeit of an unusual sort," who believed in the separation of church and state to protect religious liberty.⁶⁷ Jefferson survived as the winner of the 1800 election, but "came away with a bitter hatred for the established clergy of New England."⁶⁸

B. The Danbury Correspondence

Jefferson was inaugurated as the third American President on March 4, 1801.⁶⁹ The Danbury Baptists sent a letter of congratulations to Jefferson, but the complete story of the Danbury correspondence involves six different letters.⁷⁰ The Danbury Baptists wrote their letter in October

61 See Robert A. Goldwin, *From Parchment to Power: How James Madison Used the Bill of Rights to Save the Constitution* 125 (AEI Press 1997); see also Merrill D. Peterson, *Thomas Jefferson and the New Nation: A Biography* 297–390 (Oxford U. Press 1975) (describing Jefferson's years in France).

62 Mayer, *supra* n. 18, at ix–x. But see Mark J. Chadsey, *Thomas Jefferson and the Establishment Clause*, 40 Akron L. Rev. 623, 645–46 (2007) (arguing that Jefferson played "almost no role at all" in the adoption of the Establishment clause because his church and state views were not widely known outside of Virginia).

63 *The Revolution of 1800: Democracy, Race & the New Republic* xiii (James Horn, Jan Ellen Lewis & Peter S. Onuf eds., U. of Va. Press 2002).

64 John Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* xvii–xix (Oxford U. Press 2004).

65 Witte, *supra* n. 5, at 1893.

66 *Id.*

67 *Id.*

68 *Id.*

69 Peterson, *supra* n. 61, at 653–54.

70 Daniel L. Dreisbach, in his elegant book, *Thomas Jefferson and the Wall of Separation between Church and State*, thoroughly considers the historical context behind the famous "wall of separation" metaphor. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 128. Dreisbach explains, "This volume is a sourcebook for jurists and scholars who use Jefferson's metaphor . . . [t]his book is about a metaphor—a metaphor that has shaped American

1801. The letter reached Jefferson’s desk on December 30, 1801.⁷¹ Jefferson drafted a response letter. He sent the draft to his two New England cabinet members, Postmaster General Gideon Granger of Connecticut and Attorney General Levi Lincoln of Massachusetts.⁷² His letter to Granger no longer exists, but Granger’s December 31, 1801 reply letter survives. Jefferson’s January 1, 1802 letter to Lincoln asking for his advice on tone and content also survives; Lincoln responded the same day. By the end of the day on January 1, 1802, Jefferson revised the letter based on Lincoln’s recommendations, signed the letter, and released it.⁷³ Jefferson had looked for a chance to express his views on one important church-state issue: the practice of prior Presidents in declaring national days of thanksgiving and prayer.⁷⁴ He thought his response to the Danbury Baptists would be his opportunity to express his view that such proclamations were inappropriate. A few highlights from each of the six letters, with close attention paid to Jefferson’s writing habits, follow.

**1. Address of the Danbury Baptist Association
to Jefferson (October 1801) (Appendix 1)**

The Danbury Baptists sent their letter to Jefferson to congratulate him on the Presidency, and to ask Jefferson how to better secure their religious liberty in Connecticut.⁷⁵ The Connecticut Baptists admired and supported Jefferson because they saw him as a defender of religious liberty, and they were a minority sect in a state dominated by the Congregationalist establishment.⁷⁶ The Baptists were upset about the restrictions and taxes imposed by the Congregationalist establishment.⁷⁷ Most importantly, the Baptists “believed that religious liberty was an inalienable right, and they were deeply offended that the religious privileges of dissenters in

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church-state law, politics, and discourse. Th[is] book is primarily descriptive, and it seeks to avoid the polemical and ideological cant that polarizes students of church and state.” *Id.* at 6–7. The Appendices to this Article include the documents as transcribed by Dreisbach because his transcripts are the most accurate. Hamburger, *supra* n. 6, at 1 n. 1. The Dreisbach transcripts are included in both his book and a law review article. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, app. 6 (correspondence with the Danbury Baptist Association, 1801–1802); Daniel L. Dreisbach, “Sowing Useful Truths and Principles”: *The Danbury Baptists, Thomas Jefferson, and the “Wall of Separation,”* 39 J. Church & St. 455, 460–61, 462–63, 465, 466–68 (1997) [hereinafter Dreisbach, *Sowing Useful Truths and Principles*].

⁷¹ Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 31 (noting that the reasons behind this three-month delay are unknown).
⁷² See Hamburger, *supra* n. 6, at 159–60.
⁷³ Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 26.
⁷⁴ App. 4.
⁷⁵ Witte, *supra* n. 5, at 1893.
⁷⁶ Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 25.
⁷⁷ Witte, *supra* n. 5, at 1893. Dreisbach notes that the Danbury Baptists understood federalism to mean that the President could not interfere with any state laws, but they hoped Jefferson’s views on religious liberty would spread to the states. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 33.

Connecticut were treated as favors that could be granted or denied by the political authorities.”⁷⁸

2. Jefferson to Danbury Baptist Association (preliminary draft) (Appendix 2)

Jefferson drafted a response to the Danbury Baptists. Jefferson’s draft letter with his corrections was retained as part of his Presidential papers.⁷⁹ In his draft response, Jefferson explained that he would not offer Thanksgiving proclamations or prayers.⁸⁰ Jefferson also wrote:

Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that *their* legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof; thus building a wall of eternal separation between church and state.⁸¹

3. Postmaster General Gideon Granger to Jefferson (December 31, 1801) (Appendix 3)

Jefferson suspected that his draft letter might offend the New England clergy, so he asked Postmaster General Gideon Granger of Connecticut to review the draft.⁸² Granger wrote a brief note to Jefferson, saying that he could not “wish a Sentence changed.”⁸³ Granger acknowledged that Jefferson’s letter might offend “the established Clergy of New England,” but he thought Jefferson’s sentiments should not be softened.⁸⁴

⁷⁸ Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 33.

