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SHOULD A CATHOLIC BE PRESIDENT ?

The Smith-Marshall Controversy



EDITORIALS, ARTICLES, and OTHER
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SHOULD A CATHOLIC BE PRESIDENT?

AN OPEN LETTER TO MR. CHARLES MARSHALL

SIR:—Governor Smith has said that he will answer the open letter addressed to him by you and published in the April number of the Atlantic Monthly. As Governor Smith is well known to be a man who always speaks for himself, it would be impertinent for anybody else to attempt to answer your letter in so far as it directly concerns him, and his presumed candidacy for the presidential nomination. But your letter being public, and raising questions and problems of a fundamental political and religious importance, the discussion of its subject-matter seems to be a proper concern for others than Governor Smith and you; indeed, such discussion is invited by the responsible journal in which your letter is printed. The Commonweal, therefore, ventures to offer certain opinions which we hope may help to bring about the end you yourself desire, which is, the consideration in a spirit of fairness and tolerance of the main question you raise—namely, can a loyal and conscientious Catholic American, if elected to the Presidency of the republic, conscientiously support and defend the American Constitution and sincerely and without equivocation uphold the principles of civil and religious liberty on which American institutions are based?

First of all, The Commonweal is aware of your profound religious conviction and habit, and respectfully acknowledges your competence as a student of religious and political questions. In a recent letter to

this journal in connection with the Marlborough case, you said that you did not address your letter to us "in any caviling spirit, but in a spirit of honest inquiry by one who has given some years of study to Roman Catholic claims and who loves the religion of the Latin Church although he is quite unable to accept what seems to him its factitious and purely non-religious accretions." In brief, you are a man sincerely and deeply concerned with what we of this journal believe to be the primary concern of all intelligent men and women—namely, religion.

The question you raise is of prime interest and importance to some twenty million American Catholics and also, necessarily, to all Americans of other religious beliefs, or of no religious beliefs. Moreover, your question does not relate merely to the Presidency. The Presidency is the highest one of a series of public offices and responsibilities and duties which by the theory and in the practice of constitutional principles are open to all American citizens equally—the sole distinction that separates the Presidency from the other offices being that its incumbent shall be an American citizen by right of birth, while the lesser offices are open to naturalized as well as to born citizens. Tremendous as are the powers of the President, however, after all he is not an absolute ruler; he simply shares, though of course his share is the largest, in the sum total of civil responsibility that rests upon all elected or appointed public officials or representatives. If a President cannot or should not be trusted to uphold the Constitution and support the principles of civil and religious liberty on which American institutions are based, simply be-

cause he is a Catholic, neither can or should any Catholic be trusted with any public office. Logically indeed—and you, Sir, as your letter to Governor Smith plainly and somewhat painfully shows, are well accustomed to let your mind follow premises to their extreme conclusions—logically, we repeat, no Catholic can or should be trusted even to vote for the election of any public official, or in any other way to take any part whatsoever in public affairs, if once it be clearly, squarely and fairly established that no Catholic can or should be President because his religious beliefs are really irreconcilable with the Constitution and with the principles of civil and religious liberty on which American institutions are based.

Without in any way impugning your sincerity, or questioning your own conviction that your question is of immediate and paramount importance, The Commonwealth thinks that it is essentially so academic and theoretical a question as practically to be without particular significance to any save purely legalistic minds, on the one hand, or that much larger number of people whose thinking on this subject proceeds from inherited prejudice. It really seems to us that to ask Governor Smith, or any other Catholic who may be a candidate for the Presidency or for any other elective office, how he would act in the case of a hypothetical conflict between the principles of the American Constitution and the religious dogmas of the Catholic Church, is like asking a man what he is planning to do in case a comet should hit the earth, or if a tidal wave should rush in from the Atlantic or the Pacific, submerging the whole country. Theoretically, either of

these events may occur—today, tomorrow, a century hence, or a million years from now. Scientific principles and facts would seem to support the view that some time or other a comet may collide with the earth, or that some eruption in the bed of some ocean may or might cause the inundation of whole continents, as may have happened in the case of the lost Atlantis. But practical men or governments are as yet not taking any measures to save us from such catastrophes.

Practical Americans, instead of fleeing from the shadow of Giant Pope, are more likely to remember that thousands and tens of thousands of American Catholics have been elected or appointed to public office, from such posts as the chief justiceship of the Supreme Court, or cabinet positions, or chairs in the Senate, down to the humblest political positions. They have been entrusted with high command in the army and navy. They have marched and fought in all the wars of the United States. It is true that never until now has the question practically arisen as to whether an individual Catholic should be investigated or interrogated because of the imminent probability of his nomination as a candidate for the Presidency. But the Presidency, to repeat, is not the instrument of a supreme autocrat nor of an oligarchy. A President, like a governor, a senator, a congressman, a judge, and many other officials of high and low degree, takes an oath to support the Constitution and to uphold American laws. The American President alone cannot pass a law or an amendment to the Constitution. He is an executive officer. He alone cannot conclude treaties with any foreign power, either with the

Vatican or any other; nor can he declare war, even on Mexico. Even if any President desired for any private or religious reason to commit a treasonable act or to over-ride the Constitution, and should attempt to do so, he could be, and undoubtedly very promptly would be, removed from office by impeachment.

It is true that outbursts from time to time of a rather low and ignorant type of religious bigotry have challenged or even obstructed the entrusting of public office to Catholics. It is also true that other Americans who are not bigots have been and now are uncertain, to say the least, as to how far Catholic beliefs, when rigidly and logically carried into practical effect, may or might come into conflict with principles of the American polity. But it is quite certain that neither sporadic bigotry nor the honest doubt of a minority of minds has affected the political behavior of the American people.

