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## Church and State in the American Environment

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# Church and State in the American Environment

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EDWARD DUFF

**I**T may well be that the next President of the United States will be a Catholic, a fact which would make him unique among the 33 men who have held this high office. The possibility is a matter of serious concern to many millions of Americans. While they are mindful that the federal Constitution declares that "no religious test shall ever be required as a qualification to any office or public trust under the United States," they claim that a sincere Catholic cannot with intellectual honesty accept a fundamental principle of the American political system: the refusal of an official status or even of a favored position to any religious denomination.

At a recent Chicago symposium on "The Present Position of Catholics in America," John Cogley, a prominent Catholic journalist, indicated that there is a wide-spread feeling among non-Catholics "that the guiding clerics of the church, here as well as abroad, are power-hungry and that their followers are so cowed and so shakily American that they would go to the polls and vote away our traditional liberties if they were strong enough. Let us not kid ourselves: there are many who feel this way."

In accepting the nomination of the Democratic Party for President in Los Angeles, Senator John F. Kennedy addressed himself holdly (and some thought a bit brashly) to this fear of clerical imperialism. Recalling his 14 years of public service

“supporting complete separation of Church and State,” the nominee (who had earlier taken stands against an Ambassador to the Vatican and federal aid to non-state schools) declared: “It is not relevant, I want to stress, what some other political or religious leader may have said on this subject. It is not relevant what abuses may have existed in other countries or in other times. It is not relevant what pressures, if any, might conceivably be brought to bear on me. I am telling you now what you are entitled to know: that my decisions on every public policy will be my own — as an American, a Democrat and a free man.” Whether such an affirmation of total independence of any possible clerical counsel, whether such an avowal of faith in the American political arrangement will allay the doubts of non-Catholics remains to be seen. Senator Kennedy hoped “that no American, considering the really critical issues facing this country, will waste his franchise by voting either for me or against me solely on account of my religious affiliation.”

The religious affiliation of the Democratic Party's candidate in 1928 certainly counted heavily against him. Alfred E. Smith, elected four times as Governor of the State of New York, was the only other Catholic ever to be nominated for the Presidency by a major political party. Although the prosperity of the times, his advocacy of the repeal of the Prohibition Amendment, his personal cultural deficiencies and his identification with the political machines of the big cities hurt his chances, his Catholicism, historians are agreed, was a major negative factor in his campaign.<sup>1</sup> Since the objections to Senator Kennedy on the ground of the alleged incompatibility of his Catholicism with American political premises are the same that were urged against Governor Smith, it may be profitable to review this aspect of the 1928 campaign as well as its historical roots.

## I

It is commonly -- and hopefully -- held that the notion that Catholicism is a tradition alien and opposed to American

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<sup>1</sup> See Edmund A. Moore, *A CATHOLIC RUNS FOR PRESIDENT*, New York: Ronald Press, 1956, and Oscar Handlin, *AL SMITH AND HIS AMERICA*, Boston: Little, Brown, 1958.

culture has abated decisively since the 1928 campaign. After all, Catholics constitute 25 per cent of the nation's population; they demonstrated their patriotism splendidly in the war (Senator Kennedy was decorated for bravery in action in the Pacific); they and their educational institutions have been growing impressively.<sup>2</sup> Senator Kennedy is himself a symbol of this social advance. His great-grandparents were Irish immigrants; his grandfather became Mayor of Boston; his father, a former Ambassador to Great Britain, has through shrewd business skills become a multi-millionaire; the Senator is one of the Overseers (a trustee) of Harvard University and an author of a book awarded the Pulitzer literary prize for historical writing.<sup>3</sup> Handsome, highly intelligent and energetic, he would appear to be the refutation of the earlier image of the Catholic as a foreigner, uneducated and shiftless, superstitious and immoral, huddled with his fellow immigrants in poverty in the teeming tenements of the large cities.

Such was the image that was exploited to defeat the last Catholic candidate for President. It was an expression of a bigotry known as "nativism"; its roots go back to the founding of the country. The American colonists were unabashedly anti-Catholic. Patriotism was synonymous with Protestantism, for England was the motherland of the original settlers.<sup>4</sup>

Virginia, for example, incorporated the features of the English established church under the Acts of Supremacy and of Uniformity. By the royal charter of 1606 the colony was au-

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<sup>2</sup> The current OFFICIAL CATHOLIC DIRECTORY indicates that there are 40,871,302 Catholics in the United States, living in 16,896 parishes; they are served by 53,796 priests; a total of 8,786,270 youth are in Catholic educational institutions; last year 146,212 adults entered the Church.

<sup>3</sup> Current biographies of Senator Kennedy include: James MacGregor Burns, JOHN KENNEDY: A POLITICAL PROFILE, New York, Harcourt, Brace, 1960; Joseph F. Dinneen, KENNEDY FAMILY, Boston, Little, Brown, 1960; Joseph McCarthy, REMARKABLE KENNEDYS, New York, Dial, 1960.

<sup>4</sup> The following paragraphs are based largely on R. F. Butts, THE AMERICAN TRADITION IN RELIGION AND EDUCATION, Boston, Beacon Press, 1950.

thorized to give financial support to ministers, to require church attendance of all settlers and to levy penalties upon all who spoke blasphemy or heresy. No religious beliefs except those of the legally approved religion could be publicly taught without danger of legal punishment by the State. Somewhat similar forms of Anglican establishment were enacted in the Carolinas and eventually in Maryland and Georgia. Nor may it be thought that the Puritans of New England, victims of religious persecution in England, proposed to allow freedom of religion to others. They objected, to be sure, to the Anglican doctrine that the civil ruler is the supreme authority in religious affairs; they were, moreover, determined to "purify" religion of all Catholic taint; they made their religious orthodoxy the law of the land in Massachusetts, Connecticut and New Hampshire. Only members of the Puritan church could become freemen.

