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“What the Hell is an Encyclical?”: Governor Alfred E. Smith, Charles C. Marshall, Esq., and Father Francis P. Duffy

Thomas J. Shelley

Introduction

In the spring of 1927 it became increasingly likely that Governor Alfred E. Smith of New York would be the Democratic candidate for President of the United States in the election of 1928. His Catholic religion was bound to be an issue as it had been at the 1924 Democratic convention in Madison Square Garden when Smith and William G. McAdoo fought one another to a draw on the 103rd ballot. According to Smith himself, the religious issue first surfaced in a serious way in 1927 in the form of an open letter to him from Charles C. Marshall in the April issue of the *Atlantic Monthly*.

Both before and after the publication of this open letter, there were numerous allegations about Smith's religion, but many were of such a scurrilous nature that they could be safely ignored. For example, a photograph of Smith at the dedication of the Holland Tunnel in New York City was circulated in some Protestant churches in Georgia with the explanation that it was a tunnel to Rome for the pope to use after Smith became President of the United States. After *The Baptist Messenger* in Oklahoma published a story originating with a “Jesuit Father” in “Turlin, Italy” alleging that Catholics were authorized by canon law to murder obstinate heretics, the *New York Times* exclaimed, “This credulous Oklahoma outburst gives a hint of the kind of crazy nonsense that is being passed about.”¹

1. *New York Times*, May 3, 1927. Smith himself is the source for the Holland Tunnel story. See his autobiography, *Up to Now* (New York: Viking Press, 1929), pp. 413-414. For a survey of the “crazy nonsense” that occurred during the campaign, see Michael Williams, *The Shadow of the Pope* (New York: Whittlesey House, 1932). The best account to date of the Smith-Marshall controversy is to be found in Donn C. Neal, *The World Beyond the Hudson: Alfred E. Smith and National Politics, 1918-1928* (New York and London: Garland Publishing, Inc., 1983), pp. 211-220, who makes extensive use of the Marshall Papers in the Library of Congress.

However, Charles Marshall's open letter could not be dismissed as crazy nonsense. Marshall was a retired New York City attorney and a prominent high-church Episcopalian layman who prided himself on his knowledge of Catholic theology and canon law. His open letter was a scholarly essay whose polemical bite was neatly camouflaged beneath a patina of seemingly objective legalistic arguments. His conclusion, however, was unambiguous. In his opinion, no conscientious Catholic could be trusted to discharge the duties of President of the United States. He based his argument largely on several encyclicals of Pope Leo XIII setting forth the Catholic teaching on the relationship of church and state.

After reading Marshall's open letter, Al Smith is supposed to have said, "What the hell is an encyclical?" In his autobiography, he expressed his reaction more prosaically by saying: "The Marshall letter raised questions of theology." Smith's formal education had ended in the eighth grade, and he added: "At no time in my life have I ever pretended any fundamental knowledge of this subject."²

Charles Marshall's Open Letter

Marshall prefaced his remarks by expressing admiration for Smith's integrity, honesty and sense of fair play although there was more than a whiff of condescension in the backhanded compliment that "the American people take pride in viewing the progress of an American citizen from the humble estate in which his life began to the highest office within the gift of the nation."³

Marshall's basic quarrel with Catholic teaching centered on what he called "the ancient and dangerous theory of the Two Powers" as expressed by Pope Leo XIII in 1885 in the encyclical *Immortale Dei*. Ironically many Catholics

2. Smith, *Up to Now*, p. 367. The pithier quotation was repeated as recently as 1995 by Martin Marty who said that the story gained in the telling when repeated as "enkyklical." *A Short History of American Catholicism* (Allen, TX: Thomas More, 1995), p.160.

Marshall was born in Poughkeepsie, New York, on July 19, 1860, educated in public and private schools, and received a LL.B. degree from Columbia University Law School in 1882. In 1911 he retired as senior partner of the New York City law firm of Marshall, Moran and Williams to give his attention to the question of the relationship between church and state. He was a member of the Sons of the Revolution and the Society of Colonial Wars. In 1927 he resided at Milestone, his estate in Millbrook, Dutchess County, New York, where his family had lived for 200 years. He died in Millbrook on June 9, 1938.

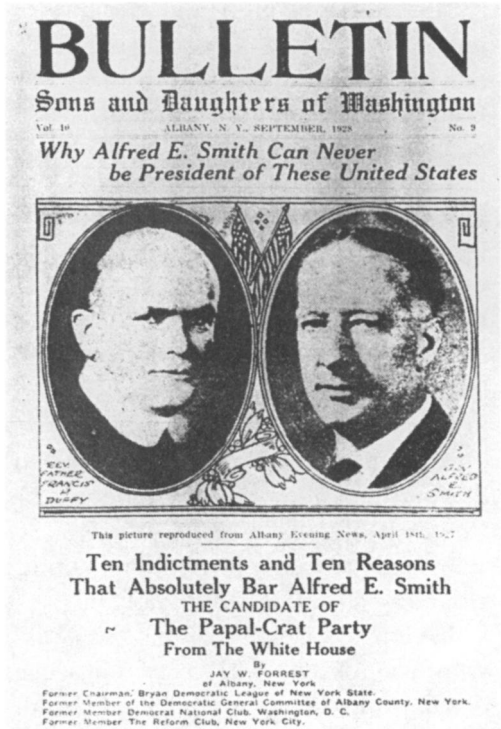
Although Marshall was widely regarded as a prominent Episcopalian layman, he once told an acquaintance: "I am not an Anglican in any true sense of that word nor am I an Episcopalian. Belonging to the Christian religion seems to me merely finding the sacraments wherever you can. . . ." Library of Congress, Manuscript Division, Charles C. Marshall Papers (Hereafter LC), Marshall to Georgiana Owens, August 30, 1927.

3. Charles C. Marshall, "An Open Letter to the Honorable Alfred E. Smith," *Atlantic Monthly* 139 (April 1927): 540-549.

regarded that encyclical as a prudent retreat from the full-blown conception of papal sovereignty enunciated by medieval pontiffs like Boniface VIII. Leo clearly conceded a legitimate sphere of authority to the state when he said: “The Almighty has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things.”

However, Marshall found two disturbing implications in Leo’s encyclical. First, he claimed that for Leo the “ecclesiastical power” referred exclusively to the Roman Catholic Church and that, therefore, all other churches lacked the “natural right to function on the same basis as the Roman Catholic Church in the moral and religious affairs of the state.” Marshall admitted that Leo also stated that it was sometimes expedient for the state to tolerate the existence of non-Catholic religions. However, Marshall complained, under this dispensation, “other churches, other religious societies, are tolerated by the state, not by right, but by favor.” He asked Governor Smith pointedly “whether such favors can be accepted in place of rights by those owning the name of freemen.”