⁷⁹ Many of the changes Jefferson made to the letter have been obvious since he made the changes, but some words from the draft were not visible because Jefferson had inked over those words when editing the letter. In 1998, the FBI developed a new technology, described as a digital airbrush, which revealed all the original words in the letter. Irvin Molotsky, *One of Jefferson’s Enigmas, So Finally the F.B.I Steps In*, N.Y. Times B7 (May 30, 1998) (available at <http://www.nytimes.com/1998/05/30/arts/one-of-jefferson-s-enigmas-so-finally-the-fbi-steps-in.html?pagewanted=1>). The FBI photographed the letter and scanned the image into a computer. Once the image was enlarged, an FBI photography expert could see the difference between the ink Jefferson used to draft the letter and the ink he used to edit the letter. The FBI expert then used a new computer tool to remove the overstriking. *Id.*

⁸⁰ App. 2 (Ltr. from Thomas Jefferson, Pres. of the U.S., to Danbury Baptist Assn. (prelim. draft) (Jan. 1, 1802)).

⁸¹ *Id.*

⁸² Jefferson’s request letter to Granger no longer exists, but it can be surmised that it was similar to the request letter Jefferson sent to Lincoln because Granger mentions the phrase “germinate among the People, and in time fix ‘their political Tenets.’” A similar phrase was included in Jefferson’s letter to Lincoln. *See* App. 3 & App. 4.

⁸³ *See* App. 3 (Ltr. from Postmaster Gen. Gideon Granger to Thomas Jefferson, Pres. of the U.S.) (Dec. 31, 1801)).

⁸⁴ *Id.*

4. Jefferson to Attorney General Levi Lincoln (January 1, 1802) (Appendix 4)

Granger's lack of editing may have disappointed Jefferson.⁸⁵ Jefferson took time away from entertaining the public on New Year's Day to ask Levi Lincoln, his other New England cabinet member, to review his draft. He sent a copy of his draft letter with a cover letter explaining his objectives to Levi Lincoln.⁸⁶

Jefferson used two metaphors in his letter to Lincoln. Jefferson told Lincoln that he had two main purposes in writing a response to the Danbury Baptists: (1) to use his letter to express his views about religious liberty with the hope that some of his views would become part of the American people's understanding of religious liberty, and (2) to explain why he would not make Presidential proclamations of fasting and thanksgiving.⁸⁷ In explaining his first purpose, Jefferson used a metaphor comparing the transfer of his ideas about religious freedom to a seed being planted and germinating. Jefferson told Lincoln that he was averse to receiving letters like the one sent by the Danbury Baptists, but he tried to use his answers by "sowing useful truths & principles among the people, which might germinate and become rooted among their political tenets."⁸⁸

Jefferson used a second metaphor in his letter to Lincoln, seeking Lincoln's specific comments about the tone he used in his Danbury letter. Jefferson compared his audience's ability to receive his message to people's receptivity to cooking flavors. Jefferson told Lincoln, "[Y]ou understand the temper of those in the North, and can weaken it therefore to their stomachs: it is at present seasoned to Southern taste only."⁸⁹

5. Attorney General Levi Lincoln to Jefferson (January 1, 1802) (Appendix 5)

Unlike Granger, Lincoln offered several suggestions to Jefferson when he wrote back several hours after receiving Jefferson's request.⁹⁰ Lincoln told Jefferson that he should make several revisions to the letter to avoid offending both the New England clergy and Jefferson's fellow Republicans.⁹¹ Lincoln noted, "The people of the five N England Governments (unless Rhode Island is an exception) have always been in

⁸⁵ Dreisbach suggests that Jefferson "perhaps desiring a more discerning view, solicited a second opinion, this one from Lincoln, of Massachusetts." Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 42.

⁸⁶ *Id.* at 26.

⁸⁷ App. 4; *see also* Witte, *supra* n. 5, at 1893-94.

⁸⁸ *See* App. 4.

⁸⁹ *Id.*

⁹⁰ Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 44.

⁹¹ App. 5 (Ltr. from Atty. Gen. Levi Lincoln, to Thomas Jefferson, Pres. of the U.S. (Jan. 1, 1802)).

the habit of observing fasts and thanksgivings in performance of proclamations from their respective Executives.”⁹² Lincoln suggested alterations which would tone down Jefferson’s sentence about executive proclamations regarding fasts and thanksgivings. Jefferson heeded Lincoln’s advice, but instead of changing tone, he eliminated the entire sentence.

6. Jefferson to Danbury Baptist Association (January 1, 1802—final version) (Appendix 6)

Jefferson incorporated Lincoln’s advice into his final draft. Most significantly, he eliminated any reference to his refusal to use the Presidential office to declare days of thanksgiving or prayer.⁹³ Although it is sometimes difficult to tell why a writer makes editing changes, Jefferson was very clear about why he made this change. He wrote in the margin of his draft, “this paragraph was omitted on the suggestion that it might give uneasiness to some of our republican friends in the eastern states where the proclamation of thanksgivings etc by their Executive is an antient [sic] habit, & is respected.”⁹⁴ Jefferson’s original draft noted that the First Amendment religion clause is “thus building a wall of eternal separation between church and state.”⁹⁵ Jefferson eliminated the word “eternal” between the words “wall of” and “separation,” so that the final metaphor reads that the First Amendment religion clause is “thus building a wall of separation between Church and State.”⁹⁶

III. Jefferson’s “Wall of Separation” Metaphor Started as a Stylistic Metaphor but Developed into a Doctrinal Metaphor

The theory that the “wall of separation” metaphor developed from a stylistic metaphor to a doctrinal metaphor is supported by the earlier analysis of Jefferson’s understanding of metaphor, but also by a consid-

92 *Id.* Lincoln’s reference to Rhode Island referred to an October 1801 session when the Rhode Island legislature broke from tradition and rejected a resolution asking the Governor to proclaim a day of thanksgiving and prayer. This legislative decision generated controversy and disagreement from both Republicans and Federalists. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 45–46.

93 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 38.

