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 folk 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.

Fellowship of Catholic Scholars Quarterly
Volume 24, Number 1 Winter 2001

Contents

President’s Page:
The Republicans and Roe ........................................... 1
Board of Directors.................................................. 2
Forum: Implementing Canon 812
Bishops’ Proposal .................................................. 3
Transcript of Bishops’ Discussion .............................. 5
Introduction: Kenneth D. Whitehead ....................... 11
Commentary:
J. Brian Benestad ............................................... 20
Rev. Thomas F. Dailey .......................................... 21
Rev. Ronald Lawler ............................................. 23
Sr. Mary Judith O’Brien ...................................... 24
Rev. James N. Schall .......................................... 25
Afterword: Mgr. George A. Kelly ............................. 26
Membership Matters ........................................... 28
Around the Church .............................................. 28
Bulletin Board ..................................................... 30
Articles:
Climate Change .................................................. 33
The Credibility of Miracles ................................. 36
President’s Letter ............................................... 46
Obituary: G.E.M. Anscombe ................................. 47
Book Reviews ..................................................... 49
On Ralph McInerny ........................................... 51

ISSN 1084-3035
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 al-
yways 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 bish-
ops give a brief explanation of how they will in-
terpret this provision of the *Guidelines*. Clarity
about the meaning of “full communion” is indis-
penisible for arriving at fair and intelligible stan-
dards 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

*Associate Professor of Theology*
*Chair, Department of Philosophy and Theology*
*DeSales University*

In a 1999 lecture delivered at the American
Enterprise Institute, Michael Novak explica-
ted 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 lib-
erty” 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 diag-
nosed in the discussion of the NCCB guidelines
for implementing the *mandatum* in Catholic col-
eges and universities. In words reminiscent of a
colonial sentry overlooking the invading troops,
the CTSA’s representative on the bishops’ com-
mitee 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 educa-
tional enterprise: the process involves reflection
and deliberation (on the part of both the theolo-
gian and the Ordinary), doing what one is pre-
pared 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 interde-
pendence among three successive groupings: be-
tween theologian and Ordinary, between them
and the university, and between all three and the
students seeking a Catholic education. Neverthe-
less, elements of this declaration could be further
clarified at each level.

On the foundational level, the *mandatum* estab-
lishes 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 congruency 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 congruency 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 possess 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 witholding/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.