Marshall’s other objection to the Two Power theory stemmed from the fact that there would inevitably be grey areas of conflicting claims by both church and state over such matters as marriage and education. He quoted Pius IX’s Syllabus of Errors: “To say, in the case of conflicting laws enacted by the Two Powers, the civil law prevails, is error.” Therefore, Marshall concluded that “the doctrine of the Two Powers, in effect and theory, inevitably makes the Roman Catholic Church at times sovereign and paramount over the state. . . .” Having established this conclusion to his satisfaction, he then asked Smith “whether, as a Roman Catholic, you accept as authoritative the teaching of the Roman Catholic Church that, in case of contradiction . . . the jurisdiction of the Church should prevail. . . .?”



A typical anti-catholic pamphlet published in 1928. (Courtesy: Archives of the Archdiocese of New York, AANY.)

After delivering this didactic theological excursus, Marshall addressed a number of inflammatory contemporary issues. He called attention to the previous year's International Eucharistic Congress in Chicago where, he suggestively noted, the Catholic Church had "declared her presence and power in American life." Only two years earlier, in a landmark decision, the United State Supreme Court had declared unconstitutional an Oregon law outlawing private and religious schools. Marshall opined that the court would have come to the opposite conclusion if there had been any indication that parochial schools "gave instruction inconsistent with the peace and safety of the state." He also dragged up the hoary chestnut of the Marlborough marriage case, asserting that the annulment of the marriage by the Roman Rota showed contempt for both American and English sovereignty.

Even the religious situation in Mexico found its way into Marshall's letter. This part of the letter may have rankled American Catholics the most, for at the time the Calles regime was engaged in a bloody persecution of the Catholic Church. William Guthrie, a distinguished Catholic constitutional lawyer, had recently published a brief strongly critical of Calles. Marshall took issue with Guthrie and came down strongly on the side of the Mexican government.

In conclusion, Marshall gave vent to his wounded high-church sensitivities when he took Leo XIII to task for declaring Anglican Orders invalid and canonizing John Felton, the intrepid Catholic layman who had been executed in Elizabethan England for posting the papal excommunication of Elizabeth outside Lambeth Palace. "Strange fruit" on the part of Catholics, he fumed, for the "magnanimity" displayed by Protestant England in giving them religious toleration.

Marshall's final thrust was a supercilious invitation to Smith for "a disclaimer by you of the convictions here imputed, or an exposition by others of the questions here presented, as may justly turn public opinion in your favor."⁴

Marshall was pleased with the reaction to his letter. Of eight-six newspapers that he surveyed from all across the country, he found that only six commented negatively on his letter. He also said that he had received "not a single disagreeable letter from Roman Catholics." As he might have expected, he received many favorable letters from Protestants. They ran the gamut from the semi-literate to the highly sophisticated.

One taciturn admirer contented himself with a one-line compliment: "Stay with 'em, Big Boy, you know your oats." Another correspondent, self-described as "a loyal red-blood American citizen," thanked Marshall for defending "the constitution of this God-favored country of ours against those

4. Marshall sent Smith an advance copy of the open letter on March 24, 1927. Always something of a fusspot, he followed this with a letter on April 3 making a minor correction in one of his quotations, and another letter four days later giving exact references to his quotations from Leo XIII's encyclicals. LC, Smith to Marshall, March 30, 1927; Marshall to Smith, April 3, April 7, 1927, copies.

who would destroy American homes and liberty.” Episcopal bishop A.S. Lloyd expressed “keen satisfaction” at Marshall’s letter and added sententiously: “Will it not be great when the Head of the Church shall have set that great Communion free from the incubus which fear for the truth in the first place induced men to substitute for the liberty that makes men free?” One of the most unusual communications came from the pastor of a Polish National Catholic Church in Philadelphia. He asked permission to publish the open letter in Polish, a permission that Marshall readily granted.⁵

Governor Smith and Father Duffy

When Smith first saw Marshall’s letter in galley form, his reaction, according to his daughter Emily Smith Warner, was one of “resentment, frustration and hurt.” She said that her father was “all but overwhelmed” by Marshall’s display of theological and canonical learning.⁶ On the spot Smith angrily decided to ignore it and make no response. However, his publicity director, Belle Moskowitz, insisted that he had to make some kind of reply. She summoned another trusted aide, Judge Joseph M. Proskauer, who also told Smith that he simply had to answer Marshall’s letter.

“I’m not going to answer the damn thing,” Smith told Proskauer. “I have been a Catholic all my life,” he explained, “and I never heard of these encyclicals and papal bulls and books that [Marshall] writes about.” Smith then suggested that Proskauer should write a response. “Well,” replied Proskauer, “that would make it perfect. A Protestant lawyer challenges a Catholic candidate on his religion, and the challenge is answered by a Jewish judge.”

Smith finally agreed that the response had to come from him personally, but he asked Proskauer to help him compose it. “But I need help too,” Proskauer replied. “I need the help of a Catholic priest, and it isn’t just any Catholic priest who will do. I want one with a record of Americanism and patriotism that no person in the world can possibly question.” At this point they both agreed to enlist the services of Father Francis P. Duffy.⁷

Duffy was then pastor of Holy Cross Church on West 42nd Street in Manhattan. Without a doubt he was the most popular priest in New York City, almost as popular with Protestants and Jews as he was with Catholics. He was also probably the best known priest in the whole nation because of his service

5. LC: Marshall to Ellery Sedgwick, April 2, 1927, copy; H.G. Fuller to Marshall, April 3, 1927; John Jackson to Marshall, April 4, 1927; A.S. Lloyd to Marshall, April 5, 1927; Rev. Br. Krupski to Marshall, April 6, 1927; Marshall to Krupski, April 5 [sic], 1927.

6. Emily Smith Warner with Hawthorne Daniel, *The Happy Warrior: The Story of My Father, Alfred E. Smith* (Garden City: Doubleday, 1956), p. 182.

7. Ibid., pp. 183-184.



Francis P. Duffy, Chaplain of the Fighting Sixty-Ninth, and Cardinal Patrick Hayes (Courtesy of the author)

as a chaplain to the 69th New York Regiment in World War I for which he had been decorated by both the American and French governments. Duffy fitted perfectly Proskauer's profile of a priest whose patriotism no one could question.⁸

However, there was another side to Duffy that also made him the ideal person to serve as advisor to Smith and Proskauer. For fourteen years, from 1898 to 1912, Duffy had been a professor at St. Joseph's Seminary, Dunwoodie, the major seminary of the Archdiocese of New York. Duffy's teaching career at

8. Duffy was born in Cobourg, Ontario, on May 2, 1871, of Irish-Canadian parents. He came to the United States as a young man because of poor health and was ordained a priest of the Archdiocese of New York on September 6, 1896. He provided his own account of his wartime experiences in *Father Duffy's Story* (New York: G.H. Horan Company, 1919). There is a laudatory popular biography by Ella M.E. Flick, *Chaplain Duffy of the Sixty-Ninth Regiment, New York* (Philadelphia: The Dolphin Press, 1935) which is useful mainly for the letters that it contains. She devotes less than a page to Duffy's role in the Marshall-Smith controversy. See also the perceptive article on Duffy by historian Richard J. Purcell in the *Dictionary of American Biography*, Supplement I, pp. 267-269. In the popular 1940 Warner Brothers' film, *The Fighting Sixty-Ninth*, Duffy was played by actor Pat O'Brien.