94 App. 6 (Ltr. from Thomas Jefferson, Pres. of the U.S., to Danbury Baptist Assn. (final version) (Jan. 1, 1802)).

95 App. 2.

96 App. 6. A few scholars have commented on Jefferson’s elimination of the word “eternal” from the final draft. See Robert S. Alley, *Public Education and the Public Good*, 4 Wm. & Mary Bill Rights J. 277, 314 n. 232 (1995–1996) (suggesting that Jefferson struck the word “eternal” from the final draft because “separation of church and state was never simply a political solution for Jefferson, but a fundamental principle to which he was dedicated”); James Hutson, *A ‘Wall of Separation’: FBI Helps Restore Jefferson’s Obliterated Draft*, 57 Lib. of Congress Info. Bull. 136, 139, 163 (June 1998) (Library of Congress Manuscript Division Chief Hutson suggests that Jefferson’s striking out of both the word “eternal” as well as a draft reference to his Presidential office as “merely temporal” might show “the Republican faithful” that Jefferson would not infringe on their religious rights).

eration of Jefferson's intent when he wrote the metaphor. Scholars hotly debate exactly what Jefferson intended when he used the "wall of separation" metaphor. On one side of the debate are those claiming that Jefferson intended for the "wall of separation" metaphor to perfectly encapsulate his opinion about the First Amendment religion clause and, in turn, the true meaning of the First Amendment's prohibition against church and state mingling.⁹⁷ Count several United States Supreme Court Justices and legal scholars on that side.⁹⁸ On the other side of the debate are those claiming Jefferson wrote the Danbury letter primarily as a political statement to appease his New England supporters, but he never meant the "wall of separation" metaphor to convey either his ultimate understanding of the First Amendment religion clauses, or the true meaning of the First Amendment's prohibition against church and state mingling. Again, count several United States Supreme Court Justices and legal scholars as holding this opposing view.

Jefferson intended for his "wall of separation" metaphor to be an important stylistic metaphor, but once he released the metaphor in his Danbury letter the metaphor developed, over the last 200 years in the law, into a doctrinal metaphor.⁹⁹ This does not mean that Jefferson originally used the metaphor in a doctrinal sense. Instead, circumstances surrounding the "wall of separation" metaphor suggest that Jefferson did not intend the metaphor to be his final and all-encompassing statement about the First Amendment religion clause: Jefferson used the metaphor once; he wrote it in a letter; he did not create the metaphor; and the metaphor gained prominence long after he wrote the Danbury letter.

A. Jefferson Used the "Wall of Separation" Metaphor Once

Jefferson has been described as an artist at metaphor.¹⁰⁰ As far as we know, Jefferson used the "wall of separation" metaphor only once, in the

⁹⁷ Some scholars have pointed out that Jefferson's intent is not particularly relevant in determining the true meaning of the First Amendment religion clause. Dreisbach notes, "Much of the modern controversy that surrounds Jefferson's 'wall,' by contrast, is less about the historical record than about the legal, political, and ideological uses of the metaphor in these times." Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 127. Still, Dreisbach notes, "Jefferson's views on church-state relations have been more closely scrutinized than those of any other American." *Id.* at 7; see also Mayer, *supra* n. 18.

⁹⁸ Haig Bosmajian notes:

[N]o other judicial metaphor [compared to "the wall of separation between church and state"] has been so directly defended and challenged by the [Supreme Court] justices, who have been conscious that they are relying on a metaphor that has had a great impact on court decisions related to church-state issues, especially the establishment clause of the First Amendment.

Bosmajian, *supra* n. 16, at 73. Bosmajian also notes that scholars, theologians, and others have both attacked and defended the "wall of separation." *Id.* at 77.

⁹⁹ Smith, *Levels of Metaphor*, *supra* n. 10, at 922.

¹⁰⁰ Miller, *supra* n. 9, at 5 ("A metaphor depends on artistry, not science, and at metaphor Jefferson was an artist.").

Danbury letter.¹⁰¹ By contrast, he used his nautical metaphors numerous times.¹⁰² To be fair, Jefferson used a metaphor similar to the “wall of separation” metaphor, “fences,” on one occasion. In a December 4, 1790 letter to Noah Webster, Jr., Jefferson wrote that there are certain rights, such as “freedom of religion,” that people “need not” surrender to the government. He continued, “[T]here are also certain fences which experience has proved peculiarly efficacious against wrong, and rarely obstructive of right, which yet the governing powers have ever shewn a disposition to weaken and remove.”¹⁰³

B. Jefferson Wrote the Metaphor in a Letter

Jefferson’s correspondence was an important part of his life, and he wrote letters almost every day, to both friends and strangers.¹⁰⁴ It is estimated that he wrote 18,000 letters in his lifetime.¹⁰⁵ Many of Jefferson’s original manuscripts have survived, but Jefferson also made copies for his own files.¹⁰⁶ Most of Jefferson’s copies are in the Library of Congress.¹⁰⁷ The Danbury Baptists’ letter to Jefferson and his reply were published in New England newspapers by late January 1802, the same month he wrote the letter.¹⁰⁸

Based on the seriousness Jefferson attached to his correspondence and the reality that much of that correspondence was published, Jefferson’s Danbury letter was not inconsequential. Still, Jefferson had formal opportunities to express his views on the First Amendment. Jefferson served two terms as President, so his views could have been

101 Dreisbach, an expert on the Danbury letter, notes:

There is no evidence from the written record that he ever again used the “wall” metaphor. Its absence is particularly noteworthy in documents such as his second inaugural address and letter to the Reverend Samuel Miller that, like the Danbury letter, purportedly addressed Jefferson’s views on the propriety of the executive appointment of days for religious observance. In short, there is little evidence that Jefferson considered his “wall” the quintessential symbolic expression or theme of his church-state thought.

Dreisbach, *Sowing Useful Truths and Principles*, *supra* n. 70, at 471.

102 Miller, *supra* n. 9, at app. 1 (Miller lists 95 nautical metaphors in Appendix 1).

103 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 87–88 (citing Ltr. from Thomas Jefferson, Pres. of the U.S., to Noah Webster, Jr. (Dec. 4, 1790) in *The Papers of Thomas Jefferson* (Julian P. Boyd et. al eds., 28 vols. to date) (Princeton U. Press, 1950)).