The issue raised by you, Sir, which is really practical and important, is the issue of alleged divided loyalty. This is the bugaboo which haunts and troubles you and other honest men; and which when it inflames the minds of less reasonable and more emotional people, who have been brought up in a tradition of suspicion and distrust of Catholicism, incites them to the most anti-social type of violence and aggression. Governor Smith and thousands and thousands of other American Catholics have answered the practical aspects of your main questions over and over again. Their answer has been accepted to the full satisfaction of a vast majority of their fellow-Americans, whether Catholic, Protestant, Jew, agnostic, or atheist.

There remains, however, another question. In being loyal to the American Constitution and American principles, have Governor Smith and the tens of thousands of other American Catholics elected to office, also been loyal to the Catholic Church? The Commonwealth believes that any fair mind familiar with the Constitution of the United States, and the history behind that Constitution, and familiar with Catholic dogma, and with the relation of the American Constitution and the history behind it to the Catholic idea of the state, will answer that second question as the first has been answered—emphatically in the affirmative.

The Commonwealth also believes that all these Catholics have been loyal both to their country and to their Church when they took their oath of office. The Commonwealth believes, furthermore, that these Catholic executives, legislators, judges, soldiers and sailors, aldermen or policemen, would not have been nor could be loyal Catholics if they refused to take their oaths of office, or if they took them with anything resembling a mental reservation. For The Commonwealth believes that the great principles of the Catholic Church, as applied to countries with a mixed religious population—principles which are included even in the brief quotations from the Popes made by you, Sir—are identical, or at least are thoroughly consonant, with those principles upon which the United States of America was founded and her Constitution built.

It is always misleading to quote a few words out of their context or out of relation to the specific conditions which gave rise to them. Even the meaning of

the Constitution demands constant interpretation by the Supreme Court, and isolated passages have to be read in relation to the whole document and in the light of plain common sense and changing conditions, and new modes of application to specific instances. Therefore, the quotations made by you from papal utterances which superficially seem to bear out your contention that they are proofs of the conflict between Catholic dogmas and American political principles, are misleading. We cannot deal with them fully or in detail because whole volumes would have to be written to elucidate single sentences. It should also be remembered that not every papal utterance comes under the heading of *ex cathedra* or absolutely authoritative teaching. Papal encyclicals represent the considered opinion of an individual Pope, based upon the considered opinions of his counselors or advisors, but not always and of necessity do they lay down the binding laws of the Church.

In many instances, individual Catholics might be wholly justified in saying as certain Irish political leaders said—that they take their religion from Rome but not their politics. Nor do they take their economic systems; nor their methods of painting pictures, building bridges, or playing golf. Catholics certainly would give to any and all opinions uttered by their Popes or their bishops most respectful consideration, just as all reasonable American citizens would give a respectful hearing to any and all decisions handed down by their Supreme Court, but they would not necessarily consider all of them absolutely sound.

The essential thing in connection with these papal

quotations is this, namely, that here we are discussing the prevailing opinion of Catholic thought about the state, and discussing it only as it relates to the American Constitution. We are not discussing the Mexican, the French, the Turkish, or the Haitian constitutions. Moreover, we are not discussing the theories of the Catholic Church on some theoretical and ideal universal Christian state, in which all the people belong to the Catholic Church and accept the same moral standards. Many of the quotations which you make, Sir, refer only to such a theoretical or ideal state, much as if this journal were to say that the ideal municipality should have no policemen, because every citizen would voluntarily and as it were instinctively obey the law, and hence all would really be policemen.

The essence of the Catholic idea of the state, as we of The Commonweal see it—of a state like the American, in which half the population professes no religious belief, and the rest are unequally divided between Protestants, Jews, and Catholics—is simply that moral law may at times actually be superior to man-made law. In this sense, not only Catholics, but all believers in the moral law are theoretically liable to come into conflict, individually or collectively, with laws of the state, if or when such state laws positively clash with moral laws. And we think that this idea, the idea that moral is superior to man-made law, is the most fundamental idea in American governance.

The American Constitution, framed to meet the actual conditions of the last two centuries, grew out of this idea. It grew out of a struggle between the law-making power of Great Britain and the American col-

onists. If the colonists had not believed that certain rights of man were superior to the repressive laws of Great Britain, they would not have had occasion to rebel against the authority of the British state. They would not have become the traitors they were held to be by the British state. Nor would they have become that nation which today Great Britain regards as its equal and its companion in civilization. It was precisely because the British state tried to transgress what the American colonists believed were the supreme moral rights of human beings that the colonists rebelled, and felt justified in rebelling—and who among their descendants would not say that they were right in rebelling against the binding authority of the British state, and breaking their allegiance to it?

And the fathers of the new American state framed their own Constitution with the single idea that the American government should never do to any part of its citizens what Great Britain had tried to do to the colonists. They inserted the first Twelve Amendments as a bill of rights to protect minorities—thus to set a limit to the domain of man-made law and protect the supreme moral rights of individuals and groups of individuals. In effect they said that “there are certain moral rights which are superior even to the wishes of a majority”—and probably half of the work of the Supreme Court ever since has been to set a limit to the powers of state legislatures and of Congress to transgress those moral rights.

Now that is exactly what the Catholic Church means in saying that the laws of God—the Author of the moral law—must be supreme. And the same idea

did not die with the authors of the Constitution. It is not Catholics alone who place moral law first. Let us give an extreme example to prove the point clearly. Suppose that Congress should legislate compulsory polygamy. Would the Catholic citizen be the only conscientious objector and the only one to disobey such a law? What of the Episcopalians, the Baptists, the Jews? What of every man, religious or not, who stood by the American principle of freedom of conscience in the conduct of his private life? There would be thousands upon thousands of non-Catholic Americans who would disobey such a law, and each one would do so on the ground that his own moral law, as determined by his own conscience—or by whatever authority, the Bible or otherwise, he accepts—was superior as a last appeal to this act of Congress.