Dunwoodie overlapped at both ends the golden years of that institution when it was briefly one of the outstanding centers of Catholic scholarship in the United States. Duffy himself was one of two faculty members who were responsible for initiating the *New York Review*, which was the leading American Catholic theological journal of its day.

The first rector of Dunwoodie, the Sulpician Edward R. Dyer, described Duffy as "one of the most efficient men I have ever seen work in a seminary." He was enormously popular with the students despite the fact (or perhaps because of the fact) that he drove them hard academically. "Lack of faith is not our difficulty," he said in 1901, "unless it be that worst form of infidelity which fears to look at the truth. Our main drawback is a certain intellectual sloth which masquerades as faith."⁹

In the aftermath of the encyclical *Pascendi*, Pius X's condemnation of Modernism in 1907, Duffy, like many of the Dunwoodie faculty, was suspected of Modernism. In 1909 Archbishop John Murphy Farley almost dismissed him from the faculty at the time that he fired the rector, Scripture scholar James Driscoll. At the last moment, Farley changed his mind about Duffy and allowed him to stay at Dunwoodie for another three years. Then in September 1912 Farley appointed Duffy to establish the new parish of Our Savior in the Bronx. The following year Farley warned the apostolic delegate in Ottawa that Duffy was "a priest of good parts and very intelligent, but . . . he has shown for years a strong leaning toward the liberal tendency of the time called modernism."¹⁰

Duffy's war record is ample proof of how unfair it was to equate his progressive theological views with heterodoxy. He spared no effort to provide his troops with Mass and the sacraments and earned their respect and affection as

9. Sulpician Archives of Baltimore (Hereafter SAB), RG 8, Box 1, Dyer to James Driscoll, January 18, 1905. Duffy, "Does Theology Preserve Religion," *American Ecclesiastical Review* 25 (1901): 382.

Duffy showed an early interest in the intellectual life. When asking Archbishop Michael Corrigan for permission for a second year of graduate study at the Catholic University of America in 1897, he said: "I feel that the best work that I can do for that Church whose interests you have so much at heart will be done with the help of such intellectual training I can now receive." Archives of the Archdiocese of New York (Hereafter AANY), Duffy to Corrigan, April 19, 1897. Duffy studied from 1896 to 1898 at the Catholic University of America where he obtained a S.T.B. degree. As late as 1905 he was still hoping to earn a doctorate from the university, but never did so. Archives of the Catholic University of America (Hereafter ACUA), Edward Pace Papers, Duffy to Pace, July 16, 1905.

That same year St. Mary's Seminary, Baltimore, awarded Duffy an honorary Doctor of Divinity degree, which he valued, he told Edward Dyer, not "on account of the vanity of being able to add the two magic letters to my name, but because it will be of real service to me in my work as teacher, editor and writer." He also told Dyer that "there will be always a bit of your liberal-conservative self in my views and actions." SAB, RG 10, Box 16, Duffy to Dyer, June 12, 1903.

10. AANY, I-12, Farley to Patrick J. Hayes, June 25, July 22, 1909; Farley to Archbishop P.F. Stagni, O.S.M., March 4, 1913; U-4, Duffy to Farley, January 12, 1916. On Dunwoodie in Duffy's time, see Thomas J. Shelley, *Dunwoodie: The History of St. Joseph's Seminary* (Westminster, MD: Christian Classics, 1993), pp. 92-170.

he had done with the seminarians at Dunwoodie. "After all," he said, "a priest's home is in the parish he is assigned to, and the old Sixty-Ninth is a mighty comforting parish."

One of his proudest moments came one day when he was standing next to some French army officers as a detachment of American troops marched past them. "But you know them all," the French officers exclaimed, "and they all know you, and they seem so pleased to see you!" As Duffy told the story later, he admitted: "I am afraid that I did not disclaim knowing all of them individually, but I did explain that the smiles that wreathed their countenances were a tribute to my priesthood rather than my person. They did not quite see it, but I know that if it were not for my priesthood, I would not count for much with them. And that's the way I like it best."¹¹

One of his commanding officers, Brigadier General Michael J. Lenihan, described Chaplain Duffy as a "scholar, soldier, priest and manly man." He added: "I regard him as the outstanding figure of the Rainbow Division. He was first of all a priest." Lenihan noted that Duffy did not confine his priestly ministrations to Catholics. "Non-Catholics came to him in great numbers for spiritual advice," said Lenihan, and he recalled how Duffy once secured the appointment of a Protestant chaplain for a unit that was composed mainly of Protestant soldiers. Mischievously Duffy told Episcopal Bishop Brent that "the way that the clergy of the different churches got along together in peace and harmony in this division would be a scandal to pious minds."¹²

After the war, Duffy was made pastor of Holy Cross Church, located a block west of Times Square. The parish boundaries included both New York's theatre district and a swath of Hell's Kitchen, a decaying immigrant neighborhood of old-law tenements and cold water flats. Duffy was at home in both worlds, movingly effortlessly between the literati and the longshoremen, and throughout the city at large. Alexander Wolcott, writing in the *New Yorker*, said that when Father Duffy "walked down the street — any street — he was a curé striding through his own village. Everyone knew him." "I had never seen so many *pleased* faces," said Wolcott. "Father Duffy was of such dimensions that he made New York into a small town."¹³

Duffy kept his intellectual interests alive by serving as President of Cliff Haven, the highly successful Catholic Summer School of America, from 1925 until his death in 1932. He was much in demand as a speaker both at church and civic events, and on those occasions he displayed a consistently ecumeni-

11. AANY, U-4, Duffy to Farley November 11, 1917; I-22, Duffy to Farley, December 21, 1917; I-24, Duffy to Farley, February 24, 1918.

12. AANY, Lenihan to John J. Mitty, November 9, 1933; *Father Duffy's Story*, p. 100. Mitty, then coadjutor Archbishop of San Francisco and an old friend of Duffy, was collecting material for a biography which unfortunately he never wrote.

13. Quoted in Flick, *Chaplain Duffy*, pp. 173-174.

cal outlook even during the height of the Ku Klux Klan agitation in the early 1920s.