In another group of colonies, New York, New Jersey, Maryland and Georgia, religious freedom varied with changes in the population. Thus, in New York each town was required to have some kind of a church and to support it, but its denomination was left to the locality. It was sufficient that the preacher be in possession of a certificate of ordination from some Protestant bishop or minister. The example of Maryland is instructive. Intended originally as a haven for persecuted Catholics, it celebrated last year the 325th anniversary of its founding. In a message to the commemorative meeting on November 22, 1959 President Eisenhower sent a message declaring that Americans "owe a debt of gratitude to the founders of Maryland who welcomed settlers of every creed to her hospitable shore." The marker unveiled by the Maryland Historical Society reads:

St. Mary's City, capital of Maryland, 1634-1694. Here, for the first time in America, men and women of different faiths lived in peace and goodwill, practising freedom of conscience according to Lord Baltimore's "Instruction to Colonists," 1633. Freemen assembled, of various beliefs, changed practice into law by approving "An Act Concerning Religion," 1649.

The Catholic Lord Baltimore's "Instruction to Colonists," it was noted at the ceremony, insisted that non-Catholics should

be treated "without discrimination on religious grounds." Protestants came to Maryland in such numbers, however, that the Puritans were able to pass laws discriminating against Catholics. In 1704 "An Act to Prevent the Growth of Popery" was adopted by the legislature; its restrictions resemble the disabilities imposed on non-Catholics in Spain today.

Another group of colonies, Rhode Island, Pennsylvania and Delaware, were founded on a larger measure of religious freedom. However, the celebrated historian of bigotry in the United States, Ray A. Billington, declares in his *THE PROTESTANT CRUSADE, 1800-1860*: "So general was... anti-Catholic sentiment in Colonial America that by 1700 a Catholic could enjoy full civil and religious rights only in Rhode Island, and even here it is doubtful what the interpretation of the liberal statutes might have been."

There were political causes as well as religious grounds for the colonists' anti-Catholicism. Catholic Powers threatened their existence from both north and south. Fear of Spain, established in Florida, induced Georgia to appoint an inspector to make sure that all immigrants were Protestants. Oaths denouncing transubstantiation were required of all office-holders after 1743. With the advent of the 18th-century wars between France and England, Pennsylvania, Virginia and New York disarmed all Catholics, the last state requiring them to post a bond for good behavior. Catholics living in the middle colonies were put under close surveillance. North and South Carolina along with New Hampshire imposed a rigid system of oaths to prevent Catholics from holding office or enjoying the free exercise of their religion. Connecticut removed them from the protection of its laws. The Quebec Act of 1774, extending toleration to Catholics there and including in that province the French settlers of the Ohio country, was viewed as an alliance of an autocratic English king with an autocratic Pope to sway Catholic Canadians against Protestant Americans.

Some historians contend that the colonists' resentment to the Quebec Act and their fear of Catholic power cemented the divergent religious groups sufficiently to allow them to make war on England.

So hostile was the environment of the colonies and so repressive the legislation, that the historian of American Catholicism, Peter Guilday, has written that at the eve of the Revolutionary War the Catholic group, numbering 25,000 of all ages, was threatened with extinction. The decisive support of Catholic France to the Revolution and the demonstrated loyalty of the Catholics to the cause of freedom (one of the signers of the Declaration of Independence, Charles Carroll, was a Catholic, the wealthiest man in the colonies) changed public opinion considerably. Even so, at the end of the Revolution seven States, Massachusetts, New Hampshire, New Jersey, Connecticut, North Carolina, South Carolina and Georgia, specified Protestant office holders, and other states in their constitutions inflicted additional disabilities on Catholics.

In the general atmosphere of liberty engendered by the successful War of Independence an amendment guaranteeing freedom of religion was added to the federal constitution by the Congress of the United States in its first session on September 25, 1789. Life became easier for Catholics in the new nation.

It was the great waves of immigration, mostly from Catholic countries, that occasioned the first outbreak of bigotry before the Civil War. Willing to take any kind of work, they drove down wages. Poor and ignorant and penniless, they often became public charges. The language barrier made them separate and suspect as, later in the century and up to World War I, Slavs, Magyars and Italians replaced the original wave of Irish and German immigrants. It became politically profitable to point to the danger to the essentially Protestant culture these immigrants represented. Their membership in an universal church was grounds for absurd canards, for example, of political directives emanating from the Vatican. Ignorance of Catholicism made possible the acceptance of stories about the immorality of convents and the moral tyranny of the confessional. As successor to the infamous "Know-Nothing Party" (so-called because its members refused to answer any questions) and the American Protective Association of the last century, the post-World

War I years saw the emergence of the Ku Klux Klan.<sup>5</sup> Catholicism was only one of the objects of this secret organization claiming five million members. It was anti-foreign, anti-Semitic; it identified America with the supremacy of white, Anglo-Saxon Protestantism. The poison of its preaching worked mightily against the Catholic nominee of 1928, Governor Smith.

It is undoubtedly true that the climate of opinion has changed a great deal in the intervening years. Will Herberg, a religious sociologist, speaks of "the transformation of the United States from a Protestant to a three-religion country" and argues that today a good American citizen is expected to have a religion although it is a matter of general indifference what it is, since any religious affirmation is sufficient to support the moralistic "American Way of Life." The change is illustrated tellingly by two books: the 1927 edition of André Siegfried's *AMERICA COMES OF AGE* describes Protestantism as "our national religion." The introductory chapter of a 1951 symposium *PROTESTANT THOUGHT IN THE TWENTIETH CENTURY* is entitled "America at the End of the Protestant Era."

Although it may no longer be accurate to describe the United States as a Protestant country, the heritage of Protestantism (and of elements of Enlightenment thought that were present in the minds of the Founding Fathers) still holds Catholicism suspect and doubts that an authoritarian religion can really be comfortable in the libertarian American environment. Last year a Catholic publishing house invited a small group of well-disposed non-Catholics to set down their impressions of American Catholicism. One of them, Professor Stringfellow Barr, declared: "It is simply a brutal fact that American non-Catholics are afraid of the Catholic Church, and its behavior in certain other countries has not reassured them. Fear is a bad basis for good communication, and breeds a kind

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<sup>5</sup> See Ray A. Billington, *THE PROTESTANT CRUSADE, 1800-1860*, New York, Macmillan, 1938. A current account of Know-Nothingism is Carleton Beals' *BRASS KNUCKLE CRUSADE*, New York, Hastings House, 1960.



of cold war."<sup>6</sup> This fear crystallized around the issue of the relationship of Church and State and, concretely, on the question of the First Amendment to the Federal Constitution which declares: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..."