Of course, the really important point is that Congress has no power to pass such a law or the President to enforce it. The Constitution expressly forbids it—just as it forbade the enactment of a law in Oregon denying the right of citizens to educate their children in schools of their own choice. Americans believe, as King Canute of legendary ridicule found out, that some things are reserved to God—or, if you prefer, to God as expressed in nature. It is not only the ocean's tides that man cannot stop. There are moral tides which no body of men, even though they represent a nation, may try to check. Americans, with their supreme gift of common sense, know this. That is why we have a Constitution of the kind we have. That is why countries whose constitutions do not protect minorities as ours does, have piled disorder upon disorder.

It is unfortunate that, in a matter of so much importance, you do not give to the inquiring reader the usual assistance of adequate references for your citations of Supreme Court decisions, which you believe to support your position. You refer on two occasions to the decision of the United States Supreme Court in the case of *Watson vs. Jones*. In one citation of this opinion, that in which the Court states that this government recognizes no heresy, the page reference is exact and sufficient. But in the rather more important quotation to the effect that religious liberty must be understood as limited by any actions which might prove contrary to the peace and security of the state, you fail to give the page reference. We have had communications from diligent searchers to the effect that they have been unable to find this passage in the Supreme Court decision to which reference is made. Although further search of this very long decision should reveal the passage in question, it would certainly be a gracious and helpful gesture on your part to supplement your letter with more specific page citations.

Your oversight, however, has extended far beyond the technical point of reference pages. The decision of the Supreme Court in the case of *Watson vs. Jones*, when read in its entirety, not only gives an impression differing considerably from that given by your brief quotations, but it actually supplies, in judicial wording, one of the strongest possible answers to the very questions which you raise. It is difficult to understand how, in your search for truth and enlightenment in this matter, you failed to gain comfort from these other passages in the decision. Thus we find (Wallace,

Volume XIII, pages 730-1) the Court quoting with approval the words of Chancellor Johnson of the Court of Appeals in South Carolina in the case of *Harmon vs. Breher* to the following effect: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority."

And again, on the following page (Wallace, XIII, page 732) we find the Court quoting with distinct approval the opinion of the Supreme Court of Pennsylvania in the case of the *German Reformed Church vs. Seibert* as follows: "The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judge of what constitutes an offense against the word of God and the discipline of the Church." It is very far from our intention to enter on a detailed discussion of constitutional law in this country, but we would be quite derelict in our attitude as interested readers of your letter if we did not refer you, and your and our readers, to the above passages in the same opinion upon which you base so important a part of your inquiry!

Curiously enough, some people, including you, Sir, seem to resent the fact that the Popes assume the right of telling the individual Catholic what the moral law is that he should hold supreme. We don't know why you should resent this, for it is only binding on those who voluntarily accept it. Moreover, if a Christian church exists at all, it surely exists to pass on the moral teachings of Christ—just as surely as the Supreme Court exists to pass on and interpret the civil princi-

ples stated in a condensed form in the Constitution. You cannot be so un-American in your principles as to believe that a church must be a church consisting entirely of Americans before it can claim the right to interpret moral law for its own members. Should a large body of Americans subscribe to the moral teachings of some Hindu teacher, ought they thereby to forfeit their right to hold office in the American government? That would be to set up a new form of national religion—a demand that we should accept only those moral teachings originated by Americans; a negative national religion to be sure, but none the less a national religion. And that is not only contrary to American common sense. It is expressly prohibited by the Constitution.

Of course, we are quite aware that the Church, believing itself to be the appointed Church of Christ, has asserted in His Name, the moral right to interpret dogma and doctrine for all mankind, going forth, as it were, "to teach all nations." But the belief in one's moral right to do something, and the assertion of one's legal right to enforce the acquiescence of all men, are two vastly different things. As any Catholic knows, not every applicant is received into the Catholic Church. The Church accepts as converts only those who give adequate proof of a genuine faith in the teachings of the Church. Lip service is not enough. And every Catholic knows that the Church considers faith a divine gift—not something that can or should be imposed. And with an understanding of this simple principle, which every Catholic boy or girl learns from his primer Catechism, the whole bogey of a

Catholic Church demanding the legal right to enforce its beliefs on everybody disappears like a foolish nightmare. Christ Himself—as all Christians believe—taught with divine authority. He claimed the moral right to teach all nations. But He sought no civil authority to enforce the spread of His teachings. That, in brief, is the Catholic position, as every Catholic knows it, and that is the only interpretation which any fair-minded man must place on the moral claims of the Church.

And so we repeat that the American in any walk of life who takes an oath to support the American Constitution is swearing to do the thing nearest his own heart—to support an idea of the state which recognizes the separate domain of the civil and moral law—of Caesar and God. We are not talking about abstract and possible constitutions. We are talking about the American Constitution of today, as it stands, and as every honest American hopes it will always stand, so long as our nation is made up, as it is, from the peoples and the beliefs of the entire earth. And to that Constitution which states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”—to that Constitution which, in those very words, asserts the inviolability of moral law, American Catholics give their full and undivided allegiance, not in spite of belonging to the Catholic Church, but largely because they are Catholics.

In doing this, they are not in the slightest degree disloyal to the express teachings of the Catholic Church as applied to the kind of society in which

Americans live and work. Perhaps the Baptists would be pleased to see all Americans embrace their faith. Perhaps the Episcopalians would rejoice to see a hundred million voluntary converts to the Episcopal Church. Perhaps as Catholics, we, too, would like to see all men in voluntary religious accord. But dreams are not facts. Americans are not the only people on earth blessed with common sense. The idea of the state for which the Catholic Church stands in a land such as ours is the same idea for which the colonists came to this country; for which Catholic Englishmen founded Maryland, the corner-stone of the national edifice of religious liberty; for which the signers of the Declaration of Independence gladly risked the gallows, and to which every God-fearing American today is dedicated in his heart.