In October 1923 Duffy delivered an address in New York City before the Catholic Writers' Guild on "The Intolerance of Intolerance" in which he urged Catholics not to over-react to the bigotry of the Klan. "Catholics, Protestants and Jews must work together to reduce the source of friction," he said. "We found during the war that we could work in harmony with Protestants without any sacrifice of principle." Duffy even defended the Masons before this largely Catholic audience, saying, "I am bitterly opposed to the attempt made by some Catholics to create a state of friction between the Catholic Church and the Masonic Order. . . . There is no priest who does not number among his friends one or more Masons." Duffy's advice for his fellow Catholics was simple: "If we can go along serving our Church and our country as a sincere, patriotic body," he said, "then all the forces of anti-Catholic bigotry will go to pieces."¹⁴

A highly respected contemporary New York priest, John P. Chidwick, said of Duffy: "Of his tolerance toward those outside of our faith, he was most liberal, sometimes one might think too much so. Yet, for the dogmas and doctrines of the Church, he was orthodox."¹⁵

This was the man to whom Al Smith and Judge Proskauer now turned for help in framing an answer to Charles Marshall. They knew that in Duffy they were getting a proven patriot and a popular hero. They may not have realized, however, that they were also getting a theologian who, like John Henry Newman in the *Letter to the Duke of Norfolk*, welcomed an opportunity to respond not only to critics outside the Church like Marshall, but also to those Catholics whose anachronistic opinions gave credibility to Marshall's charges of Catholic intolerance.

“Catholic and Patriot: Governor Smith Replies”

At the *Atlantic Monthly* the editor, Ellery Sedgwick, awaited a response to Marshall's letter from Smith or some other Catholic spokesman. He heard rumors that the American Catholic bishops were thinking of entrusting the

14. New York *Catholic News*, October 27, 1923.

15. AANY, Chidwick to John J. Mitty, October 21 [1933-?]. As the shaky grammar indicates, Chidwick was no scholar, but he was a man of sterling integrity. A former navy chaplain and the first hero of the Spanish-American War, Chidwick was aboard the U.S.S. *Maine* when it exploded in Havana harbor and won widespread praise for his care of the dead and wounded. He was the rector of Dunwoodie during the final three years that Duffy was a member of the faculty.

Duffy's health was always precarious, which led Chidwick to say that there were two things that he especially admired in Duffy. First, at the end of the Spanish-American War, he volunteered to work as a chaplain at the typhoid-infested Camp Black in Montauk Point, New York. Secondly, during World War I he volunteered for service in France at the age of forty-six, "an age," said Chidwick, when "he could have been easily excused and where the hardships of the campaign might severely impair his health."

response to “a select group of Jesuit casuists” which, he feared, “would involve the public in a discussion leading absolutely nowhere.” Both John A. Ryan of the Catholic University of America and Jesuit scholar John J. Wynne submitted rebuttals; in fact, said Sedgwick, “every mail brings new champions to the list,” and he informed Marshall that he had refused a good number of articles on both sides of the issue.¹⁶

Meanwhile Judge Proskauer and Father Duffy were busy at work on Governor Smith’s reply. When they brought the draft to him, he then made extensive modifications in the text. Proskauer later told Emily Warner: “As was the case when any document was drafted for your father, this one I handed him was revised and revised again until it bore the unique imprint of his own personality.” Smith then told Proskauer to send the final version to the *Atlantic Monthly*, but Proskauer suggested one other preliminary step, that it should be submitted first to Cardinal Patrick Hayes for his theological approval. Smith agreed; Proskauer called on Hayes that same evening; the cardinal read the text and pronounced it “good Catholicism and good Americanism.”¹⁷

When Sedgwick received Smith’s reply in early April, he alerted Marshall and warned him that Smith’s answer was very different from what Marshall had been anticipating. “There can be no doubt,” he said, “that the impression that it will produce on the general public is that of a candid, painstaking, honest man, striving to answer without reservation.”¹⁸

Sedgwick himself was responsible for the felicitous title: “Catholic and Patriot: Governor Smith Replies.” Smith’s answer was markedly different in both substance and style from Marshall’s open letter. Lawyers turned theologians are apt to sound like prosecuting attorneys even when they are discussing the most sublime matters. That was one of the shortcomings of Marshall’s carefully crafted letter. Smith, on the other hand, wrote with the ingenuousness of a decent man whose most cherished beliefs had been unfairly assailed. He also knew how to turn his personal limitations into assets.

16. LC, Sedgwick to Marshall, March 31, April 9, April 14, 1927.

17. Warner, *Happy Warrior*, pp. 184–185. Proskauer tells the same story in his memoirs, *A Segment of My Times* (New York: Farrar, Straus and Company, 1950), p. 56.

Cardinal Hayes was a proverbially cautious man, so much so that the New York clergy facetiously claimed that his real episcopal motto was not *Mane Nobiscum Domine*, but “You Can’t Be Too Damned Careful.” However, Proskauer was impressed at how careful Hayes was to avoid entanglement in political matters — unlike many contemporary Protestant clergy. According to Proskauer, Hayes said, “I would give almost anything to see Al Smith President of the United States, but I can take no part in a political campaign or give any advice on a political question. Before I even read this, I must make clear to you that I consider it my duty to answer one question — and one only. That question is: ‘Does this document contain anything offensive to the dogma of the Roman Catholic Church?’ If you understand that clearly, I will read it; otherwise, I prefer not to.”

Proskauer said: “I assured him that he had stated precisely the reason we were submitting the reply to him. Thereupon he studied the document with a great deal of care. When he finally finished, he gave it as his considered opinion that it was both good Catholicism and good Americanism.” *Ibid.*

18. LC, Sedgwick to Marshall, April 14, 1927.

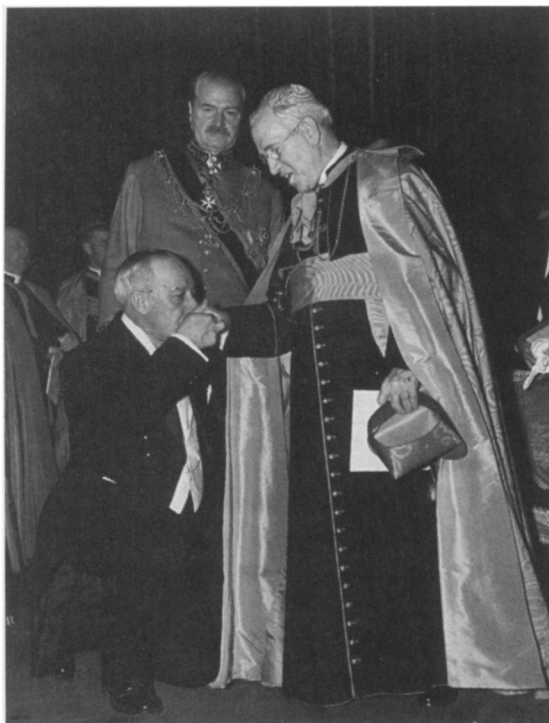
"I am only a layman," he protested to Marshall. "I am neither a lawyer nor a theologian." He told Marshall that after reading his letter, his first impulse was "to answer you with just the faith that is in me." "But," he added, "I knew instinctively that your conclusions could be logically proved false." Therefore, the governor explained, dipping for a moment into vintage Fourth-of-July oratory, he turned for theological guidance to one who "wears upon his breast the Distinguished Service Cross of our country, its Distinguished Service Medal, the Ribbon of the Legion of Honor, and the Croix de Guerre with Palm of the French Republic . . . Father Francis P. Duffy, now in the military service of my own state."