The charge, based on official church pronouncements, is made persistently that a Catholic cannot give sincere intellectual assent to this fundamental provision of the nation's Bill of Rights, that his religious belief is in inevitable and insoluble conflict with true political allegiance to his country. Senator Kennedy anticipated the challenge by announcing in advance that he believes in the separation of Church and State and by pointing to his public record.<sup>7</sup> To Governor Smith the challenge came in the form of an elaborately courteous "Open Letter" from a distinguished New York lawyer, Charles C. Marshall, published in the prominent cultural review, *THE ATLANTIC MONTHLY*.<sup>8</sup> Analyzing the assertions of the 1885 encyclical *Immortale Dei*, the writer singled out Pope Leo's claim: "Over the mighty multitude of mankind, God has set rulers with po-

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<sup>6</sup> *AMERICAN CATHOLICS, A PROTESTANT-JEWISH VIEW*, edited by Philip Scharper, New York, Sheed and Ward, 1959, p. 18. Another contributor to the same symposium, Professor Robert McAfee Brown, sums up the impression given that "Catholicism is a kind of monolithic structure." "In its crudest form," he observes, "this image of the Church suggests that the hierarchy has a uniform opinion on absolutely everything and that the laity believe and do whatever the hierarchy tells them to believe and do about absolutely everything. Every Catholic is a part of this structure, usually called a 'power structure,' and will in no way deviate from what he is told to do" p. 81.

<sup>7</sup> Speaking to the American Society of Newspaper Editors, Senator Kennedy said: "There is only one legitimate question underlying all the rest: Would you, as President of the United States, be responsive in any way to ecclesiastical pressures or obligations of any kind that might in any fashion influence or interfere with your conduct of that office in the national interest? I have answered that question many times. My answer was—and is—'No.' Once that question is answered, there is no legitimate issue of my religion...." *NEW YORK TIMES*, April 22, 1960, p. 16.

<sup>8</sup> The Marshall article appeared in the April, 1927, issue. It is reprinted in *RELIGION AND POLITICS*, edited by Peter H. Odegard, New York, Oceana Publications, 1960.

wers to govern, and he has willed that one of them (the Pope) should be the head of all." Mr. Marshall found the logical conclusion to this claim in Leo's statement that the Catholic Church "deems it unlawful to place the various forms of divine worship on the same footing as the true religion." This being the Catholic position, as diagnosed by Marshall, his concern was normal. "It is obvious that such convictions," he wrote, "leave nothing in theory of the religious and moral rights of those who are not Roman Catholics. And, indeed, that is Roman Catholic teaching and the inevitable deduction from Roman Catholic claims, if we use the word 'rights' strictly. Other churches, other religious societies, are tolerated in the State, not by right, but by favor."

How could Smith live at once with the Constitution's prohibition of an established religion, its insistence on holding in equal favor different kinds of religion or no religion and with the statement of Leo XIII: "It is not lawful for the State, any more than for the individual, either to disregard all religious duties or to hold in equal favor different kinds of religion"? Marshall put a direct question to the Catholic candidate: "Thus the Constitution declares the United States shall hold in equal favor different kinds of religion or no religion and the Pope declares it is not lawful to hold them in equal favor. Is there not here a quandary for that man who is at once a loyal churchman and a loyal citizen?"

There is no evidence that Charles Marshall was particularly prejudiced. His professed purpose was to enable Governor Smith to explain what seemed a conflict of Catholicism and American constitutional law: Marshall did not exploit against the Catholic candidate the standard reference book on the subject, *THE STATE AND THE CHURCH*, written in 1922 by John A. Ryan, Professor of Moral Theology at the Catholic University of America, in collaboration with Moorhouse F. X. Millar, S.J.<sup>9</sup> The book set forth the traditional confessional state as the ideal form of relationship between Church and State. In this ideal arrangement the State, as the political instrument of

<sup>9</sup> Published by Macmillan, New York, 1922.

society, would profess the Catholic faith and, in consequence, would act to advance Catholicism while discouraging, if not repressing, false religions.

Father Ryan's argumentation may be judged from this series of quotations from three consecutive pages of his book as stitched together by Paul Blanshard, the most vocal of the current Catholicism-as-a-political-peril school, to indicate that freedom of religious worship would not be available to non-Catholics in any State based on Catholic principles: "If these [religious practices] are carried on within the family, or in such inconspicuous manner as to be an occasion neither of scandal nor of perversion to the faithful, they may properly be tolerated by the State. . . . Quite distinct from the performance of false religious worship and preaching to the members of the erring sect is the propagation of the false doctrine among Catholics. This could become a source of injury, a positive menace, to the religious welfare of true believers. Against such an evil they have a right of protection by the Catholic State. . . . If there is only one true religion, and if its possession is the most important good in life for States as well as individuals, then the public profession, protection, and promotion of this religion and the legal prohibition of all direct assaults upon it, becomes one of the most obvious and fundamental duties of the State."<sup>10</sup>

Embarrassed by the use made of his expression of the traditional Catholic teaching against the Catholic candidate, Monsignor Ryan wrote to THE NEW YORK WORLD: "While all this is very true in logic and in theory, the event of its practical realization in any state or country is so remote in time and in probability that no practical man will let it disturb his equanimity or affect his attitude toward those who differ from him in religious faith."