CHURCH, STATE AND CONSTITUTION

By JOHN A. RYAN

(The following comment on the Open Letter to Governor Smith contributed to the April Atlantic Monthly by Mr. Charles C. Marshall, supplements what was said editorially in The Commonwealth for April 13. Dr. Ryan's status as an authority on Catholic principle and American constitutional practice is recognized everywhere—THE EDITORS.)

IN THE April number of the Atlantic Monthly, Mr. Charles C. Marshall calls for a statement that shall clear away all doubt concerning the reconcilability with constitutional principles of the status and claims of the Catholic Church. The following paragraphs attempt to answer, one after another, all the questions and difficulties that he raises.

I

First (page 541, column two): Mr. Marshall quotes Pope Leo XIII to the effect that no religious society other than the Catholic Church possesses divine sanction and that none of the other churches has a natural right to function on the same basis.

This is the Catholic position but it does not conflict with the Constitution, for the simple reason that the Constitution has nothing to say about this doctrine. The Constitution defines legal rights, not natural rights.

Second (page 541, column two): Mr. Marshall cites a statement from the Catholic Encyclopedia concerning "dogmatic intolerance" as the right and duty of the Catholic Church.

This is merely another way of asserting the claim described above. Obviously it has nothing to do with the Constitution.

Third (page 542, column one): Mr. Marshall correctly quotes Pope Leo XIII as saying that the Church "does not condemn those rulers" who for sufficient reasons allow each kind of religion to have a place in the state. Then he translates "does not condemn" into "will allow," which is a bit invidious.

There is nothing in the Constitution which forbids the Catholic Church or any other church to take this attitude. Mr. Marshall's indignant question, "whether such favors can be accepted in place of rights by those owning the name of free men?" is irrelevant and gratuitous. Since the claim which he is criticizing is not forbidden by the Constitution or the laws of the land, it does not concern him as an American citizen. Of course, he has the legal right to resent the claim, as a member of the Anglican Church.

II

Fourth (page 542, column two): Mr. Marshall points out that the Catholic Church claims the right to determine the line which separates its jurisdiction from that of the state in those "mixed matters" in which both have an interest. According to Mr. Marshall, "the Constitution of the United States clearly ordains that the state shall determine the question." What he seems to mean is that this principle is implicit in the Constitution, inasmuch as the Supreme Court has declared that "practices inconsistent with the peace and safety of the state shall not be justified."

In other words, the American state constitutionally claims the right to determine for itself what practices are inconsistent with its peace and safety.

Obviously it does, and must, within the limits fixed by the Constitution. However, the Supreme Court has not left the matter quite so vague as it appears in the words which Mr. Marshall quotes from *Watson vs. Jones*. In another sentence of that decision, the Court declared that Americans have the right "to practise any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights." In *Mormon Church vs. United States*, the same Court decided that "the state has a perfect right to prohibit polygamy." The Catholic Church likewise condemns all these practices. On the other hand, the Supreme Court has never construed as unconstitutional any practice of the Catholic Church. Hence, there is no conflict in the realm of actuality. If any had existed in the realm of possibility it would have been converted into reality long before now.

Fifth (page 543, column two): Mr. Marshall adduces the words of Pope Leo XIII to the effect that it is not lawful for the state "to hold in equal favor different kinds of religions," and then cites these words of the Constitution: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

At last we seem to be confronted with a genuine conflict. The Pope seems to declare unlawful an arrangement which the Constitution requires Congress to maintain. But the Pope is speaking of normal or

ideal conditions, that is, those which should obtain in what is technically known as a "Catholic state." He is not referring to such a state as ours. In his encyclical letter on Catholicity in the United States, the same Pope implicitly approved the relations between Church and state existing in this country. The distinction between a "Catholic state" in which the normal arrangement is a union between the ecclesiastical and civil powers, and a country containing several religious societies already established, is well known in Catholic literature on this subject. Why does Mr. Marshall ignore it? Why does he not recall here the statement which he cites from Pope Leo earlier in his article, namely, that the Church does not condemn such religious equality as we have in the United States? If he desired to be completely accurate and fair, he would have quoted the declaration of a distinguished German theologian, Father Pohle, that it is very doubtful whether a single "Catholic state" exists today. When we examine the whole situation we find that the apparent contradiction vanishes into thin air.

Sixth (page 543, column two): Mr. Marshall quotes Pope Leo as saying that the Catholic Church deems it unlawful to place all other religions on the same footing as the true religion, whereas, the Supreme Court, in *Watson vs. Jones*, declared that our law "knows no heresy and is committed to the support of no dogma, the establishment of no sect."

Here again Pope Leo is discussing the normal and ideal situation, not conditions such as obtain in the United States. Even so, his statement is not formally

contradicted by the words of the Supreme Court. The Court does not say that all religions are equally good or true. It was not considering that question. It used the words quoted above in order to emphasize the difference between the attitude of American courts and that of British courts toward the validity of ecclesiastical statutes. Whether one religion is as good as another or whether the Catholic religion is the only true one, are questions upon which the Constitution is silent and to which the Supreme Court will in no conceivable circumstances presume to return an answer.

Seventh (page 544, column one): Mr. Marshall cites Pope Leo's rejection of the opinion "that it would be universally lawful or expedient for state and Church to be, as in America, dissevered and divorced." This statement, he finds, is somehow in conflict with our constitutional separation of church and state.