104 Cohen, *supra* n. 21, at 824. Cohen further notes that many of Jefferson’s original manuscripts have survived, but Jefferson also made copies for his own files with either a copy press or the polygraph copying machine. *Id.* at 824–25. Jefferson called the polygraph copying machine the “finest invention of the present age.” *Id.* at 825 n. 4 (citing *The Writings of Thomas Jefferson* vol. XI, 118 (A.A. Lipscomb & A.E. Bergh eds., 1903–1904)). “The polygraph copying machine was a device with one or more additional pens connected to a writer’s pen,” so copies were produced simultaneously while the writer wrote. *Id.* Cohen reports, “Jefferson himself made several improvements in his own version of the polygraph.” *Id.*

105 Mayer, *supra* n. 18, at ix.

106 Cohen, *supra* n. 21, at 824.

107 *Id.*

108 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 24.

expressed in his State of the Union addresses or in his second inaugural.¹⁰⁹ Jefferson did not use these formal occasions to re-emphasize his “wall of separation” metaphor.

C. Jefferson Was Not the First or Last to Use the “Wall of Separation” Metaphor

Although Jefferson authored the Danbury letter, he was neither the first nor the last to use the “wall of separation” metaphor. At least three people, Richard Hooker, Roger Williams, and James Burgh, used the “wall of separation” metaphor in a church-state context before Jefferson.¹¹⁰ Further, “[t]he image of a wall or similar barrier separating the realms of the church and civil government can be found in Western political and theological literature centuries before Jefferson penned the Danbury Baptist letter.”¹¹¹ It is difficult to say with certainty whether Jefferson knew about these earlier “wall of separation” metaphors, but scholars suggest that he likely read at least one of the earlier references.¹¹²

More importantly, Jefferson’s metaphor languished in obscurity for years after he wrote the Danbury letter and it was published in 1802. The metaphor became a doctrinal metaphor only after several Supreme Court Justices used it in their opinions. After 1802, the Danbury letter was not published again until 1853 when it was included in a collection of Jefferson’s writings.¹¹³ The “wall of separation” entered the legal vocabulary in 1879 when the Supreme Court included the entire second paragraph of the Danbury letter and wrote that the letter “may be accepted almost as an authoritative declaration of the scope and effect of the [first] amendment thus secured.”¹¹⁴ The “wall of separation” metaphor then languished again for almost seventy years before Justice Hugo Black wrote, in *Everson v. Board of Education*, “In the words of Jefferson, the [First Amendment] clause against establishment of religion by law was intended to erect ‘a wall of separation between church and State.’ . . . That wall must

109 See Dreisbach, *Sowing Useful Truths and Principles*, *supra* n. 70, at 471 (pointing out the wall metaphor is missing from Jefferson’s second inaugural even though he again alluded to the issue of Presidential proclamations of days of fasting and thanksgiving).

110 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 71.

111 *Id.* at 71–72.

112 *Id.* at 76 (Jefferson had a copy of Hooker’s book in his personal library which was sold to the Library of Congress), 78 (some scholars suggest that Jefferson deliberately borrowed Williams’s “wall of separation” metaphor, but others say there is no conclusive evidence that Jefferson knew about the metaphor), 79 (“A plausible source for Jefferson’s ‘wall’ metaphor is the work of the dissenting Scottish schoolmaster James Burgh . . . Jefferson read and admired the Scotsman’s work and almost certainly encountered Burgh’s use of the ‘wall of separation’ metaphor in his extensive readings.”).

113 *Id.* at 96.

114 *Reynolds v. United States*, 98 U.S. 145, 164 (1879).

be kept high and impregnable. We could not approve the slightest breach.”¹¹⁵ Barbara A. Perry notes that “Justice Hugo L. Black, the foremost jurisprudential interpreter of the metaphor in the Supreme Court’s modern era, is arguably responsible for the public’s familiarity with the ‘wall’ doctrine.”¹¹⁶ The Supreme Court cited the Danbury letter “frequently and favorably in the cases that followed *Everson*.”¹¹⁷ The “wall” metaphor was used frequently during the Chief Justice Burger and Rehnquist eras.¹¹⁸

If someone creates an effective metaphor and releases it to the world, then others can use the metaphor. Michael Smith notes that if those others happen to be judges who use the metaphor in opinions to stand for a particular legal concept, then “it is also possible for the metaphor to become the rule governing the analysis of the issue—to wit, a doctrinal metaphor.”¹¹⁹ Jefferson’s metaphor started as a stylistic metaphor which later, with substantial help from various Supreme Court Justices, developed into a doctrinal metaphor.

IV. Lessons Legal Writers Can Learn from Jefferson’s “Wall of Separation” Metaphor

This section analyzes why Jefferson’s “wall of separation” metaphor has remained in our legal lexicon, and what we can learn from this metaphor. Part A considers the attributes of successful metaphor. Part B suggests that legal writers take time when selecting metaphors. Part C urges legal writers to consider the common attacks against metaphors when they are used in the legal context.

A. Use Decorative, Concrete, Analogic, Creative, and Concise Metaphors

As noted, metaphor is critical to all humans in general, and to lawyers in particular. Chad Oldfather identifies five functions of metaphor in legal analysis and discourse, which parallel the function of metaphor in all contexts.¹²⁰ First, metaphors serve a decorative function which “is more

115 *Everson v. Board of Education*, 330 U.S. 1, 16, 18 (1947).

116 Barbara A. Perry, *Justice Hugo Black and the “Wall of Separation between Church and State,”* 31 J. Church & St. 55, 55 (1989).

117 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 102.

118 *Id.* at 103.