Governor Smith was disposed to ignore the Marshall challenge, so preposterous did the alleged conflict of his religion and

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<sup>10</sup> AMERICAN FREEDOM AND CATHOLIC POWER, Boston, Beacon Press, 1949, p. 71. The composite quotation is from Ryan, *op. cit.*, pp. 35, 35-36, 37.

his patriotism seem to this self-educated son of Irish immigrants. Ultimately at the strong urging of his political advisors, Franklin D. Roosevelt prominent among them, he reluctantly addressed himself to the task of composing a reply, summarizing his creed "as an American Catholic."<sup>11</sup> His first riposte was direct: "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." He felt compelled to minimize the authority of the pronouncements invoked by Marshall, asking "by what right do you ask me to assume responsibility for every statement that may be made in any encyclical letter? As you will find in the CATHOLIC ENCYCLOPEDIA (Vol. V, p. 414) these encyclicals are not articles of our faith. The Syllabus of Pope Pius IX which you quote on the possible conflict between Church and State, is declared by Cardinal Newman to have no dogmatic force! You seem to think that Catholics must be all alike in mind and in heart, as though they had been poured into and taken out of the same mould. You have no more right to ask me to defend as part of my faith every statement coming from a prelate than I should have to ask you to accept as an article of your religious faith every statement of an Episcopal bishop, or of your political faith every statement of a President of the United States." He declared unabashedly: "I believe in absolute freedom of conscience for all men and in equality of all churches, all sects, and all beliefs before the law as a matter of right and not as a matter of favor. I believe in the absolute separation of Church and State and in the strict enforcement of the provisions of the Constitution that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. I believe that no tribunal of any church has any power to make any decree of any force in the law of the land, other than to establish the status of its own communicants within its own church."

Governor Smith found support for his position in aspects of American Catholicism, its historic stance on the issue of religious freedom. He read the record: "The American prelates

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<sup>11</sup> The Smith reply is in THE ATLANTIC MONTHLY for May, 1927. It is found in RELIGION AND POLITICS, p. 62 ff.

of our Church stoutly defend our constitutional declaration of equality of all religions before the law. Cardinal O'Connell has said: "Thus to every American citizen has come the blessed inheritance of civil, political, and religious liberty safeguarded by the American Constitution. . . the right to worship God according to the dictates of his conscience." Bishop England, referring to our Constitution, said 'Let the Pope and the Cardinals and all the powers of the Catholic world united make the least encroachment on that Constitution, we will protect it with our lives. Summon a General Council — let that Council interfere in the mode of our electing but an assistant to a turnkey of a prison—we deny the right, we reject the usurpation.' Archbishop Ireland has said: "The Constitution of the United States reads: "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof." It was a great leap forward on the part of the new nation towards personal liberty and the consecration of the rights of conscience.' He also said: "To priest, to Bishop, or to Pope (I am willing to consider the hypothesis) who should attempt to rule in matters civil and political, to influence the citizen beyond the range of their own orbit of jurisdiction that are the things of God, the answer is quickly made. "Back to your own sphere of rights and duties, back to the things of God." ' Archbishop Dowling, referring to any conceivable union of Church and State, says: 'So many conditions for its accomplishment are lacking in every government of the world that the thesis may well be relegated to the limbo of defunct controversies.' Archbishop Ireland again said: 'Religious freedom is the basic life of America, the cement running through all its walls and battlements, the safeguard of its peace and prosperity. Violate religious freedom against Catholics, our swords are at once unsheathed. Violate it in favor of Catholics, against non-Catholics, no less readily do they leap from the scabbard.' "

It was almost snidely that Smith observed to Marshall: "I think you have taken your thesis from this limbo of defunct controversies." The allusion here is to the celebrated distinction of "thesis-hypothesis" elaborated by the Jesuit editors of *CIVILITÀ CATTOLICA* in the wake of the controversy following the pub-

lication of the *Syllabus Errorum* of 1864. According to the "thesis" the Catholic Church, the unique, divinely created vehicle of salvation of mankind, is superior in nature, purpose and destiny to the State and is entitled to the assistance of the political instrument of society in the propagation of the gospel and the suppression of heresy. According to the "hypothesis" the Church, being unable to impose its claims, provisionally tolerates erroneous opinions and condones religious freedom as the lesser evil.

The consistent and uninterrupted voice of the magisterium of the Church in the United States from the beginning appears unaware of the necessity of any such distinction, the hierarchy giving full-hearted approval of the political arrangement set forth in the Constitution whereby the State declares itself neutral in the matter of religious belief.

In 1784, seven years before the adoption of the First Amendment, John Carroll, first bishop of the United States, declared openly: "We have all smarted heretofore under the lash of an established church and shall therefore be on our guard against every approach toward it." He was pleased to note that "thanks to genuine spirit and Christianity, the United States has banished intolerance from its system of Government. Freedom and independence, acquired by the united efforts and cemented by the mingled blood of Protestant and Catholic fellow citizens, should be equally enjoyed by all." The outstanding loyalty of Bishop John England of Charleston, South Carolina, was acknowledged by the Holy See which commissioned him Papal Nuncio to negotiate a concordat with Haiti. Yet, addressing the Hibernian Society of Savannah, Georgia, on Saint Patrick's Day, 1824, the bishop did not blush to plead: "May God long preserve the liberties of America from the union of any church with any state." On another occasion, Bishop England proclaimed: "I am convinced that a total separation from the temporal government is the most natural and safest state for the Church in any place where it is not, as in the Papal territory, a complete government of churchmen." In an argument over parochial school support in 1850 Archbishop John Hughes referred to "that justly obnoxious union of Church

and State." Preaching in his titular church in Rome in 1909 Cardinal Gibbons asserted: "As a citizen of the United States, without closing my eyes to our defects as a nation, I proclaim, with a deep sense of pride and gratitude, and in this great capital of Christendom, that I belong to a country where the civil government holds over us the aegis of protection without interfering in the legitimate exercise of our sublime mission as ministers of the gospel of Jesus Christ. . . . American Catholics rejoice in our separation of Church and State. And I can conceive of no combination of circumstances likely to arise which would make a union desirable either to Church or State. . . . We know the blessings of our present arrangement; it gives us liberty and binds together priests and people in a union better than that of Church and State. . . . Other countries, other manners; we do not believe our system adapted to all conditions; we leave it to Church and State in other lands to solve their problems for their own best interest. For ourselves we thank God we live in America, 'in this happy country of ours,' to quote Mr. [Theodore] Roosevelt, where 'religion and liberty are natural allies.'" It was a sentiment that was echoed by Archbishop Ireland and Spaulding among others. Quoting Cardinal Gibbons' words forty years later, Cardinal Cushing declared: "So spoke in his day Cardinal Gibbons. So do we speak in our day."