Of course, there is no such conflict. Mr. Marshall thinks that separation of church and state is the best arrangement for the United States. Practically all American Catholics hold the same opinion. Mr. Marshall thinks that is the best plan, not only for our country, but for all countries everywhere, and he intimates that this abstract opinion is imbedded in the Constitution. This is absurd. In providing for separation of church and state the Constitution no more implies that this order ought to obtain everywhere than that a republic is the best form of government for all peoples.

Eighth (page 544, column one): Mr. Marshall asks Governor Smith whether he believes that the

Catholic Church or the Supreme Court should prevail when they differ upon a question of jurisdiction.

For the reasons given above, especially under Fourth, Governor Smith or any other Catholic can logically deny the possibility of actual conflict.

III

Ninth (page 544, column two): Had the pleadings on behalf of the Oregon Anti-Private School Law, says Mr. Marshall, included the assertion that the parochial schools "gave instruction inconsistent with the peace and safety of the state," the Supreme Court would necessarily have pronounced the law valid.

If this interpretation of the mind of the Court is correct, counsel for the State of Oregon were negligent or unfortunate or both in having failed to associate Mr. Marshall with the defense of the law.

Tenth (page 545, column one): Mr. Marshall goes on to specify the Catholic teachings which he regards as "inconsistent with the peace and safety of the state," and which he says would so appear to the Supreme Court. Here they are: it is not universally lawful for the state and the Catholic Church to be separated; the non-Catholic religions have no natural right to state protection; dogmatic intolerance is the right and duty of the Catholic Church; when laws conflict that of the Church should prevail.

As we have already seen, the first three of these declarations are abstract propositions upon which the Constitution has nothing to say, for it is not concerned with general doctrines of this sort, but with practical

policies. The principle that the law of the Church should prevail over that of the state in case of conflict would scarcely be noted by the Supreme Court, so long as no evidence was presented to show that Catholic schools or the Catholic pulpit taught disobedience to the state. Here as in many other paragraphs, Mr. Marshall fails to distinguish between the application of practical doctrines to "Catholic states" and their adaptation to states which recognize no particular form of religion.

IV.

Eleventh (page 545, column one): The Catholic Church, says Mr. Marshall, claims the right to fix the conditions for the validity of all marriages of baptized persons. Hence, the Roman authorities declared invalid the marriage of the Marlboroughs on the ground that it lacked one of the required conditions. This act constituted an "utter disregard of the sovereignty" of New York State and of Great Britain.

The State of New York considers invalid the divorces which many other states grant for "incompatibility of temper" and subsequent marriages contracted by the parties to these divorces. Does this show "utter disregard of the sovereignty" of the sister states? The State of South Carolina does not recognize divorce for any cause. Several states do not recognize marriages between white persons and Negroes. Do these restrictions imply "utter disregard of the sovereignty" of the other states of the Union? The church of which Mr. Marshall is a distinguished member will not remarry persons who ob-

tain civil divorces for any cause except marital unfaithfulness. Does his church thereby show "utter disregard of the sovereignty" of those commonwealths which grant divorce for other reasons? Here are several "conflicts" on the subject of marriage. They differ only in degree, not at all in kind, from the difference which obtains between our civil regulations concerning marriage and the law of the Catholic Church. Of course, the Church would prefer that all the other states prohibited divorce as does South Carolina. Of course, the Church holds that the states do wrong in granting divorce. Here is a genuine conflict between the theory practised by our states and the doctrine held by the Church. Nevertheless, I have never heard of a Catholic priest being arrested for violating the marriage laws of the state in which he resided.

Moreover, Mr. Marshall's entire discussion about education and marriage is irrelevant and impertinent in a letter addressed to a possible candidate for President of the United States. The federal government has no control over either of these fields. Consequently the President is never called upon to take any official attitude thereupon, and in no circumstances could he change the civil laws governing either education or marriage. As Governor of New York State, Mr. Smith does enjoy some power of these sorts, but I have never heard it charged that he exerted it contrary to the Constitution or the laws of New York.

V

Twelfth (page 545, column two): Mr. Marshall drags in the Mexican situation, but his only pertinent

contention is that Mr. William D. Guthrie was speaking "officially" for the Catholic Church when he declared that armed intervention by the United States would be justified by "many historical precedents."

As a matter of fact, Mr. Guthrie's statement has no official character or value whatever and he would be the last person to make any such claim. Why does Mr. Marshall ignore the pastoral letter of the American hierarchy on Mexico which is the only official pronouncement that we have and which explicitly disclaims any desire for armed intervention by the United States?

Thirteenth (page 548, column two): Mr. Marshall assures us that he will be satisfied if Catholics "will but concede" that the claims which he has been discussing will, unless modified, "precipitate an inevitable conflict between the Roman Catholic Church and the American state, irreconcilable with domestic peace."

Well, we will not concede anything of the sort, for we know the teaching and spirit of our Church better than does Mr. Marshall, and we think we understand the provisions and implications of the Constitution. We even indulge the supposition that we have a better acquaintance than he with the rules of logic.

Fourteenth (page 549, column two): Mr. Marshall reaches across the ocean to England and to Rome in order to exploit his grievance against Pope Leo XIII for having declared the invalidity of Anglican Orders. Surely this is mere trifling. The papal action which he criticizes was a matter of internal administration of the Catholic Church. It denied admission into the Catholic priesthood of Anglican clergy without reor-

dination. What has this to do with politics? And what possible basis does it set for a conflict between the American state and the Catholic Church? Here again Mr. Marshall seems to be speaking, not as an American citizen, but as a member of the Anglican Church who resents the Pope's attitude toward his denomination.

Fifteenth (page 549, column two): Finally, Mr. Marshall goes back nearly three and a half centuries to tell us about John Felton, who was hanged during the reign of Queen Elizabeth for treason but who was beatified in 1886 by Pope Leo XIII.