119 Smith, *Levels of Metaphor*, *supra* n. 10, at 941.

120 See Chad Oldfather, *The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions*, 27 Conn. L. Rev. 17 (1994).

important than its name implies” because metaphor enhances persuasiveness.¹²¹ Second, metaphors make abstract concepts more concrete.¹²² Third, metaphors are a “concealed form of analogical reasoning . . . [because] they . . . compare[e] one concept with another.”¹²³ Fourth, metaphors have an “almost magical capacity to unleash creative thought.”¹²⁴ Oldfather explains that “metaphor provides a link between two often largely unrelated ideas,” which leads to “a radically different view of the underlying subject.”¹²⁵ Fifth, metaphors are concise.¹²⁶

The classical teachers who Jefferson studied offer insights about what qualities make a metaphor particularly effective. Aristotle said, “[M]etaphor[s] . . . must not be far-fetched; rather we must draw them from kindred and similar things; the kinship must be seen the moment the words are uttered.”¹²⁷ Quintilian offered, “A metaphor must not be too great for its subject, or, as is more frequently the case, too little.”¹²⁸

The “wall of separation” metaphor performs all five functions of a legal metaphor. The metaphor is decorative,¹²⁹ concrete,¹³⁰ analogic,¹³¹ creative,¹³² and concise.¹³³ We can see the wall, and so could early Americans. No special cultural competence is required to visualize a wall.¹³⁴ The concept of a wall separating things is familiar.¹³⁵ Both those

121 *Id.* at 20.

122 *Id.* at 21.

123 *Id.* at 22.

124 *Id.* at 23 (citing Michael Boudin, *Antitrust Doctrine and the Sway of Metaphor*, 75 Geo. L. J. 395, 414, 414–21 (1986)).

125 *Id.*

126 *Id.* at 23–24.

127 Aristotle, *The Rhetoric of Aristotle*, *supra* n. 46, at 188.

128 Smith, *Advanced Legal Writing*, *supra* n. 50, at 240 (citing 3 Marius Fabius Quintilianus, *Institutio Oratoria* 309 (H.E. Butler trans., 1954)).

129 See *supra* part II.

130 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 111 (“Herein lies much of the appeal of Jefferson’s remarkably simple, yet concrete metaphor.”).

131 Oldfather, *supra* n. 120, at 22 (“[A] judge invoking the metaphor of the ‘wall of separation’ between church and state says that the constitutionally-prescribed relationship between religion and government is analogous to a boundary, and also says something about the nature of that boundary (i.e., that it is rigid, well-defined, etc.).”).

132 Creative is used here in the sense Oldfather suggested—the metaphor helps the reader understand the First Amendment religion clause in a new way. *Id.* at 23.

133 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 112 (“Jefferson’s celebrated metaphor unquestionably ‘condensed a wealth of concepts into a few words.’”) (quoting Steven J. Safranek).

134 This is in contrast to several metaphors which are criticized because “the metaphor will trigger different associations for the reader and writer and thus they will no longer assign congruent meanings to the concept, nor will they be able to express fully their shared meaning through literal language.” Oldfather, *supra* n. 120, at 25. Oldfather suggests that baseball metaphors may fall into this category. *Id.* at 30–51. Others suggest that “because baseball is central to our culture, it is a presumptively appropriate source of metaphorical references.” Michael J. Yelnosky, *If You Write It, (S)he will Come: Judicial Opinions, Metaphors, Baseball, and “The Sex Stuff”*, 28 Conn. L. Rev. 813, 817 (1996).

135 See Smith, *Advanced Legal Writing*, *supra* n. 50, at 239 (Smith warns writers to avoid arcane or esoteric metaphors).

who first read the metaphor and those who read it today can see the relationship between a wall as a way to separate things and the First Amendment as a way to separate church and state. The metaphor's image of a wall is consistent with the theme of the First Amendment as a barrier between church and state mingling.¹³⁶ Finally, the serious tone of the metaphor is appropriate for the gravity of the subject.¹³⁷

In addition to all these strong qualities, Jefferson's "wall of separation" has one additional quality which we cannot replicate: Thomas Jefferson wrote it. Jefferson's fame no doubt played a role in the lasting quality of the metaphor.¹³⁸ But other famous Americans, like George Washington and James Madison, also wrote metaphors about the role of religion and government that never took hold like Jefferson's metaphor.¹³⁹ More essentially, we cannot be Thomas Jefferson, so we will have to use metaphors that have all the other qualities of good metaphors.

B. Take Time When Crafting or Borrowing Metaphors

Chief Justice William Rehnquist called Jefferson's Danbury letter "a short note of courtesy."¹⁴⁰ But any argument that Jefferson hastily wrote the "wall of separation" metaphor dissolves when one reviews how Jefferson drafted the letter, asked for editing advice, and redrafted the letter. Scholars must be careful not to make overbroad conclusions from a writer's decision to eliminate or change words during the drafting of a document unless the writer specifically indicates exactly why the change was made. Still, Jefferson's writing practices show that he took care when crafting his response to the Danbury Baptists. He carefully considered his audiences, both the Danbury Baptists and the public who he knew would read the letter once it was published in newspapers. He did not send his first draft, but made several changes before sending the final draft. He consulted with two Cabinet members who he believed would have particularly helpful

¹³⁶ I realize that I started this Article by saying I would not enter the debate about whether the "wall of separation" metaphor is a brilliant metaphor for the First Amendment religion clause. I recognize that I come dangerously close to that debate when I contend that the "wall of separation" metaphor is effective. I thus do not analyze the effectiveness of the analogy created between a wall and the First Amendment religion clause.

¹³⁷ See Smith, *Advanced Legal Writing*, *supra* n. 50, at 242 (suggesting that a metaphor's tone should be consistent with the discussion, and a serious tone is appropriate for most legal matters).

¹³⁸ See Hamburger, *supra* n. 6, at 1. Hamburger notes:

Jefferson's words seem to have shaped the nation. Beginning with his draft of the Declaration of Independence, Jefferson's taut phrases have given concentrated and elevated expression to some of the nation's most profound ideals. Few of Jefferson's phrases appear to have had more significance for the law and life of the United States than those in which he expressed his hope for a separation of church and state.

Id.

¹³⁹ See *infra* Part IV.C.3.

¹⁴⁰ *Wallace v. Jaffree*, 472 U.S. 38, 92 (1985) (Rehnquist, J., dissenting). He also called the metaphor misleading. *Id.*

insights because they were from New England states. We should take that same care when we create, or borrow, metaphors for our legal writing.¹⁴¹

C. Consider the Common Attacks Against Metaphors Used to Describe Doctrinal Legal Concepts

Some suggest that a doctrinal metaphor like the “wall of separation” metaphor can be defeated either by an attack on the accuracy of the metaphor or the adoption of an alternative legal analysis.¹⁴² I add a third common way to defeat a doctrinal metaphor: the attempt to substitute a different metaphor. All three methods of attack have been tried in the “wall of separation” debate, but still the “wall of separation” stands. Courts continue to mention the metaphor even if only to criticize it.¹⁴³ It is a testament to its power that the “wall of separation” metaphor continues to appear in judicial opinions and scholarly articles. Legal writers should be prepared for these criticisms of metaphor when using doctrinal metaphors.