In 1948 Archbishop John T. McNicholas of Cincinnati endeavored to set all doubts on this point to rest. Speaking as the Chairman of the Administrative Board of the National Catholic Welfare Conference (and, therefore, as spokesman for the entire hierarchy), he made this solemn declaration on January 25, 1948: "If tomorrow Catholics constituted a majority in our country, they would not seek a union of church and state. They would, then as now, uphold the Constitution and all its amendments, recognizing the moral obligation imposed on all Catholics to observe and defend it."

Archbishop McNicholas' reassurance has been very recently updated by his successor as Chairman of the Administrative Board of the National Catholic Welfare Conference and, thus, spokesman for the American hierarchy, the Most Reverend Karl J. Alter, Archbishop of Cincinnati. Insisting that "there

is no doctrine of the Catholic Church which is in conflict with the Constitution of the United States and, hence, there can be no conflict between the obligations imposed by the Church and those imposed by the Constitution," Archbishop Alter gave the the following pledge: "The fear that we as Catholics will use religious toleration here to gain the ascendancy in our country and then, having achieved political hegemony, proceed to deprive our fellow citizens of freedom of speech in religion, freedom of conscience, or impose our convictions upon them willy-nilly, is utterly unwarranted by any doctrine of the Catholic Church, as well as by the consistent pronouncements of the American hierarchy. We seek no privileged status; we proclaim our full adherence to the provisions of the Constitution as of now as well as for the future."<sup>12</sup>

It is small wonder, then, that Archbishop Egidio Vagnozzi, Apostolic Delegate to the United States, asserted in the course of a symposium on Pope Leo XIII, held at Loyola University, Chicago, on March 18: "As far as the United States is concerned, I feel that it is a true interpretation of the feelings of the hierarchy and of American Catholics in general to say that they are well satisfied with their Constitution and pleased with the fundamental freedom which their Church enjoys; in fact, they believe that this freedom is to a large extent responsible for the expansion and consolidation of the Church in this great country. Whether they remain a minority or become a majority, I am sure American Catholics will not jeopardize their cherished religious freedom in exchange for a privileged position."<sup>13</sup>

Surveying this uninterrupted and energetic endorsement of the principle of religious freedom written into the First Amendment, Msgr. John Tracy Ellis concluded: "When one considers that the position which I have been outlining has been held from 1784, when the future Archbishop Carroll was found publicizing his acceptance of the American pattern of Church-State relations, to 1948, when the late Archbishop McNicholas

<sup>12</sup> THE SIGN, July, 1960, pp. 11, 14, 65.

<sup>13</sup> "Leo XIII and Human Liberty," CATHOLIC MIND, LXIII (July-August, 1960), p. 298.



made unmistakably clear his wholehearted avowal of the separation of Church and State in this country — and that no variation from this theme has been heard from an American Catholic bishop — this should constitute an argument entitled to respect.”<sup>14</sup>

The meaning of the same record was read by Professor Henry Steele Commager in his *THE AMERICAN MIND* in this fashion: “Whatever conclusion may be drawn from a scrutiny of Catholic doctrine, the fact was that Catholicism had flourished as a major religion for three-quarters of a century without raising serious difficulties except in the imagination of men and that democratic institutions seemed as sound when the church numbered twenty-four million members as they had been when it counted its communicants by the hundred thousand . . . It might indeed be maintained that the Catholic Church was, during this period [since 1889], one of the most effective of all agencies for democracy and Americanization.”<sup>15</sup>

How explain this loyal acceptance of a political philosophy whose Constitution, while not employing the phrase, imposes a separation of church and state, an arrangement deplored in Papal documents? The purpose of the First Amendment and the temper of its declaration of distinction of jurisdictions explains this positive allegiance of the American Catholic mind to the public law of the land.

The First Amendment to the Constitution — prohibiting a national Established Church and guaranteeing freedom of religious expression — does not express an ideology. It represents a pragmatic disposition.<sup>16</sup> Abundant and unassailable historical

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<sup>14</sup> “Church and State: An American Catholic Tradition,” *HARPER'S*, CCVII (November, 1953), p. 67. The earlier quotations from the American hierarchy on religious freedom are taken from this article.

<sup>15</sup> New York, Oxford University Press, 1950, p. 193.

<sup>16</sup> The classical historical survey of the subject is Anson Phelps Stokes' *CHURCH AND STATE IN THE UNITED STATES*, New York, Harper, 1950. A brilliant brief analysis is Wilfrid Parsons' *THE FIRST FREEDOM*, New York, Declan X. McMullen, 1948.

evidence demonstrates, as Mr. Justice Story attests in his fundamental study on the Constitution, that: "The real object of the Amendment was to exclude all rivalry among Christian sects and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government." Behind this determination was the concern to leave to the separate states their preferences in matters of the preferred religion. (For many years several did, Massachusetts disestablishing its Congregational Church only in 1833 and to this day New Hampshire by its Constitution may legislate for "adequate support of public Protestant teachers of piety.") In addition, there was undoubtedly resentment over the disloyalty of the established Anglican churches in several of the colonies during the Revolution. Also actively present as a factor were the views of the very influential James Madison who, typical of many of his Virginia friends, conceived of religion as being of a wholly private character. That framers of the Amendment did not conceive of the Amendment as an expression of indifference to religion nor as a mandate against non-discriminatory cooperation between the state and religion is evident from the action of the U.S. Senate which, having agreed on the language of the Amendment, appointed a committee "to wait on the President of the United States to request that he recommend to the people of the United States a day of public thanksgiving and prayer be observed." Archbishop Alter emphasizes the crux of the matter, observing: "The First Amendment actually limits the jurisdiction of the government by denying it any competence in the field of religion."