The burden of his complaint in this case seems to be that the Pope does not always approve every action performed by a political government. Does Mr. Marshall ask us to hold that every state is morally omnipotent? If he will read Professor Laski's *Studies in the Problem of Sovereignty* he will find an interesting record of other churches that refused to obey some of the laws passed by the British Parliament. He asks whether "the record of the Roman Catholic Church in England is consistent with the peace and safety of the state." As addressed to Governor Smith this question is irrelevant and impertinent. The only political group properly interested are the people of England, and they seem to have been far less excited about these episodes than Mr. Marshall.

Governor Smith is to be congratulated on the publication of Mr. Marshall's questions. They are professedly located on a lofty plane and they are propounded by a distinguished lawyer. Yet the last five pages of

the article have no relation to the office of President of the United States. Education and marriage are the exclusive concern of the several states, the opinions of Mr. Guthrie on the Mexican situation have no official authority, while Anglican Orders and the beatification of John Felton are beyond the control of any American citizen. The "conflicts" between the Catholic Church and the Constitution of the United States which Mr. Marshall strives to show in the first four pages of his article, fade out of the picture when we recall that the Catholic doctrine of union between Church and state applies practically only to "Catholic states"; that Pope Leo XIII implicitly approved the separation which exists in the United States, and that the Constitution neither defines the natural rights of religious societies nor enunciates any abstract doctrine about their equality nor pronounces upon the value of the American system as a universal arrangement nor asserts any claim of religious or moral jurisdiction which could bring the American state into actual conflict with the Catholic Church. In a word, Mr. Marshall's effort is so vain and futile that some of the bigoted persons from whom he rightly dissociates himself may, perhaps, be tempted to infer that his recent article was prearranged with Governor Smith, that it was, in fact, "a frame-up."

A VOICE FROM THE GRAVE

An Editorial

IT IS one of the misfortunes that attend discussions conducted in an atmosphere of theory that, whereas a dilemma has only two horns, casuistry literally bristles with points of interrogation. To have met one, or a hundred, and satisfactorily blunted them today is no guarantee that the principle which is being put on its defense will not find another, just as peremptory, confronting it tomorrow. There is practically no limit to the supposititious cases which can be framed by a determined advocate once the sound practice of confining evidence to cases of fact, which the law has had to insist upon to preserve its own reputation, has been abandoned in favor of the Socratic method.

Not only are these problems, in which conscience is intruded as the insoluble factor (the mathematical repeating decimal) desperately hard to express in terms which infer finality. From their very nature we may expect to see them laid under contribution again and again whenever the exigencies of special pleading call for them, without any hint that they are old or discredited. In an article written in *The Commonweal* many months ago,* one of these libels, which had reference to a wholly imaginary reservation in the attitude of Church to state in France, was examined and

**On the Trail of a Lie*, December 17, 1924.

traced to its source in a rhetorical flight of the essayist Macaulay. The hope was expressed at the time that, if the ancient slander was ever revived, some notice at last might be taken of the fact that it bore upon its body traces of previous encounters with truth. The Open Letter to Governor Smith at the hand of Mr. Charles C. Marshall, was treated with what we venture to consider fitting detail in *The Commonweal* of April 13, 1927. The purpose of the present article is not to add anything to this detail, but merely to suggest that Mr. Marshall's much advertised "open letter," respectable and moderate as it appeared in contrast with the charge against the Church in France, was, in one respect at least, no franker. Bluntly, the air it wore of posing an entirely fresh quandary, propounded now because it had hitherto been evaded by those most concerned in rebutting it, was not at all justified by the facts.

The credit of the discovery, to give credit where credit is due, does not belong to *The Commonweal*, or to any organ even remotely connected with the interests of the Catholic Church in America. It comes from the *North American Review*, a weighty and secular organ, dedicated, since the days of Henry Adams, to an expression of the views held by the more cultured element in Massachusetts and New England. Under the heading, *A Cardinal Speaks for "Al" Smith*, our contemporary reminds a forgetful public that all the questions raised by Mr. Marshall anent the position of Catholics in American politics, were "very fully and circumstantially answered" by the beloved Cardinal-Archbishop of Baltimore in its issue of March, 1909.

“His leading article in that number,” proceeds the North American editors, “could scarcely have been a more apt and effective reply to Mr. Marshall’s letter, if it had been written after the latter’s appearance.”

To take up the points answered by Cardinal Gibbons, one by one, and to stress their positively amazing parallel with the heads of Mr. Marshall’s letter, would require more space than we can devote to it, the more so as there is little doubt that means will be found to give fresh currency to this voice from one in whom, at times, America as well as Catholic America seemed to be incarnate. Two or three, however, seem to cry aloud for quotation.

No charge, for instance, was so plausibly advanced by Mr. Marshall as that the Church in America was merely letting its principle of a closely coöperating Church and state lie in abeyance, meantime allowing “state authorities for political reasons—that is, by favor and not by right—to tolerate other religious societies.” Could “such favors,” it was asked, “be accepted in place of rights by those owning the name of free men?”

The sentiment (one admits it freely) is not Mr. Marshall’s invention. It was, there can be no doubt, very much in the air that the wise old Cardinal of Baltimore breathed seventeen years ago. He met it then, quite simply and frankly, by pointing out that the Constitution of our fathers when it dissociated America from any concept of a state church, made a clean sweep of privilege, and settled the question of comparative degrees of “favor” at the same time and by the same instrument.

"They [Catholics]," wrote the Cardinal, "accept the Constitution without reserve, with no desire, as Catholics, to see it changed in any feature. . . . The separation of Church and state in this country seems to them the natural, inevitable and best conceivable plan, the one that would work best among us, both for the good of religion and of the state. . . . No establishment of religion is being dreamed of here, of course, by anyone; but, were it to be attempted, it would meet with the united opposition of the Catholic people, priests, and prelates."

