

The Republicans and *Roe*

Gerard V. Bradley

Since shortly before George Bush's inauguration, the Republican party has been dancing a minuet around *Roe v. Wade*. Does the party mean to overturn it, or to treat it as settled law? Depends on who is doing the talking.

Attorney General John Ashcroft stated, at his confirmation hearing, that *he* would not challenge *Roe*. Curiously, First Lady Laura Bush chose that moment to voice her approval of *Roe*. No big deal there? Well, a president's spouse, it is true, has no formal authority. But no one should imagine that Mrs. Bush would speak so forcefully to a burning issue without her husband's approval. Especially after she stood by, silently, throughout the campaign, while he reassured pro-lifers that he was reliable on abortion. And the Cabinet's most prominent member—Colin Powell—is famously pro-choice. These folks have ratified *Roe*. For them the center of gravity of "Pro-life" politics no longer is abortion.

The President and the Vice-President, however, do not rule out, *a priori*, challenging *Roe*. On the other hand, they do not vow to seek to overturn it. And they cast no doubt upon the validity or bindingness of *Roe*, so long as the Supreme Court does not overrule it. This concedes a lot. Just a few years ago pro-life leaders, notably including the late Robert Casey, held that public officials could, and should, act on *their* view of the Constitution, that the Supreme Court did not settle the meaning of the Constitution. Governors and sheriffs and clerks who believe that the unborn are persons, should treat them as persons. And legally would do so, unless a specific positive law directed them to do otherwise. One wonders, now, whether any nominee for a federal judgeship may safely say: I am beyond John Ashcroft on abortion. I believe *Roe v. Wade* was and is an unconstitutional decision, which should be overruled.

George W. Bush is undoubtedly a better choice for President than the alternatives available last fall. And he will do a great deal of good for moral sanity, starting with the issue of same-sex "marriage." He has, moreover, effectively reached out to Catholic leadership, including a dinner with Catholic prelates at Cardinal McCarrick's residence. But, in all the good feelings, we should never lose sight of this: as a legal matter, we are not going to save a single baby until we overrule *Roe v. Wade*. ☪

O Timothee, depositum custodi, devitans profanas vocum novitates et oppositiones falsi nominis scientiae, quam quidam profiteres circa fidem aberraverunt. Gratia vobiscum. 1 ad Timotheum 6

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diocese and with the universal Church depends on the voluntary compliance of the university with Church law regarding the *mandatum* and other requirements of *Ex corde*. If College presidents are unwilling to take requisite steps to promote the Catholic identity of their schools, the bishop always has the option of making a public declaration about a particular university. As Canon 808 of the new code says, "Even if it really be Catholic, no university may bear the title or name Catholic without the consent of the competent ecclesiastical authority." This provision of Canon Law gives the local ordinary enormous leverage, which he will understandably be reluctant to use. He may, how-

ever, adopt a whole series of public measures short of this solution.

As there is no agreement among theologians or among Catholics in general about the meaning of being "a teacher within the full communion of the Catholic Church," it would be helpful if the bishops give a brief explanation of how they will interpret this provision of the *Guidelines*. Clarity about the meaning of "full communion" is indispensable for arriving at fair and intelligible standards for the granting and withdrawing of the *mandatum*. It is, of course, already a sign of crisis in the Church that the meaning of communion with the Church is no longer self-evident. ✘

The *Mandatum*: A Declaration of Interdependence

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In a 1999 lecture delivered at the American Enterprise Institute, Michael Novak explicated the thesis that we should take the Declaration of Independence seriously in as much as it articulates a vision of "God's Country." In contrast to the "judgmentaphobia" from which our contemporary culture suffers, he reminds us that "in the absence of judgment ... freedom cannot thrive." Ours is a "drama of liberty" expressed by the founders in biblical and rational language that speaks of freedom in terms of *character*: "after reflection and deliberation, [it is] to do what you are prepared to commit yourself to, in a way that others may count on."