1. The Metaphor Is Not Accurate

Many judges and scholars have long used the first attack, lamenting that the “wall of separation” metaphor does not accurately capture the meaning of the First Amendment religion clause.¹⁴⁴ We must be prepared for a similar criticism against any metaphors we use to describe a legal concept.

2. The Metaphor Should Be Replaced with an Alternative Legal Analysis

This second type of attack, that an alternative legal analysis should be used, was launched by the United States Supreme Court itself when it developed the 1971 *Lemon* test, a three-part test for evaluating whether government action is constitutional.¹⁴⁵ Under the *Lemon* test, a challenged governmental action (1) must have a secular legislative purpose; (2) must have a primary effect that neither advances nor inhibits religion; and (3)

141 Scholars disagree about whether Jefferson borrowed the “wall of separation” metaphor. See *supra* Part III.C. Jefferson did borrow some of his other metaphors, most notably his nautical metaphors. Miller, *supra* n. 9, at 8–17.

142 Smith, *Levels of Metaphor*, *supra* n. 10, at 923–28.

143 See e.g. *Wallace*, 472 U.S. at 107 (Rehnquist, J., dissenting) (“Our recent opinions, many of them hopelessly divided pluralities, have with embarrassing candor conceded that the ‘wall of separation’ is merely a ‘blurred, indistinct, and variable barrier,’ which ‘is not wholly accurate’ and can only be ‘dimly perceived.’ Whether due to its lack of historical support or its practical unworkability, the *Everson* ‘wall’ has proved all but useless as a guide to sound constitutional adjudication.”).

144 Bosmajian notes that Justice Stewart criticized the “wall of separation” metaphor as not accurately reflecting the meaning of the First Amendment. Bosmajian, *supra* n. 16, at 76. Bosmajian also notes that Robert Hutchins criticized the “wall of separation” metaphor by stating, “It is not a reason; it is a figure of speech.” *Id.* at 77 (citing Robert Hutchins, *The Future and the Wall*, in *The Wall Between Church and State* 19 (Dallin Oaks ed., U. Chi. Press 1963)).

145 *Lemon*, 403 U.S. at 612–13 (citing *Walz v. Tax Commn.*, 397 U.S. 664, 674 (1970)).

must not foster “an excessive government entanglement with religion.”¹⁴⁶ This suggestion, that an alternative legal analysis is better than the metaphor, might also be used against any doctrinal legal metaphors we use.

3. An Alternative Metaphor Should Be Used

Several alternative metaphors to the “wall of separation” metaphor have been suggested. The proposed alternatives often take one of three forms: (1) a metaphor suggesting separation or a barrier; (2) variations on the wall metaphor; or (3) a completely different metaphor comparing church-state relations to something else.

Dreisbach notes that other early Americans used the image of a separation or barrier to explain church-state relations. George Washington wrote a letter to a Baptist association promising that he would zealously labor “to establish effectual barriers against the horrors of spiritual tyranny.”¹⁴⁷ James Madison used the metaphor of “the great Barrier” several times to describe his understanding of religious freedom.¹⁴⁸ Madison also penned the metaphor “the line of separation, between the rights of Religion & the Civil authority.”¹⁴⁹ Jefferson himself used the metaphor of “fences” to explain how individual rights should be protected from government encroachment.¹⁵⁰ Roger Williams used the metaphor of “the hedge or wall of separation between the garden of the church and the wilderness of the world.”¹⁵¹

At least since the United States Supreme Court emphasized Jefferson’s “wall of separation” metaphor in 1947, people have suggested variations on the wall metaphor.¹⁵² In *Everson v. Board of Education*, Justice Hugo Black wrote that the First Amendment “wall must be kept high and

146 For a thorough discussion opining that the “wall of separation” doctrinal metaphor was dismantled and replaced by the three-part test, see Smith, *Levels of Metaphor*, *supra* n. 10, at 925–28. Smith notes, “Interestingly, the third part of the *Lemon* test itself contains a metaphor: ‘excessive government entanglement.’ ” *Id.* at 927 n. 44.

147 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 84 (citations omitted). Washington wrote the letter months before the First Amendment was drafted. *Id.*

148 *Id.* at 85–87 (citations omitted).

149 *Id.* at 88 (citations omitted). The line of separation metaphor has been criticized, most notably by Justice Felix Frankfurter who wrote, “Separation means separation, not something less. Jefferson’s metaphor in describing the relation between Church and State speaks of a ‘wall of separation,’ not of a fine line easily overstepped.” *McCullum v. Board of Education*, 333 U.S. 203, 231 (1948) (Frankfurter, J., concurring).

150 Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 87 (citations omitted); see also *supra* Part III.

151 *Id.* at 76–77 (citing Perry Miller, *Roger Williams: His Contribution to the American Tradition* 98 (Bobbs-Merrill 1953)). Both a fence and a hedge suggest something less substantial than a wall. *Id.* at 88 (“A fence, although clearly a barrier and a structure of demarcation, suggests a construct less impermeable than a high, solid wall or a great and permanent barrier.”).

152 Dreisbach notes, “These twentieth-century alternatives, unlike earlier metaphoric barriers suggested by Washington and Madison, were crafted with knowledge of, and response to, Jefferson’s construct, as interpreted by the modern Court.” *Id.* at 90.

impregnable.”¹⁵³ Walls were important to Jefferson, who used a unique architectural feature, serpentine brick walls, on the University of Virginia campus.¹⁵⁴ Justice Robert H. Jackson made a reference to these walls when he wrote that without “surer legal guidance” in church-state matters, the Justices “are likely to make the legal ‘wall of separation between church and state’ as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded.”¹⁵⁵

A few new alternatives to the “wall” metaphor have been suggested in legal opinions and scholarly articles. These include suggestions that the area where church and state intersect should be considered a zone, a permeable membrane, a parchment barrier, an iron curtain, or the public square.¹⁵⁶

We could speculate about how our understanding of the religion clause would differ if Jefferson wrote about a “hedge of separation” or if the Supreme Court adopted one of the other suggested metaphors. Still, the lesson is that we must be prepared to face suggestions that other metaphors—ones different from the one we selected—more accurately describe the legal doctrine.