To the question of a possible clash in jurisdiction, which is as old as the history of any church which has not merely been a department of government, the Cardinal replies by reiterating the principle of independent functions, rooted, though contemporary idolaters of the supreme state seem to forget it, in natural quite as much as in ecclesiastical law.

"The Church," he told us, "holds that the civil government has divine authority, just as has the ecclesiastical; that the limits of each are fixed by the nature of its purpose . . . and that members of the Church are bound to obey the state within its own domain, in all things that do not contravene the moral law."

The old Cardinal never lacked courage. His courage, indeed, was the quality that most endeared him to his fellow-countrymen of all denominations. In adding this last phrase, he was well aware that he stood with one foot in that famous "twilight zone" of conscience, defined by Mr. Marshall as territory "in which it is impossible to determine to the satisfaction of both in which jurisdiction the matter lies." In expressing his

conviction that never, from any act of a government to which every loyalty that was not due God was freely and lovingly rendered, would such a predicament arise, Cardinal Gibbons spoke words that ring strangely prophetic and which our neo-Erastians might well ponder when scrutinizing possibilities of conflict:

“There are forces, I know, that tend to paternalism and Caesarism in government; but true Americanism recognizes that these forces would bring disaster on American liberties. So long as these liberties, under which we have prospered, are preserved in their fullness, there is no danger of a collision between Church and state.”

In re-reading the words of a man who passed years ago “beyond these voices,” and comparing them with the note of mistrust and suspicion that is so prevalent today, it is impossible not to be afflicted with a little sadness. The thought of which Cardinal Gibbons was the spiritual heir was so brave in its essence! The founders of the republic, when they inaugurated the greatest experiment in democracy the world will ever know, took an immense draft upon the future. They knew (for they were men of philosophic thought, quite aware of the dualism of human nature) that the energies they were releasing would not be confined to the material sphere. Thanks to them, Americans, during the first century and a half of their history, have seen members of a body they were taught to consider the child of the state, spoiled or despoiled by turns, not only sharing in a vast material growth, but inevitably, as the very memories of disability faded away, acquiring the confident belief that no single part or parcel

of their political inheritance as free Americans would be refused them. Today a crisis seems to be impending. Far more than the comparative credit or discredit of any religious communion among our citizenry depends on its just solution. Upon the day which decides that a Catholic citizen of the United States, possessing all the qualifications which the Constitution lays down, and commanding the unlimited respect of his own commonwealth among free states, is ineligible for the highest federal office because he is a Catholic, the American Constitution may still remain the least imperfect instrument of government in an admittedly imperfect world. But it will not, for any practical purpose, be the Constitution that the old Maryland Cardinal, who thought he knew it, died believing in and loving.

COMMUNICATIONS

ON

THE SMITH-MARSHALL CONTROVERSY

New York, N. Y.

TO the Editor:—Prevalent discussion dealing with the supposed obligations and impediments of constitutional officers of our government, in the event of a conflict between Church and state, seems on the one hand, to indicate that Protestants frequently fear that a Catholic incumbent would favor the Church; while, on the other hand, it indicates that Catholics are often of the opinion that such a conflict could never arise.

But admitting that the conclusions of the latter are logically sound, there still remains the broad area of apparent conflict, and reference to the attitude of the Church in this field may clear the atmosphere and dispel the fears of intelligent doubters.*

Accordingly, it may be restated that, in the event of conflict, Roman Catholic constitutional officers of government, in a country of diversified religious population such as in the United States of America, are invariably required by the Church ("under pain of sin") to fulfill every constitutional obligation, precisely for the same nationalistic reasons and in the same manner and to the same extent that a non-Catholic would have to fulfill a similar obligation under similar circumstances.

The contention that no conflict between the principles of Church and government could possibly arise, seems to be at least arguable. For example: The opposition of the Catholic Church to divorce (*a vinculo matrimonii*) is well known. It is also well known that many Catholic jurists are frequently required, in the performance of their constitutional obligations, to grant divorces, regardless of the tenets of their Church.

Yet, intelligent Catholics and Protestants alike seem to have overlooked the fact that in this constantly recurring apparent

conflict, the Church has never sought to prohibit a Roman Catholic judge from granting a divorce for cause, even when the parties suing were themselves nominal Catholics. Nor does the Church require a Catholic judge who grants a divorce to seek absolution on the ground that in so doing he has sinned.

This emphasizes, I think, the broad policy of the Church in upholding the civil rights of the governed and in supporting the principle of separation of Church and state, as provided for in our various and variable constitutions.

Indeed, in so far as I know, and I am fairly familiar with the courts, no Roman Catholic judge has ever sought to evade a divorce calendar on the theory of conscientious objection although such an attitude would doubtless be respected as a discretionary disqualification here, as it often is in other civil actions.

JOHN M. GIBBONS.

*At the instant of placing this in the mails, the reply of Governor Alfred E. Smith to the open letter of Charles C. Marshall, Esquire, is released. Therefore, it is conceded that no further clearing of the atmosphere by anyone is necessary and that henceforth there will be no "intelligent doubters."

The communication goes forward, nevertheless, in the belief that the novelty of the point made about the attitude of the Catholic Church—in upholding our constitutional provisions for divorce—may be of academic interest to your readers.

J. M. G.

New York, N. Y.

TO the Editor:—In your open letter to me you refer to my citation, in the *Atlantic Monthly* for April, page 543, of the case of *Watson vs. Jones*, 13 Wall. page 679 (not 579). In that case, the Supreme Court of the United States cites with approval the case of *Chace vs. Cheney*, 58 Ill. page 509, in which at page 537 the Court uses the words, "practices incon-

sistent with the peace and safety of the state shall not be justified."

