

**CIVIL LIBERTIES** *By Harvey A. Silverglate***Threat to academic freedom**

**T**HE NATION'S Catholic bishops voted overwhelmingly in November to impose firmer ecclesiastical control over the country's 230 Roman Catholic colleges and universities. This poses what some academics and lawyers view as the most serious threat in recent memory to academic freedom on campuses that are nominally Catholic but have attained legal autonomy from the church and have adopted academic freedom as a reigning orthodoxy.

Some academics, administrators and general counsel on Catholic campuses are predicting an explosion of lawsuits as the church seeks to tighten its control over campus theologians and as college administrators comply to one degree or another. Faculty dismissals in the face of contractual obligations, claims of discrimination and other legal violations, and other prescriptions for legal conflict are sure to follow, they predict. Others, however, believe that principles of separation of church and state will cause courts for the most part to avoid involvement in such disputes, leaving the two sides no alternative but to adopt a mutually acceptable *modus vivendi*.

The move, by a 223 to 31 vote of the National Conference of Catholic Bishops, seeks to implement the spirit of a 1990 papal edict, *Ex Corde Ecclesiae*. In the words of the chairman of the committee that drafted the new guidelines, it is meant to "help institutions to focus on their Catholic identity." Under its terms, a Catholic theologian

teaching at a Catholic college will be required to obtain his or her bishop's mandatum, thus allowing the bishop to maintain a kind of quality control over Catholic doctrine taught there.

There is little reason to believe that this movement toward central control of ecclesiastical doctrines will have an impact on standards and doctrines taught on the secular side. Nevertheless, faculty members and others are nervous about the implications for all aspects of academic freedom on American Catholic campuses.

**Thorny path ahead**

The Vatican's effort to exert firmer control will necessarily be somewhat limited by the fact that American Catholic colleges and universities are legally autonomous and are neither church-owned nor financed.

However, few have any doubt that these institutions will not want a serious break with Rome or to risk being denounced by the church hierarchy. The delicate and long-standing relationship between America's Catholic colleges and the church is now going to be tested and, perhaps, strained.

The problem is a curious one, and curiously American. When the American Association of University Professors (AAUP) in 1915 promulgated its first code defining academic freedom, it pointedly exempted church-supported, religious and denominational institutions—"proprietary" institutions "designed for the propagation of specific doctrines."

The AAUP insisted that parochial institutions "should not be permitted to sail under false colors" of academic freedom because "genuine boldness

and thoroughness of inquiry, and freedom of speech, are scarcely reconcilable with the prescribed inculcation of a particular opinion upon a controverted question."

Since that report, America's Catholic colleges have evolved on dual tracks, with an ecclesiastical side and a secular academic side. The secular side has enjoyed virtually the same academic freedom found on nonreligious public and private universities, but curiously, even the ecclesiastical side in most Catholic colleges has been characterized by a toleration, even an encouragement, of wide-ranging and vigorous discourse and debate on hot-button theological issues: church doctrine on birth control, clerical celibacy, women and the church, and papal infallibility.

The bishops' action, apparently aimed at exerting more control over these debates, seems to highlight the tension perceived by the AAUP between the academic freedom that characterizes liberal institutions avowedly dedicated to pursuing an open inquiry into truth wherever that inquiry may lead, and the religious mission of an institution allied with a church characterized by the propagation of orthodoxes rather than free inquiry.

Nobody can predict with confidence how the situation will unfold, although there is a strong suspicion that both sides will proceed in the same spirit that has characterized the sometimes uneasy but largely successful historic relationship thus far—that is to say, they will muddle through by not insisting on doctrinal purity with respect to either papal encyclicals or AAUP pronouncements. **□**

*Mr. Silverglate is a bimonthly NLJ columnist and a partner at Boston's Silverglate & Good.*