It is important to remember that the American Revolution is *not* a product of the French Revolution whose cause and inspiration and consequences were essentially different. The writers of the American Constitution were not 19th century Liberals, promoting a policy of religious oppression in the name of religious freedom, using the slogan of the separation of Church and State to expel religious Orders, confiscate church property

and penalize the Church's charitable activity.<sup>17</sup> They had no desire to separate religion from public life, for they had founded their claims to justice in the *Declaration of Independence* on the fact that "all men are created equal, that they are endowed by their Creator with certain unalienable rights." That is why the Pledge of Allegiance to the flag declares that we are "one nation, under God," why our money has always carried the emblem "In God we trust," why the crier opens sessions of the Supreme Court with the call "God save the United States and this Honorable Court," why each session of Congress is opened with a prayer, why the students at the national military academies have always been required to attend the chapel of their religious faith. In short, as the Supreme Court ruled in a case releasing children from school for religious instruction, "we are a religious people whose institutions suppose a belief in a Su-

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<sup>17</sup> The rationale and the methodology of Liberalism are thus described by Professor H. A. Rommen: "The basis for the separation was not solicitude for the common good, it was not the desire for peace among a plurality of churches and sects, but rather an adherence to the philosophical tenets of rationalist liberalism as a kind of civil religion in Rousseau's meaning. Supernatural faith is here simply denied. The Christian values of morality and the divine law are publicly declared either a myth, irreconcilable with modern science or with the proletarian revolution, or they are said to be only a propaganda instrument of clerical arrogance and of political anti-democratic reaction. Social and political life consequently are to be ruled without consideration of absolute Christian and divinely revealed law, but exclusively by the immanent rules of political or social or even proletarian science. It can easily be seen that such a 'religion' of indifferentism, even of anti-Christian rationalist scientism, in the new laic religion of the state, when imposed upon the citizens in public universities and schools, in the laws and administrative practices, makes of the state an instrument of the rationalist unbelievers of the intellectual ruling class to destroy the traditional religion of the state's Christian people. The new religion becomes the public religion of the state while the Catholic religion is declared to be exclusively and wholly a private affair of the citizen." *THE STATE IN CATHOLIC THOUGHT*, St. Louis, B. Herder Book Co., 1945, pp. 600-601.

preme Being."<sup>18</sup> It is the affirmation of the American political system that, by a self-denying ordinance, the government may (and in a modern pluralistic society should) abstain from recognizing or favoring any particular form of faith followed by this "religious people."<sup>19</sup>

The question is inescapable and American Catholics are constantly confronted with it: Is our acceptance of religious freedom a species of superficial opportunism, of intellectual dishonesty and of political Machiavellism as the "thesis-hypothesis" distinction would seem to suggest? Can the Church which is, by definition, dogmatically intolerant, acknowledge religious liberty on principle and not merely on account of compulsion or expediency?

To be sure, the Catholic Church which announces itself to be the repository of revealed truth cannot be expected to cease insisting on the obligation of each person to seek and pursue the truth, an obligation limiting the notion of freedom of conscience. "You are not morally free," the Church declares, "not to believe, whatever your personal rights to pursue your present religious convictions." There is a distinction here between ontological truth and personal freedom which was underscored in a sentence of Pius XI's encyclical on Fascism, *Non abbiamo bisogno*: "We are both proud and happy to fight for the freedom of consciences (*la liberta delle coscienze*), and not, as I was inadvertently led to say, for freedom of conscience (*la liberta di coscienza*), an ambiguous expression that is all too often

<sup>18</sup> 343 U.S. 312. In July of this year the Maryland State Court of Appeals upheld a lower court's decision to deny a notary's commission to an avowed atheist when he refused to take an oath affirming his belief in God, declaring: "It seems clear under our Constitution that disbelief in a supreme being, and the denial of any moral accountability for conduct, not only renders a person incompetent to hold public office, but to give testimony, or to serve as a juror."

<sup>19</sup> John Cogley has noted: "Almost everyone would agree that the American people are a 'religious people,' in the sense that neither by conviction, tradition, nor law are we aggressively anti-religious. As to what being a 'religious people' consists in, disagreement is almost as wide as the varieties of opinions about religion which thrive in our society. Since there is no consensus about the meaning of religion, there can be no consensus about a 'religious people.'"

wrongly used to mean *complete* independence of conscience, which is absurd when applied to a soul created and redeemed by God." The same distinction was stressed last year by Cardinal Lercaro of Bologna in his widely read lecture on tolerance: "When one affirms that truth is objective, by that very fact he admits of a distinction between truth itself and the act by which the individual yields to truth. Hence, in recognizing the objectivity of truth, the individual is, at the same time, establishing the right to personal freedom."<sup>20</sup>

Further striking quotations might be offered from Cardinals Feltin, Griffin and Cushing as well as from Bishop Francois Charriere of Fribourg, traditional center of Catholic social thought. The Church has always insisted on religious freedom in that from the beginning she has forbidden — and termed a sin — any forced conversion. The new emphasis to be noted is on the sacredness of the person as the basis of the individual's subjective right to freedom of conscience.

Those inclined to consider the strictures of 19th century Popes, not least those of Leo XIII, on religious freedom as of permanent appositeness might well ponder the words of the same Pope: "It is the special property of human institutions and laws that there is nothing in them so holy and salutary but that custom may alter it, or overthrow it, or social habits bring it to naught. So in the Church of God, in which changeableness of discipline is joined with absolute immutability of doctrine, it happens not rarely that things which were once relevant or suitable become in the course of time out of date, or useless, or even harmful." In his 1955 discourse to the International Historical Congress Pope Pius XII, for example, recognized explicitly that the medieval idea of a Church having power over the state "was time-conditioned and did not represent

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<sup>20</sup> THE CATHOLIC MIND, LVII (January-February, 1960), p. 18. Also in DOCUMENTATION CATHOLIQUE, March 15, 1959.

fundamental Catholic principles in the matter.”<sup>21</sup> An example of such adaptation and development emerged during the press conference last October 30th when Cardinal Tardini, Papal Secretary of State, was explaining the preparations for the coming General Council. One point, as reported by the London TABLET, is of interest: “Asked whether invitations would be sent to the governments of foreign states as was the custom in the past, Cardinal Tardini replied that ‘times have changed’ and that the presence of the mighty of the earth, instead of adding dignity to the proceedings, might well provide an incongruous touch. . . . The Press will be kept fully informed about the proceedings, not least to prevent reporters from guessing or reporting rumors.”