Both cases are referred to in connection with each other and are quoted from at length by Mr. Guthrie in his opinion to the Roman Catholic hierarchy of America on the Mexican situation. The words quoted above are quoted by him with approval. The doctrine they express is of course fundamental in all constitutional government.

CHARLES C. MARSHALL.

Washington, D. C.

TO the Editor:—Among the pet bêtes noires which Mr. Charles C. Marshall has brought forward in his open letter to Governor Smith is the case of John Felton, beatified in 1886 by Pope Leo XIII along with a number of others long venerated among English Catholics. Of course, these venerable names were not drawn from obscurity by Pope Leo; they were brought to him, and by his official act the continuation of the veneration paid to them was declared to be permissible. Pollen, in his *English Catholics in the Reign of Queen Elizabeth*, states: "No doubt some of those Catholics, and they have been many, who admired Gallican ideals would have refused to admit Felton's claim to martyrdom; and although his name and Percy's occur in Leo XIII's decree of 1886, it must be remembered that this decree is so far only permissive." John Felton has not been canonized; his beatification is a fact, but not infallibly pronounced upon by the Holy See; though what reason exists why anyone should deny that John Felton is in heaven is hard to see. To one who does not believe in purgatory, he must be either in heaven or in hell; I know of no reason for consigning him to this latter place, and if he had a period in purgatory, I believe it is long since passed.

Was the law making it treason to publish the papal bull of excommunication on the statute books of England at the time

when Felton (May 25, 1570) posted the bull on the door of the Bishop's Palace? It was not until Parliament assembled in the thirteenth year of her reign that the special proclamation issued August 8, 1570, by Elizabeth against the bull became the Act of Parliament brought in on April 2, 1571. Felton was condemned as Pollen says, "as a matter of course"; but his act was not an explicit violation of an Act of Parliament. The special proclamation of Elizabeth (July 1, 1570) was issued after Felton's act had been committed and after he had been arrested; I have not the full report of his indictment and trial at hand to determine whether or not he was a victim of an "ex post facto" decree. It may be noted in passing that the Parliament which passed the Act of 1571 was also the first to resist Tudor dictation, and with it, says Pollen, began the Puritan victories over the crown which were to overthrow the monarchy.

John Felton protested to the end that he meant no harm and that he had done none to the queen; he believed that the bull was for the salvation of both herself and the kingdom. Pius V has been canonized, and was revered even among Protestants; yet it is the ordinary belief of Catholic historians that his bull, *Regnans in Excelsis*, was a blunder: why should we refuse our veneration to the sturdy English courage of John Felton, gentleman, who paid with his life for his courageous deed, and willed his ring to the queen? Some of the noblest "traitors" of that age were Protestants, and sometimes even ministers: for more than once they sheltered hunted priests under the laws which followed. John Felton was a hero for his convictions, in the goodly fashion of merrie England; if there be any reason to exclude him from the company of the blessed, there is still time to make it known.

AUGUSTINE WALSH.

AN EDITORIAL NOTE ON GOVERNOR SMITH'S ANSWER

GOVERNOR SMITH'S reply to the Marshall letter is destined to be the most widely read Catholic apology ever published in the United States. It answers queries which came to the fore because of the Governor's importance as a possible presidential candidate, but which have characterized American private opinion for generations. To some extent they are legacies from the time of the Religious Revolution; and it was easy for Father Duffy, the Governor's counsel regarding matters of canon law, to show that the Church's attitude toward them is modified by circumstances, changes in the concept of state government, and constitutional practice. Catholic principle, in short, never reckons with "a" state, but always with "this" or "that" state. Governor Smith himself could not deal with them authoritatively as an historian or theologian, but his burry speech as a citizen and a man entrusted with high executive office by the people of a great commonwealth, treats of them in a direct, practical, common-sense way which must gain the assent of the average intelligent person. "I have taken an oath of office in this state nineteen times. Each time I swore to defend and maintain the Constitution of the United States. All of this represents a period of public service in elective office almost continuous since 1903. I have never known any conflict between my official duties and my religious belief. No such conflict could exist. Cer-

tainly the people of this state recognize no such conflict. They have testified to my devotion to public duty by electing me to the highest office within their gift four times." This is language everybody can understand. It is the testimony of experience supported by a record of immaculate personal integrity and complete public confidence. If any Catholic is familiar with the matter in hand, it is Governor Smith; if anybody can be trusted to tell the plain truth about it, it is also he.

THUS, through a "felix culpa" on the part of some too hasty journalists, the country received an Easter letter which, though written by a layman, everywhere draws strength from the tradition of the Universal Church. But we may properly recall that Governor Smith's testimony does not stand alone. It is reinforced to the ultimate jot and tittle by the Catholic record in the United States. "Toleration" and "law" were associated for the first time in this country by the Catholic colonists in Maryland; and the code they fixed was broken only when the power to enforce it was wrested from their hands by enemies of their faith. They shared in the signing of the Declaration and the adoption of the Constitution. Every critical hour in the subsequent history of the republic found them ready to make heroic sacrifices, untroubled by any spectre of divided allegiance. Fredericksburg is part of their history, and they shared in the tangled tragedies of the Argonne. Immigration swelled their numbers with millions of people drawn from the most diverse

social and racial groups, but nowhere did representatives of the Church assail American institutions (in the manner of Communists, for instance) and nowhere was there heard a syllable of any Catholic disloyalty to the Constitution. Indeed, though Catholics became numerically a power in the nation, they have never once attempted to use governmental power for their own ends, and they have zealously refrained from all attempts to write one of their special moral principles into federal or state law. They are simply citizens; and until that unimaginable, dismally hypothetical day when God and country will no longer be associated in the United States, they will ask to be judged only by the loyalty and integrity of their citizenship.

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