Smith stated clearly that it was from Duffy that he "learned whatever is hereafter set forth in definite answer to the theological questions you raise." The ideas were Duffy's, but, as Proskauer indicated, the words were Smith's. Like a scholastic theologian *manqué*, Marshall had dealt with theories; like a practical American, Smith appealed to facts. He mentioned that he had taken the oath of office nineteen times and had never experienced any conflict between his official duties and his religious beliefs. He pointed to the two Catholic chief justices of the U.S. Supreme Court — Roger Brooke Taney and Edward Douglass White — whose experience had been the same. He admitted that he knew many Catholic prelates and priests, but said that none of them had ever attempted to influence his judgment.

Marshall had raised the issue of papal encyclicals. Smith paid him back in spades. "By what right," he complained, "do you ask me to assume responsibility for every statement that may be made in any encyclical letter?" He then explained the limited and varied authority of encyclicals, even quoting Cardinal Newman to the effect that the Syllabus of Errors had "no dogmatic force." On a more personal note, he added: "So little are these matters of the essence of my faith that I, a devout Catholic since childhood, never heard of them until I read your letter."

Marshall's most telling blows had been his contention that Catholics were committed to both union of church and state and also to the domination of the church over the state. Smith addressed both issues head-on. With regard to the first, he could hardly deny that union of church and state was the ideal that was enshrined in Catholic theology and papal encyclicals. However, he claimed that this ideal applied only to purely Catholic states, and that such states no longer existed anywhere in the world, not even in Spain or Latin America. He quoted Archbishop Austin Dowling of St. Paul, who had recently said that this traditional Catholic church-state theory "may well be relegated to the limbo of defunct controversies." "I think that you have taken your thesis from this limbo of defunct controversies," he chided Marshall.

With regard to Marshall's contention that Catholics must always side with the Church in case of conflict with the state, Smith referred him to the Thirty-



Govenor Al Smith kissing the ring of Cardinal Hayes (Courtesy:AANY)

Nine Articles of his own Episcopal Church which stated clearly in Article XXXVII: "The power of the civil magistrate extendeth to all men, as well clergy as laity, in all things temporal, but hath no authority in things purely spiritual." As if repeating the lesson for a not too bright student, Smith gently explained to Marshall: "Your Church just as mine is voicing the injunction of our common Savior to render unto Caesar the things that are Caesar's, and unto God the things that are God's."

Besides, Smith added for good measure, "You write as though there were some Catholic authority or tribunal to decide with respect to such conflict." He informed Marshall that there was no

such entity, and that for Catholics "conscience is the supreme law which under no circumstances can we ever lawfully disobey." Here again he dipped into American Catholic history and produced an apposite quotation from Archbishop John Ireland, who once said that, if the pope should interfere in civil or political matters, American Catholics would respond by telling him: "Back to your own sphere of rights and duties, back to the things of God." As further confirmation that this was sound Catholic teaching, he also invoked John Ireland's assurance that "both Americanism and Catholicism bow to the sway of personal conscience."

These and other quotations from American Catholic prelates including John England, Cardinal Gibbons and even that walking icon of *Romanità*, Cardinal William O'Connell of Boston, were likely to linger in the popular memory long after the more controversial passages of Leo XIII's encyclicals had been forgotten. They obviously came from Duffy, and Duffy must have had them at his fingertips to produce them on such short notice.

Politely but firmly Smith answered Marshall's complaints about contemporary issues. He reminded him that Leo XIII's statement on Anglican Orders

was not a gratuitous slur but a response to a question raised by Anglicans. He pointed out that the decision of the Roman Rota in the Marlborough case was no different from similar decisions issued by Anglican tribunals for members of Marshall's own communion. With regard to Mexico, he called attention to the recent pastoral letter of the U.S. bishops disavowing any intent of urging armed American intervention in the affairs of that country. Smith was at his best (because he was drawing on personal experience) when he responded to Marshall's hints that parochial schools were teaching subversive doctrines. "I and all my children went to a parochial school," he declared. "I never heard of any such stuff being taught or of anybody who claimed that it was."

The *pièce de résistance* was the penultimate paragraph. In nine short, crisp sentences Smith summarized his "creed as an American Catholic." While proclaiming his belief in "the faith and practices of the Roman Catholic Church," among other things Smith declared his commitment to "absolute freedom of conscience for all men" and "the absolute separation of Church and State." In conclusion he appealed to the decency and fair play of the American people by expressing "a fervent prayer that never again in this land will any public servant be challenged because of the faith in which he has tried to walk humbly with his God."¹⁹

The Aftermath of Smith's Response

Governor Smith's reply had been eagerly awaited by the public. In fact anticipation ran so high that two newspapers obtained stolen copies of the letter and published it before it appeared in the *Atlantic Monthly*. On April 18 *The New York Times* devoted half of its front page to the story, including a front-page sidebar of Smith's creed, and it published the full text of Smith's reply on pages two and three. In an editorial the same day the *Times* praised not only Smith, but also Duffy for his handling of the church-state issue. Throughout the country editorial opinion was overwhelmingly favorable to Smith. Even in the deep South, where suspicion of Smith's religion was strongest, Richard Reid, a Georgia Catholic journalist, sampled fifty newspapers and found them unanimous in giving the victory to Smith. In Albany Smith's office was flooded with telegrams and letters of congratulation, including one from Cardinal O'Connell, who said: "Every Catholic, every American owes you a debt of gratitude for so clear and straightforward a treatment of a delicate question."²⁰

Catholics were understandably elated. *Commonweal* predicted with that

19. "Catholic and Patriot: Governor Smith Replies," *Atlantic Monthly* 139 (May 1927): 721-728.

20. *New York Times*, April 18, 19, 1927; Richard Reid, "The South Reads Mr. Smith," *Commonweal* 6 (May 11, 1927): 8-10. Smith, *Up to Now*, p. 367. Archives of the Archdiocese of Boston, O'Connell to Smith, April 18, 1927, copy.