Moreover, the historical context of Papal pronouncements must always be kept in mind. Replying to the question “Where can one find the most authoritative and clearest statement of Catholic principles in relation to the subjects we have discussed?” Archbishop Alter replied: “Not in the much quoted writings or encyclicals of Boniface VIII or in the *Syllabus*

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<sup>21</sup> Discourse to Tenth Congress of Historical Sciences, DOCUMENTATION CATHOLIQUE, October, 1955, pp. 1222-5. The English moralist, Canon L. L. McReavy explains the current conception of the roles of Church and State: “Given the objective truth of the deposit of faith, the Church, its guardian, must of necessity be dogmatically intolerant. She can never compromise with religious or moral error on the intellectual plane, or make any concession in principle to the religious indifferentism of the liberalist thesis. But because dogmatic intolerance is proper to the Church, it does not follow that it is proper also to the State, or even that the State should lend a hand in enforcing it at the civil level. The Church has a divine mission to teach and defend the truth, but no such mission has been given to the State. Catholic doctrine has always rejected Caesaropapism and insisted on the distinction between the things that are Caesar’s and those that are God’s. Even in a predominantly Catholic country, the proper duties of the State are defined and limited by the requirements of the purpose for which God has given it authority, the promotion of the common temporal good. It has no proper mission in the religious field, and therefore any assistance which it may afford its Christian subjects in the fulfillment of their dual citizenship is a subsidiary activity which must be subordinated to its essential function.” The London TABLET (June 4, 1960), p. 533.

of *Errors of Pius IX*; not in the sense that their teaching is rescinded, but in the sense that they cannot be rightly understood outside their historical context. They are couched in a language of polemics as well as of exposition."<sup>22</sup> Thus, the editor of the London TABLET notes, the *Syllabus of Errors* of 1864 "although it used general language, arose in an Italian context, and was aimed primarily by an encircled Pope against the followers of Mazzini and Cavour, and meant by progress and the modern civilization with which the Roman Pontiff had no obligation to reconcile himself what Mazzini and Cavour meant by those high, vague words. But the document went around the world as a declaration of war on a far broader front than its authors ever intended, absorbed as they were in the death-throes of the temporal power after some twelve hundred years."<sup>23</sup>

Pope Pius XII insisted on the Church's "vital law of continuous adaptation" and on her refusal to become so identified with a particular historical moment as to be incapable of further dynamic development. The Church's experience under modern totalitarian regimes and her increasing contact with the competing cultures of the globe have occasioned a new openness to changing conditions. Thus, Pope Pius XII's Christmas Message of 1954, popularly entitled in English, "On Democracy," recommends "social forms which can permit and ensure full personal responsibility in things temporal as well as in things eternal." Among the fundamental rights of man, the Holy Father listed "the right to worship God in private and in public and to continue this with charitable works of a religious

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<sup>22</sup> THE SIGN, *op. cit.*, p. 65.

<sup>23</sup> June 4, 1960, p. 532. The writer, commenting on the OSSERVATORE ROMANO'S insistence on the hierarchy's "right and duty to intervene" in the political field to guide its flock, continued: "The government of the Universal Church must be based somewhere, and it was providentially placed from the beginning in the city which has been the chief centre of human government, among the people with the greatest genius for that rare and invaluable art. But it is a natural consequence that it very often happens that decisions are flashed round the world which to be understood have to be seen in the Italian context which has brought them about."

nature." The painful experience of changes in historical circumstances has convinced the Church that the denial of fundamental human rights to all men inevitably leads to a restriction of the freedom of the Church in the public life of a nation and is immensely dangerous to her apostolic mission.

The harsh reality of the jack-boot state, invading every domain of personal life, imposing its organized ideology as a substitute for religious faith, has made the Church think kinder of the democratic regime with its self-imposed limitation of function and official neutrality on religious questions. It is not without significance that when French integrists complained of the inclusion of the adjective *laïque* in the Constitution of the Fifth Republic the hierarchy reminded them that the word does not necessarily have a pejorative meaning. In a conference to the leaders of Catholic Action last December 31 in the context of the debate on school aid in the National Assembly, Bishop Guerry of Cambrai explained the distinction by employing two different words. "Applied to the question of education, a public function of the State, *la laïcité* means that this public service is non-denominational, that it is neutral and need not, therefore, take a position for or against religion. The *laïcité* of the State manifests itself in the practical order then by an impartiality towards the different religious groups, recognizing the pluralism of the nation. A wholly different thing is the *laïcisme d'État*, that is to say, a philosophical doctrine based on agnosticism, materialism and ideological atheism which is to serve as the official inspiration of the State in all its public functions including that of education. This *laïcisme d'État* is the opposite of the genuine *laïcité d'État*."

The Church's increasing contacts with the different civilizations of the world was certainly in the mind of Pope Pius XII when he addressed the Catholic Jurists of Italy on December 6, 1953. The Holy Father deplored the transfer of the proposition that "error has no rights" from the metaphysical plane to the sphere of state legislation where it may offend against the common good. "God Himself," noted the Holy Father, "permits error and evil. . . . the duty of suppressing moral



and religious error cannot, therefore, be the final norm for action."

This papal denial of the government's right to restrict religious freedom cannot, of course, be converted into an affirmative argument establishing freedom of religion as an universal principle. It can be honestly reported, however, that the clear trend of theological thinking in the Church is toward such an opinion. It is significant that one of the articles which the editor of the CATHOLIC ENCYCLOPEDIA felt needed updating after fifty years was that on Church and State. Appearing as a fascicule, issued as a supplement to the 1908 edition, it reports the current preoccupations of Catholic theologians who are striving to clarify the distinctions between the inner reality of religion and its cultural encrustation. It may well be that the catalyst will be a more acute analysis of the concept of "the community," the society of voluntary groups intervening, in logic, between the person and the state, a concept not over-familiar to students of Roman and Napoleonic law. In any case, the direction the debate is taking has been assessed by an outsider, Dr. A. F. Carrillo de Albornoz, a research specialist at the World Council of Churches' headquarters at Geneva. In the course of a 95-page survey of contemporary Catholic discussion, published as ROMAN CATHOLICISM AND RELIGIOUS LIBERTY, Dr. Carrillo observes:

Roman Catholic literature representing this modern tendency has lately been so voluminous and of such quality that it would be an understatement to say that, for one book or article in favor of the traditional doctrine, ten have been published defending universal religious freedom as "thesis"; and one should note that they have all been published with the "nihil obstat" of the Roman Catholic authorities. As is well known, the "nihil obstat" does not always mean that the book approved reflects exactly the official Roman Catholic doctrines on the matter, but it does always mean that nothing in such a book is against the official teaching of the Roman Catholic Church.<sup>24</sup>

Dr. Carrillo concludes his inquiry:

We think that there is evidence enough of the fact that: (a) many Roman Catholic theologians, in many countries, defend a new theory in favor of complete religious freedom in principle, which

<sup>24</sup> Published by the World Council of Churches, Geneva, p. 8.

is quite different and even opposite to the old doctrine of "thesis" and "hypothesis"; (b) this theory has in no way been condemned but, on the contrary, is supported by very important members of the Roman Catholic Hierarchy; and (c) this theory is not a tactical variant of the old doctrine for reasons of opportunism, but another radical and irreducible doctrinal position which is very sincerely fiercely fighting the old one.<sup>25</sup>

The study of Dr. Carrillo has been circulated in influential quarters in the United States. Its conclusions have been welcomed by American Catholics as useful to dispel the doubts and confusions endemic in the minds of non-Catholics. At the Chicago symposium in mid-June on "The Present Position of Catholics in America" Bishop John King Mussio of Steubenville, Ohio, remarked that the American Catholic has learned to give "to the service of his country the same spirit of loyal service he gives to his Church. . . . [he] could never properly recognize as the authority of God what would deprive men, no matter what their background, race or persuasion, of their inherent right to worship God as conscience dictates." "Hence his surprise," commented the Jesuit weekly *AMERICA* on July 2, "at expressions of fear by some of his fellow Americans over possible encroachments by the Church on traditional American liberties. Even less comprehensible to the American Catholic is the fondness manifested by some of his coreligionists abroad for interpreting or discussing American domestic affairs in terms of the far less satisfactory history of Church-State or inter-credal relations in other lands."

Freedom of religion whatever its observance is today conceded to be a fundamental human right. It is inscribed in the Universal Declaration of Human Rights and incorporated in the Charter of Human Rights of the Council of Europe which, incidentally, Sweden and Norway had to sign with a reservation because of the discriminatory clauses of their Constitutions. What the ideological underpinnings of such a right are, however, is not clear. For the jurist, I suppose, the phenomenon of the prevalence of such guarantees in modern political constitutions gives the right recognition in international public law. The Protestant world community, as institutionalized in

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<sup>25</sup> *Ibid.*, p. 2.

the World Council of Churches, never systematically studied Church-State relations. Its 1948 Amsterdam Assembly listed as primary characteristics of genuine religious freedom, "the right of all men to hold and change their faith, to express it in worship and practice, to teach and persuade others, and to decide on the religious education of their children",<sup>26</sup> but the Director of the World Council's Commission of the Churches on International Affairs, O. Frederick Nolde, concedes that the approach is "juridical" and insisted at that time that "there is an immediate need for the development of a Christian view on human rights in forms which will apply to all men."<sup>27</sup> No great progress is evident. American Protestantism seems merely to have given theological canonization to the political theory formulated in the First Amendment of the Constitution.

Working out a satisfactory theology of religious toleration will be an immense task that will have to draw out and synthesize a vast amount of Catholic teaching on the freedom of the act of faith, on the scope of the State, on the primacy of the individual's conscience and on the modes of apostolic action available to the Church in our times. The task is not an easy one because, as Canon McReavy notes, "the problem is itself relatively modern and the theology of it is still in process of being worked out." The issues involved are not simple ones but they are crucially important. "The fundamental question we have to answer," writes Gabriel Marcel very pertinently, "is that of knowing on what principle it is possible to base a religious freedom that will be truly a contra-intolerance and that, nevertheless, will not be the expression or the testimony of scepticism, but instead the living incarnation of a faith."<sup>28</sup> Formulating a theology of tolerance is a task Father Max Pri-billa, S.J., thought urgent ten years ago. "Above all," he remarked, "Catholics should consider it a primordial task to come

<sup>26</sup> THE FIRST ASSEMBLY OF THE WORLD COUNCIL OF CHURCHES, New York, Harper, 1948, p. 93.

<sup>27</sup> "Freedom of Religion and Related Human Rights" in THE CHURCH AND THE INTERNATIONAL DISORDER, New York, Harper, 1948, p. 148.

<sup>28</sup> "Phenomenologie et dialectique de la tolerance," DU REFUS A L'INVOCATION, Paris, 1940, p. 277.

to a theoretical and practical agreement which — at least in respect of more difficult issues — does not exist to date. 'This lack of unanimity weakens their inner unity and renders their outward defence more difficult.'<sup>29</sup>

American Catholics are eager to see such a theology elaborated quite apart from sensing that it would make the candidacy of Senator Kennedy more attractive to their fellow citizens. A recent article by a regular contributor to *AMERICA*, Donald McDonald, makes an earnest plea for "A Theology of Tolerance."<sup>30</sup> The statements of the hierarchy insisting on their permanent and unconditional acceptance of the Constitution with its separation of Church and State provisions (and this even should Catholics constitute a majority of the nation) is found by the writer to be "not enough." Before the Holy See takes a position, the writer observes, theologians must first attend to their traditional task of elaboration and explanation. They will have a clear set of facts to start from: the uninterrupted and the consistent declarations of the American hierarchy extolling, as fully satisfying the demands of Catholic teaching and as fruitful for religion, a regime in which responsibility for the growth of the Kingdom of God is left uniquely in the hands of his assigned agents, unassisted by Cæsar's functionaries.

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<sup>29</sup> "Dogmatische Intoleranz und bürgerliche Toleranz," *STIMMEN DER ZEIT*, 144 (April, 1949), pp. 28-29.

<sup>30</sup> *AMERICA* (July 9, 1960), p. 437.