¹⁵³ *Everson*, 330 U.S. at 18. In the same case, Justice Wiley B. Rutledge did not reference the “wall of separation,” but said that the First Amendment’s purpose “was to create a complete and permanent separation of the spheres of religious activity and civil authority.” *Id.* at 31–32 (Rutledge, J., dissenting).

Dreisbach lists several other proposed variations on the wall metaphor: a permeable wall; a wall with cracks, gaping holes, or a few doors; a wall punctuated with checkpoints; a single-sided wall; or a prison wall. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 90–94 (citations omitted).

¹⁵⁴ Susan Tyler Hitchcock, *The University of Virginia: A Pictorial History* 32–33 (U. Press of Va. 2003) (“Between the Lawn and the Ranges stretch ten gardens, some divided in two. The serpentine walls enclosing these gardens were designed by Jefferson after English ‘crinkle-crankle walls,’ whose combination of strength, efficiency of materials, and beauty he admired”). Jefferson considered his design and founding of the University of Virginia to be one of his greatest accomplishments. Jefferson requested the following inscription for his tombstone: “Here was buried Thomas Jefferson; Author of the Declaration of American Independence; Of the Statute of Virginia for Religious Freedom; and Father of the University of Virginia.” See Jefferson’s Sketch and Instructions for His Tombstone (available at <http://www.picturehistory.com/product/id/12411>).

¹⁵⁵ *McCullum*, 333 U.S. at 238 (Jackson, J., concurring).

¹⁵⁶ Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 90–94 (citations omitted). One judge even suggested the metaphor comparing a camel sticking its nose into a tent to the court investigating the constitutionally protected area of religion. *Catholic H.S. Assn. of Archdiocese of NY v. Culbert*, 753 F.2d 1161, 1166 (2d Cir. 1985). Some of these metaphors, like the iron curtain, are politically charged. Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 92–93 (noting that James H. Hutson uses the term as a “constructive allusion,” but others use the term pejoratively and “one suspects, . . . not only to emphasize the impenetrability of the modern Supreme Court’s ‘wall’ but also to associate the Court’s ‘wall’ with atheistic communist regimes . . . and the strictly secular culture promulgated by a ‘high and impregnable’ barrier”).

Conclusion

Jefferson is considered one of our most eloquent Presidents.¹⁵⁷ He used metaphor to illuminate and persuade. Jefferson's classical education cautioned that metaphor could be dangerous. Jefferson might be shocked to learn that the metaphor he used once, comparing the First Amendment religion clause to a "wall of separation," remains.¹⁵⁸

Metaphor has been eternally criticized for its inability to capture every nuance and delicacy contained in abstract concepts. Yet, metaphor is the way all humans, including lawyers, make sense of difficult ideas. We should choose concrete, creative, and analogic metaphors. We should take care when using metaphor in our legal writing. We should anticipate the arguments that will be made against our selection of a metaphor used to explain doctrinal law. In the end, let us remember the lesson from Jefferson's "wall of separation": metaphor is powerful.

¹⁵⁷ Theodore C. Sorensen, former special counsel to President John F. Kennedy, notes, "Lincoln was a superb writer. Like Jefferson and Teddy Roosevelt, but few if any other presidents, he could have been a successful writer wholly apart from his political career." Theodore C. Sorensen, *A Man of His Words*, Smithsonian 96, 98 (Oct. 2008).

¹⁵⁸ Dreisbach emphasized the lasting power of Jefferson's metaphor, "Given the extensive and continuing influence of Jefferson's felicitous phrase in church-state law, policy, and discourse, it can be said, in the words of John Adams's memorable deathbed declaration, that 'Thomas Jefferson still survives.'" Dreisbach, *Thomas Jefferson and the Wall of Separation*, *supra* n. 1, at 128 (citations omitted). Jefferson and Adams died on the same day, July 4, 1826, the fiftieth anniversary of the American Declaration of Independence. These were reported as Adams's last words. Adams did not realize that Jefferson had died at Monticello five hours before Adams's own death. *Id.* at 242 n. 104 (citing Merrill D. Peterson, *The Jefferson Image in the American Mind* 3–6 (Oxford U. Press 1960)).

Appendix 1*

Address of the Danbury Baptist Association to Jefferson, October 1801

The address of the Danbury Baptist Association, in the State of Connecticut; assembled October 7th. AD 1801.

To *Thomas Jefferson* Esq. President of the united States of America.

Sir,

Among the many millions in America and Europe who rejoice in your Election to office; we embrace the first opportunity which we have enjoy,d in our collective capacity, since your Inauguration, to express our great satisfaction, in your appointment to the chief Magistracy in the United States: And though our mode of expression may be less courtly and pompious than what many others clothe their addresses with, we beg you, Sir to believe, that none are more sincere.

Our Sentiments are uniformly on the side of Religious Liberty—That Religion is at all times and places a Matter between God and Individuals—That no man ought to suffer in Name, person or effects on account of his religious Opinions—That the legitimate Power of civil Government extends no further than to punish the man who *works ill to his neighbour*: But Sir. our constitution of government is not specific. Our antient charter, together with the Laws made coincident therewith, were adopted as the Basis of our government, At the time of our revolution; and such had been our Laws & usages, & such still are; that Religion is consider,d as the first object of Legislation; & therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights: and these favors we receive at the expence of such degrading acknowledgements, as are inconsistent with the rights of fre[e]men. It is not to be wondered at therefore; if those, who seek after *power & gain* under the pretence of *government & Religion* should reproach their fellow men—should reproach their chief Magistrate, as an enemy of religion Law & good order because he will not, dares not assume the prerogative of Jehovah and make Laws to govern the Kingdom of Christ.