Smith's reply was "destined to be the most widely read Catholic apology ever published in the United States." *America* was equally pleased, although the Jesuits seemed nervous that American Catholics might now be tempted to ignore papal encyclicals because Governor Smith had never heard of them. Such an attitude would be "gravely erroneous," they warned. The Vatican said nothing. A spokesman for the Holy See said it regarded the whole controversy as a purely internal American affair. Early in May Cardinal Pietro Gasparri, papal Secretary of State, issued a statement affirming the Holy See's indifference to the outcome of the election. Three days later, however, *Osservatore Romano* printed generous excerpts from Smith's reply to Marshall.²¹

Many Democratic politicians were as pleased as the Catholics with the outcome. They were delighted with the publicity that Smith received and thought that his reply would enhance their chances of victory the following November by ending the whispering campaign against him. In fact some Democratic leaders were so impressed with the reaction to Smith's letter that they wanted him to issue a similar statement on that other hot potato that threatened to ruin his election bid — prohibition.²²

Duffy received a great deal of attention as speculation mounted about his exact role in composing Smith's reply. He minimized his own contribution and even joked about it. "Of course, Governor Smith wrote the letter himself," Duffy told the press. "My contribution," he said, "was simply references and theological argument, which have been translated by the Governor into a direct and popular rendering. If I had a fraction of his ability," he added modestly, "I would be at least a Cardinal."²³

Meanwhile, on his estate in Millbrook, an unhappy Charles Marshall pondered the wreckage of his *ballon d'essai*. His mail certainly did not cheer him up. An old friend, Dr. Joseph G.H. Barry, an Episcopalian clergyman, told him: "I am quite sure that you are destined to go down in history as the man who elected Al." Rubbing salt in the wound, he added, "It is something to shine even in a reflected light." Another friend, a Presbyterian minister, delivered an even crueler blow. He asked in all seriousness: "Are you one of the Smith undercover men? "Personally," he added, "I don't think it possible for you to rid yourself of the suspicion that the whole thing is a plant to aid Al Smith."²⁴

21. *Commonweal* 5 (April 27, 1927): 675; *America* 37 (April 30, 1927): 53-55; *New York Times*, April 20, May 11, May 14, 1927. *Commonweal* published a forty-one page pamphlet, *Should A Catholic Be President?*, consisting of articles, editorials and other comments on the Smith-Marshall controversy.

22. *New York Times*, April 19, 1927.

23. *Ibid.*

24. LC, Barry to Marshall, April 20, 1927; A.J.C. to Marshall, April 18, 1927. Another correspondent wrote: "As one Episcopalian to another — should I be permitted to advise one so august as yourself — my suggestion would be to find your own solace in obscurity, and as rapidly as possible." Edward Staats Luther to Marshall, April 19, 1927.

To be sure, much of the mail was quite favorable, such as the letter from an Episcopalian layman who gave Marshall this assessment of the situation: "Governor Smith is, by his own statements, either a good citizen but a poor Catholic, or a good Catholic but a poor citizen." Dr. Barry struck the same note, complaining that Smith's version of Catholicism was really heretical. "Fr. Duffy," he said, "with his quotations, is interesting as practically abandoning the papal position." As for Smith, Barry commented that "Al's statements would probably have led him to the stake in the Middle Ages whereas in the twentieth century they will perhaps lead him to the presidency."²⁵

The whole country was praising Governor Smith for his honesty. "The very jewel of his life has been his unquestioned integrity," said the *New York Times*. However, Marshall was convinced that Smith, perhaps misguided by Duffy, had not given the American people an honest exposition of the Catholic teaching on church and state. There was no advantage to attacking Smith personally, and so Marshall shifted his ground from Smith's faith to the "polity" of the Catholic Church. In a long rambling letter which the *New York Times* published in full on April 19, he made this point but then weakened his argument by citing as his authority a high school textbook written by an obscure Christian Brother in France.

Duffy had little difficulty in blunting the force of Marshall's new attack. "Mr. Marshall's original letter quoted not lay brothers but popes to bear out his contention," Duffy observed. "The Governor, having discussed the statements of popes, need scarcely concern himself with lay brothers." He checkmated Marshall with a quotation from another Catholic school textbook, one which praised the American system of separation of church and state as "the bulwark of our country and of its unequalled liberty, security, peace and prosperity."²⁶

Marshall wanted the *Atlantic Monthly* to publish his second letter to Smith, but the editor, Ellery Sedgwick, refused despite Marshall's pleadings that it was the only way to show the public that they had not been in collusion with Smith. Sedgwick eventually grew weary of Marshall's complaints and hints of legal action, and he agreed to place a one paragraph disclaimer in the July issue of the magazine. It was of course a tacit recognition that Smith had won the debate although Marshall would never have admitted it.²⁷

Perhaps to stem the flow of letters from Marshall to himself, Sedgwick suggested to Marshall that he should write a book that people could "read at leisure." Never at a loss for words, Marshall the next year produced two books. The first was a thin volume, *Governor Smith's American Catholicism*; the

25. LC, Harry Hayward to Marshall, April 23, 1927; Barry to Marshall, April 20, 1927.

26. *New York Times*, April 19, 1927.

27. LC, Marshall to Sedgwick, May 3, 5, 1927, copies; Sedgwick to Marshall, May 17, 1927; Marshall to Sedgwick, August 3, August 27, 1927, copies. Marshall finally got his reply to Smith published in the *Moody Bible Institute Monthly*, June 27, 1927, pp. 486-487.



John Raskob, Archbishop Amleto Cicognani, Apostolic Delegate, Alfred E. Smith, Cardinal Hayes, James Farley, Cardinal William O'Connell of Boston (Courtesy: AANY)

other, *The Roman Catholic church in the Modern State*, was a hefty tome of over 400 pages in which Marshall expanded and repeated ad nauseam the arguments that he had used in his open letter to Smith.²⁸

Having bested Marshall in the pages of the *Atlantic Monthly*, Smith took no further notice of him. After all, Smith was a politician, and he knew when he was ahead. Duffy did the same. Oswald Garrison Villard, editor of the *Nation*, tried to induce Duffy to debate Marshall on the radio, but nothing ever came of

28. Charles C. Marshall, *Governor Smith's American Catholicism* (New York: Dodd Mead and Company, 1928), 88pp.; *The Roman Catholic Church in the Modern State* (New York: Dodd Mead and Company, 1928), 419pp.

Marshall found another outlet for his views in the letters-to-the-editor pages of the *New York World*, sparring with editor Walter Lippmann, and also with John A. Ryan and Wilfrid Parsons, S.J. *New York World*, editorial, August 18, 1928, August 20, August 25, September 24, September 30, October 3, 1928. In a private letter to Marshall, Lippmann cut through Marshall's verbosity like a knife through butter. "Unless you mean that (Governor Smith) would not act as he has solemnly promised to act," he told Marshall, "your whole argument is irrelevant to the real issue as it presents itself in this campaign. . . . For everything that you have to say about the doctrine and the dogmas of the Roman Catholic Church acquires whatever relevance it may have only insofar as those doctrines and dogmas control the conduct of Governor Smith." LC, Lippmann to Marshall, September 10, 1928.

it. An effort was also made to arrange a debate between Marshall and Duffy in Philadelphia, but again Duffy begged off on the grounds that he did not want to fight with his "Protestant fellow citizens" and because he feared that "a public debate would merely stir up animosities."²⁹