Now, it seems, another phobia can be diagnosed in the discussion of the NCCB guidelines for implementing the *mandatum* in Catholic colleges and universities. In words reminiscent of a colonial sentry overlooking the invading troops,

the CTSA's representative on the bishops' committee warns that the *mandatum* "threatens the Church's mission to the world" and makes great "the potential for open conflict between bishops and theologians."

Not at all. In fact, the granting of a *mandatum* reflects that core concern for liberty which is at the heart of our national heritage and our educational enterprise: the process involves reflection and deliberation (on the part of both the theologian and the Ordinary), doing what one is prepared to commit to (in granting or accepting the *mandatum*), in a way that others (administrators and students) may count on (as being in communion with Catholic Church teaching).

It is, in other words, a declaration of interdependence among three successive groupings: between theologian and Ordinary, between them and the university, and between all three and the students seeking a Catholic education. Nevertheless, elements of this declaration could be further clarified at each level.

On the foundational level, the *mandatum* establishes a formal relationship between the theologian

and the Church, in the judgment of the Ordinary. But the key phraseology in this regard juxtaposes person and profession, wavering between who one is and what one does. Does the mandate concern the “teacher” (1a) or the “teaching”(4a) that is to be acknowledged as being “in full communion with the Church”?

Admittedly, the two are not separable. A teacher of any discipline whose lived practice in that discipline is not in congruity with what he/she teaches about it would hardly be considered, by peer or by disciple, to be a master of the art in question. But the overriding concern is for congruity between what is taught by the theologian and what is proclaimed by the Church. The lone standard is, rightly, a negative and limited one, namely “to refrain from putting forth as Catholic teaching anything contrary to the Church’s magisterium. Were the guidelines to focus solely on this teaching dimension—on the “public utterances and writing” (cf. *Doctrinal Responsibilities*) of the theologian—this would heighten awareness of the proper context within and about which theology is “free” to work.

On the institutional level, the process concerns the relationship between the parties to the *mandatum* and the administration of a Catholic university. Reference to this in the guidelines is minimal and considers only the case of a teacher not obtaining a *mandatum* in the specified time period, in which case the Ordinary “should notify” the university (4d). (To be consistent, a similar notification should be included in the guidelines for cases in which a *mandatum* is withdrawn.) But is it necessary that more be done, by way of enacting formal policies and procedures in the university?

The simple answer is “no”—particularly since episcopal guidelines (which, themselves, are not particular law) cannot and should not legislate university policy. Of course, theologians at a university that claims to be Catholic should hold the *mandatum*, as teachers in any discipline should pos-

sess the requisite credentials to teach. And the notification suggested in the guidelines does add a key consideration in judgments about quality of teaching for all parties concerned (both in hiring and in tenure decisions). But further specifying the requirement by way of university statutes could mistake a necessary condition for a sufficient one.

The larger and related question concerns the last level, the public realm between the teaching of theology and the marketing of Catholic education to prospective students. The guidelines do not specify any action on the part of the Ordinary for publicizing whether specific theologians at a Catholic university do or do not hold the *mandatum*. This is no lacuna. It avoids perpetuating an inadequate view of the *mandatum* as the sole or even the constitutive link to the Catholicity of an educational institution, as if Catholic identity were merely the purview of theologians. Moreover, and more pertinent, it respects the rightful freedom of the Ordinary with regard to pastoral governance.

In the end, the process of granting or withholding/withdrawing a *mandatum* is and should be concerned with what is being taught at a Catholic university. In teaching is where the “drama” of academic liberty is enacted, in the freedom of theologians to pursue intellectual credibility. There, too, is where institutional judgment (the Church’s and the university’s) must take place, for credibility lies not merely in the strength of ideas but in their right relation to what is true. Ultimately, it is this search for truth that concerned students and/or parents rightly value in their educational investment. The bishops’ guidelines suggest, within prudent limitations, the interdependence of these groups with regard to theological credibility. And, as with the Declaration of Independence, the union (or communion) of those concerned—the theologian, the Church, the university, and the public—is the condition of that good we call liberty, even in academia. ☩