* Correspondence included in the Appendices is reprinted with permission from and follows the format of the original:

Documents from the Papers of Thomas Jefferson, Correspondence with the Danbury Baptist Association, 1801–1802, Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation between Church and State*, app. 6 (N.Y.U. Press 2002). © 2002 by New York University.

Sir, we are sensible that the President of the united States, is not the national Legislator, & also sensible that the national government cannot destroy the Laws of each State; but our hopes are strong that the sentiments of our beloved President, which have had such genial Effect already, like the radiant beams of the Sun, will shine & prevail through all these States and all the world till Hierarchy and tyranny be destroyed from the Earth. Sir, when we reflect on your past services, and see a glow of philanthropy and good will shining forth in a course of more than thirty years we have reason to believe that America,s God has raised you up to fill the chair of State out of that good will which he bears to the Millions which you preside over. May God strengthen you for the arduous task which providence & the voice of the people have cal,d you to sustain and support you in your Administration against all the prede-termin,d opposition of those who wish to rise to wealth & importance on the poverty and subjection of the people ——

And may the Lord preserve you safe from every evil and bring you at last to his Heavenly Kingdom through Jesus Christ our Glorious Mediator.

Signed in behalf of the Association,

Neh,h Dodge)	
Ephm Robbins)	The Committee
Stephen S. Nelson)	

Appendix 2

Jefferson to Danbury Baptist Association (preliminary draft)

To messrs. Nehemiah Dodge, Ephraim Robbins, & Stephen S. Nelson a committee of the Danbury Baptist association in the state of Connecticut.

Gentlemen

The affectionate sentiments of esteem & approbation which you are so good as to express towards me, on behalf of the Danbury Baptist association, give me the highest satisfaction, my duties dictate a faithful & zealous pursuit of the interests of my constituents, and, in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more & more pleasing.

Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof; thus building a wall of *eternal* separation between church and state. [Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts, I have refrained from prescribing even *those* occasional performances of devotion, *practised indeed by the Executive of another nation as/is* the legal head of *it's* [sic] church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect.] *confining myself therefore to the duties of my station, which are merely temporal, adhering to, concurring with this great act of national legislation in behalf of the rights of conscience* sincere satisfaction *of mine, and that* I shall see with *friendly dispositions* the progress of those sentiments which tend to restore to man all his natural rights, convinced

he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection and blessing of the
common father and creator of man, and tender you for yourselves and
your religious
the Danbury Baptist association, assurances of my high respect & esteem.

Th: Jefferson
Jan. 1. 1802

[Dreisbach's] Note: In the manuscript of this draft letter, the italicized text is inked out. In addition, a line is drawn around the sentence bracketed in this transcription, and the following comment in the same hand is written in the left margin:

this paragraph was omitted on the suggestion that it might give uneasiness to some of our republican friends in the eastern states where the proclamation of thanksgivings etc by their Executive is an antient habit, & is respected.

The manuscript of this draft letter reveals that Jefferson wrote and rewrote the last sentence of the second paragraph. He first wrote:

confining myself therefore to the duties of my station, which are merly temporal, be assured that your religious rights shall never be infringed by any act of mine, and that I shall see with friendly dispositions the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

He then apparently amended this sentence to read: "concurring with this great act of national legislation in behalf of the rights of conscience" (Jefferson apparently intended this sentence to continue with "I shall see with friendly dispositions the progress of those sentiments . . ." from the initial draft). The opening words "concurring with" were replaced with "adhering to." Both of these versions were inked out before Jefferson wrote the final version, which reads:

adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

At some point, Jefferson replaced "friendly dispositions" in the initial version with "sincere satisfaction."

Appendix 3

Postmaster General Gideon Granger to Jefferson

G. Granger presents his compliments to The Presidt. and assures him he has carefully & attentively perused the inclosed Address & Answer—The answer will undoubtedly give great Offence to the established Clergy of New England while it will delight the Dissenters as they are called. It is but a declaration of Truths which are in fact felt by a great Majority of New England, & publicly acknowledged by near half of the People of Connecticut; It may however occasion a temporary Spasm among the Established Religionists yet his mind approves of it, because it will “germinate among the People,, and in time fix “their political Tenets,,—He cannot therefore wish a Sentence changed, or a Sentiment expressed equivocally—A more fortunate time can never be expected. ——

Appendix 4

Jefferson to Attorney General Levi Lincoln

Th: J. to mr. Lincoln

Averse to recieve [*sic*] addresses, yet unable to prevent them, I have generally endeavored to turn them to some account, by making them the occasion, by way of answer, of sowing useful truths & principles among the people, which might germinate and become rooted among their political tenets. the Baptist address now inclosed admits of a condemnation of the alliance between church and state, under the authority of the Constitution. it furnishes an occasion too, which I have long wished to find, of saying why I do not proclaim fasting & thanksgivings, as my predecessors did. the address to be sure does not point at this, and it's [*sic*] introduction is awkward. but I foresee no opportunity of doing it more pertinently. I know it will give great offence to the New England clergy: but the advocate for religious freedom is to expect neither peace nor forgiveness from them. will you be so good as to examine the answer and suggest any alterations which might prevent an ill effect, or promote a good one among *the people*? you understand the temper of those in the North, and can weaken it therefore to their stomachs: it is at present seasoned to the Southern taste only. I would ask the favor of you to return it with the address in the course of the day or evening. health & affection.

Jan. 1. 1802

Appendix 6

Jefferson to Danbury Baptist Association (final version)

To messrs. Nehemiah Dodge, Ephraim Robbins, & Stephen S. Nelson, a committee of the Danbury Baptist association in the state of Connecticut.

Gentlemen

The affectionate sentiments of esteem and approbation which you are so good as to express towards me, on behalf of the Danbury Baptist association, give me the highest satisfaction. my duties dictate a faithful & zealous pursuit of the interests of my constituents, & in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing.

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that *their* legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church & State. adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves & your religious association, assurances of my high respect & esteem.

Th: Jefferson

Jan. 1. 1802.