Duffy and Marshall never met and never even corresponded directly with one another. However, they did briefly establish indirect contact through a mutual friend, Frederic R. Coudert, a New York attorney and prominent Catholic layman. With Duffy's permission, Coudert passed along to Marshall a letter from Duffy in which he said: "[Mr. Marshall] can mince as he may. The Governor's answer has gone across and the comments of the press has [sic] fixed the impression created beyond the power of the aftermath of controversy to modify." Marshall had complained about the silence of the American Catholic hierarchy. Duffy told Coudert: "If he could have seen the reception I got from our own Cardinal the day the letter was published, and from archbishops like Dowling, Hanna and Glennon in Washington, he would have changed his mind. Even Boston, about whose attitude I was uncertain, sent me the next day a check for an institution in which I am interested. In fact, I find myself so popular with the hierarchy that I grow alarmed. The first thing I know they will be making me a Monsignor or a Bishop or something like that, and that would be a catastrophe." "Anyway," he added, "I give Marshall credit for starting a very pretty battle. A peaceful life is a dull one."³⁰

In reply Marshall admitted that Smith had won the debate in the eyes of the American public, but he clung tenaciously to his position that Smith's reply was really at variance with official Church teaching. Marshall raised the intriguing question that, if Smith's reply were "to be understood as expressing the position of a new American Catholicism against the absolutism of his Church, his words are indeed significant." Marshall only raised such a possibility, however, to reject it out of hand. Besides, he said, "Governor Smith, even plus the Reverend Father Duffy, is not the Church." He pointed out that "hierarchical accommodation of temporary political exigency is a well known phe-

29. LC, Villard to Marshall, May 10, 1927; Marshall to Villard, May, 11, 1927, copy; Villard to Marshall, May 12, 1927; William K. Huff to Marshall, April 5, 1927; Marshall to Huff, April 7, 1928, copy; Huff to Marshall, April 12, 1928. Huff was executive director of the Philadelphia Forum. Disappointed at Duffy's refusal to debate, he said to Marshall: "But is a disinclination to stir up animosities ever an Irishman's real reason for refusing to fight?" Huff to Marshall, April 5, 1928.

While Duffy avoided a debate with Marshall, he was not silent during the 1928 campaign. In May he preached in St. Patrick's Cathedral at the Mass opening the state convention of the Knights of Columbus, urging them to be good citizens. The following January, in an address to the National Republican Club in New York City, he said that, if the pope declared war on the United States, he would fight the pope, and the 69th Regiment would join him. Two weeks before the election, he spoke at Columbia University on the topic of "The Function of a Church in a Modern State." He extolled the American system of separation of church and state and urged clergymen to stay out of politics. Mr. Marshall's reaction to his second point is not recorded. *New York Times*, May 27, 1927; January 29, October 25, 1928.

30. LC, Duffy to Coudert, May 4, May 9, 1927, copies; Coudert to Marshall, May 10, 1927.

nomenon of religious history,” but, he added, “it is of course merely a gesture. It has never reversed and, of course, cannot reverse the tradition of the Church, the decrees of its Councils, and the binding force of Papal Encyclicals. . . .”³¹

Duffy’s response was to call Marshall’s attention to the notion of the development of doctrine. He suggested that Marshall should read Newman’s treatise on that subject before he read his reply to Gladstone. “It seems to me,” he told Coudert, “that Mr. Marshall’s trouble lies in the fact that he is himself a thirteenth-century theologian, and cannot conceive that a twentieth-century theologian can possibly be right.” Duffy denied any intention of softpedaling Catholic teaching, but he revealed his own personal involvement in the issue when he said: “I have held very ardent convictions on these matters since I was nineteen years of age, and it was a matter of keen joy to me to take advantage of Governor Smith’s prestige to win a victory over the opposing Catholic school of thought.”

Duffy faulted Marshall for failing to recognize what a later age would call theological pluralism. “Mr. Marshall cannot be made to see,” Duffy complained, “that there can be in the Catholic Church various schools of thought. He cannot deny that the hierarchy of America is opposed to the union of Church and State, and with an intolerance greater than he could attribute to a pope, he would read them all out of the Church. But he cannot. We are Catholics and we are Americans, and to both loyalties we stick.”³²

Marshall was personally offended by Duffy’s letter. “I am ridiculed as of the 13th century,” he complained, “because I have put to a distinguished Roman Catholic the authoritative teaching of his Church in the 19th and 20th century even up to 1927 and asked him his views.” Marshall again dug in his heels. “I am as opposed to the union of church and state as Father Duffy is. I have publicly accepted Governor Smith’s disclaimer for himself. I wait in common with a great multitude of people for the settlement of the issue raised by that disclaimer.” Then Marshall tossed off a suggestion that must have seemed fatuous in the extreme to both Duffy and himself. “We have the future before us,” he said, “and some day the Vatican Council may be reconvened.”³³

31. LC, Marshall to Coudert, May 14, 1927, copy.

32. LC, Duffy to Coudert, June 3, 1927, copy.

33. LC, Marshall to Coudert, June 8, 1927, copy. Marshall became increasingly bitter in the course of the 1928 campaign. He sent a copy of his book on Catholicism and the modern state to President Calles of Mexico with sentiments of sympathy for his resistance to the claims of the Catholic Church. He sent a check for \$50.00 to the Defenders of Truth Society, which operated WHAP, a notoriously anti-Catholic radio station in New York City. A month before the election, he told a friend that “nothing could be worse at present for this country than the election of a Roman Catholic to a great office” because of “the designs of the foreign government at Rome to which he is must be as a Roman Catholic fundamentally in allegiance.” LC, Marshall to Calles, April 17, 1928, copy; Franklin Ford to Marshall, September 8, 1928; Marshall to E.N. Vallandigham, October 16, 1928, copy.

Modernism and Americanism

When Duffy described himself as a twentieth-century theologian, he was distancing himself from the neo-scholasticism that had dominated Catholic theology in the late nineteenth century. In 1927 it still flourished in many places, especially in Roman seminaries and universities where it had its most prominent representative in Cardinal Louis Billot, who once declared that "dogmas have no history." This kind of neo-scholasticism represented a timeless, non-historical form of theology that allowed no room for development of doctrine on church-state relations or any other topic.³⁴

A quarter of a century before Marshall appeared on the scene, Duffy had indicated his distaste for that kind of theology. "The old faith does not change and does not need to change," he said in 1901, "but we must find new approaches to it and new ways of presenting it." In the surveys of contemporary Catholic theology that Duffy wrote regularly for the *New York Review*, he showed an appreciation for theology that was firmly grounded in Scripture and history.³⁵

As Duffy told Frederic Coudert, he welcomed the opportunity to strike a blow at Cardinal Billot's kind of theology by defending the American experience of religious freedom. He did so by appealing to historical development and maintaining that the ideal Catholic state envisioned by medieval theology no longer existed anywhere in the world. A few years earlier, Duffy's appeal to history would have been enough to awaken suspicions that he was a crypto-Modernist. If acceptance of the development of doctrine was Modernism, then Duffy was a Modernist.

Duffy was also an Americanist in the sense that he was well aware of a living American Catholic tradition that accepted and welcomed freedom of religion and separation of church and state.³⁶ By affirming these values, Duffy knew that he was not breaking new ground but reasserting an American Catholic commitment to freedom of conscience that went back to colonial

Most significant of all perhaps was a request for legal advice from the Freethinkers' Society of New York. They were seeking to overturn a new church property law in New York which allowed Catholic bishops to appoint three of the five parish trustees. Marshall also expressed his opposition to the law, since the trustees were appointed indirectly by the pope. "The issue of old was between the Pope and the King," he said, "today it is between the Pope and the people." It was the same argument that the Know-Nothings had used a hundred years earlier. LC, Marshall to Joseph Lewis, October 20, 1928.

34. Roger Aubert, *The Christian Centuries*, Vol. 5, *The Church in a Secularized Society* (New York: Paulist Press, 1978), p. 179.

35. Duffy, "Does Theology Preserve Religion?" p. 383.

36. R. Scott Appleby has noted that there "was indeed an intimate relationship between Americanism and modernism," but, unfortunately, he narrows his interpretation of both terms by citing as his sole examples William L. Sullivan and John R. Slattery, both of whom left the priesthood and the Church. R. Scott Appleby, *"Church and Age Unite!" The Modernist Impulse in American Catholicism* (Notre Dame: University of Notre Dame Press, 1992), pp. 169-206.

Maryland. However, for critics like Marshall, the views expressed by Duffy through Al Smith were those of a theological maverick or, at best, the views of a limited number of American bishops that carried no weight in Rome. As the Imperial Wizard of the Ku Klux Klan put it with refreshing succinctness: "Mr. Smith seems to us too ingenuous when he, a layman, and Father Duffy, a simple priest, attempt to explain away the statements of 'infallible' popes."³⁷

One of the most perceptive comments on the Marshall-Smith controversy came from a former Jesuit priest, E. Boyd Barrett, writing in the *American Mercury*, who said: "The first salient feature of American Catholicism (the Catholicism of Gibbons, Ireland, Keane, O'Connell, O'Gorman, Kain and Alfred E. Smith) [is] what amounts to a veritable religious faith in the American ideal of democracy." Like Marshall and so many other critics, however, Boyd Barrett insisted that "it is not possible to doubt that the Holy See disapproves of the stand taken up by Governor Smith and the Catholics, lay and clerical, of this country on the question of the relationship between the Church and the State." That was also the opinion of Walter Lippmann, who told Marshall: "It is perfectly plain, and you prove it beyond dispute, that Governor Smith's personal declaration is in conflict with the doctrine of his church. I do not, of course, know, and should be enormously interested to know, what the real attitude of the Vatican is."³⁸

The Vatican made no formal comment, but the curial official who was best informed about American affairs, Cardinal John Bonzano, former apostolic delegate to the United States, expressed himself in terms that would have surprised and shocked Marshall, Lippmann and many others. Bonzano told Cardinal Hayes that Smith's reply to Marshall was a "capo lavoro" — "a masterpiece." He said that "a theologian could and should perhaps have some internal reservations about certain expressions, [that were] not always rigorously exact; but, I repeat," he said, "the letter, taking into account that it was written by a layman and the circumstances and object for which it was written, can be called a masterpiece." Moreover, Bonzano added, "it was judged such by everybody here who knows conditions in America."³⁹

37. H.W. Evans, "The Catholic Question Unanswered," typed copy in the Marshall Papers, LC.

38. E. Boyd Barrett, *The American Mercury* 16 (January 1929): 3, 9. LC, Walter Lippmann to Marshall, September 26, 1928.

Walter Lippmann had an intriguing perspective on the outcome of the 1928 election. He wondered if "the election of Governor Smith would constitute a much more real menace to the Papal claims than to the American constitution. . . . I believe," he explained, "that the inevitable tendency of American Catholicism is away from Rome, and that the naive and wholly sincere declaration of Governor Smith truly expresses the average mind of American Catholic laymen. In view of the immense relative importance of the American Catholics, owing to their economic power, I should, if I were the Pope in Rome, be greatly disturbed at anything which tended to draw Catholics away from their isolation as a special class and to absorb them into the spiritual community of American life." Ibid.

39. AANY, Q-17, Bonzano to Hayes, July 4, 1927. "La risposta del Signor Smith — cattolico e uomo politico americani — é un capo lavoro. Un teologo potrebbe e dovrebbe forse fare qualche riserva interno

It required more than a private letter from a curial cardinal to an American archbishop to vindicate the views set forth by Smith and Duffy. Thirty years later, when the Smith-Marshall controversy had been long forgotten, John Courtney Murray would begin his analysis of the encyclicals of Leo XIII that Marshall had found so offensive, and he would discover in them a development of doctrine that provided theological justification for Catholic acceptance of religious toleration and freedom of conscience. Like Duffy, Murray was initially dismissed by many as a maverick who was challenging the received interpretation of papal encyclicals and setting church teaching on its ear.

Marshall had once expressed the forlorn hope that some day the Vatican Council might be reconvened and reconsider Catholic teaching on church-state relations. Perhaps even he would have accepted such a decision as authoritative. Murray had the pleasure of seeing that happen and seeing much of his own theology incorporated into Vatican Council II's "Declaration on Religious Liberty."⁴⁰

Duffy anticipated Murray by thirty years. He was fortunate in the timing of his views, since both the Holy See and the American bishops were eager to allay fears of Catholic intolerance in the heat of a bitter political campaign. However, Duffy also showed commendable courage in expressing his forthright views in an era when the papal condemnations of Americanism and Modernism were still potent forces in American Catholic life. Al Smith too deserves credit for the stand that he took. He may not have known "what the hell an encyclical was," but he trusted Father Duffy, and he knew instinctively, as Cardinal Hayes said, that Duffy's theology was good Catholicism and good Americanism.

a qualche espressione, non sempre rigorosamente esatta; ma, ripeto, la lettera, tenuto conto dello scrittore laico, delle circostanze e dello scopo per cui fu scritta, può dirsi un capo lavoro. E così, del resto, fu guidata qui da tutte la personnel che conoscano le condizioni d'America."

40. One wonders what Marshall would have thought of Vatican Council II. He said: "If the Church of Rome officially confirms the statements of [Smith's] letter, he will be honored in history as the American citizen who gave the final blow to Papal pretensions of control *jure divino* over the moral and political life of men. In American history his letter would become the equivalent of the treaty of Westphalia in the history of Europe. You are quite as able as I to forecast the probability of papal confirmation. If it can be secured in the plain American sense of words and phrases, then Governor Smith will have brought the struggle of the Roman Catholic Church and the modern State to an end. I see no chance of such confirmation." LC, Marshall to John B. Joyce, July 9, 1928.