

## Appendix B

### FORUM: CATHOLIC IDENTITY, ACADEMIC FREEDOM, AND THEOLOGICAL RESPONSIBILITY

Friday evening President-elect Anne E. Patrick chaired a special session designed to provide an opportunity for updating on and discussion of matters related to ecclesial responsibility and academic freedom. Leo J. O'Donovan, a past president of the CTSA (1981-1982) and newly appointed president of Georgetown University, opened the session by informally summarizing recent developments in several areas: the Document on Doctrinal Responsibilities, the Joint Committee of Catholic Learned Societies and Scholars, the Commission of Bishops and Scholars, and the Vatican Schema on Higher Education. Then John A. Slosar, Jr., Associate Professor of Social Work at St. Louis University and Director of the Central Region of the American Association of University Professors, reviewed the history of the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure and described the current state of the AAUP discussion concerning the "limitations clause" associated with the 1940 Statement. These panel presentations were followed by a spirited discussion session, during which a number of CTSA members voiced various concerns. Documentation on the material discussed by O'Donovan is available in the CTSA *Proceedings* published over the last several years as well as in the report he edited for joint publication in 1982 by the CTSA and Canon Law Society of America, *Cooperation Between Theologians and the Ecclesiastical Magisterium*, and also in recent issues of *Origins*; the text of Slosar's presentation appears below.

#### THE AAUP, ACADEMIC FREEDOM, AND THE LIMITATIONS CLAUSE

In the spring of 1913, a letter signed by 18 full professors on the faculty of Johns Hopkins University was sent to their colleagues of equal rank at nine other leading universities, urging them to join in the formation of a national association of professors. The letter stated that the scholarly and scientific interests of academics were served by the disciplinary societies, but that their institutional and societal interests, which were equally pressing and important, were not being adequately cared for; that as members of a profession "essential to the well being of society," professors had reason to be concerned about its "efficiency, public influence, and good repute"; and, that a professional organization was needed to support those interests through "collective action" and to give "authoritative expression" to those concerns. On the whole, the recipients of this letter responded favorably. Committees of eminent professors advanced the project; 600 "distinguished specialists" accepted an invitation to become charter members. Among these were such notables as John Dewey of Columbia and Arthur Lovejoy

of Johns Hopkins. In January of 1915 the first Annual Meeting of the American Association of University Professors was held with John Dewey as president presiding.<sup>1</sup>

In listing activities for the Association, the Johns Hopkins call had given prominence to two. It proposed that the new professional body undertake "the gradual formulation of general principles respecting the tenure of the professional office and the legitimate grounds for the dismissal of professors" and that it establish "a representative judicial committee to investigate and report in cases in which freedom is alleged to have been interfered with by the administrative authorities of any university or in which serious and unwarranted injury to the professional standing and opportunities of any professor is declared to have occurred."<sup>2</sup>

The first Annual Meeting of the Association authorized appointment of the Committee on Academic Freedom and Academic Tenure to deal with these concerns. Known as Committee A, this committee remains the cornerstone committee of the Association. The Association now has committees designated by almost every letter of the alphabet, but the work of Committee A is still its primary reason for being.

Committee A currently performs two important roles in dealing with contemporary issues of academic freedom and tenure: (1) It is the first source and the authoritative interpreter of policy statements dealing with academic freedom and tenure which are developed by the AAUP; (2) It is the judicial committee which determines whether violations of academic freedom have occurred and recommends to the Annual Meeting of the AAUP the imposition of censure.

It was the first Committee A which developed the 1915 "Declaration of Principles on Academic Freedom and Tenure." Committee A also played a major role in the 1925 Conference Statement and the 1940 Statement of Principles on Academic Freedom and Tenure which were jointly formulated with the Association of American Colleges. The 1940 Statement has been endorsed by over 120 educational associations and learned societies, including the American Catholic Historical Association, the American Catholic Philosophical Association, the College Theology Society, the American Academy of Religion, the Association of Theological Schools, and the Association for Jewish Studies. Language from the Statement has been incorporated directly or indirectly into the faculty handbooks of hundreds of colleges and universities across the country.

The statement cites the value of academic freedom for the good of society and spells out conditions of academic freedom supported by a system of tenure. Among the key provisions of the 1940 Statement are the following:

#### ACADEMIC FREEDOM

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

<sup>1</sup>Walter Metzger, "Academic Tenure in America: An Historical Essay," in *Faculty Tenure: A Report and Recommendations by the Commission on Academic Tenure in Higher Education* (San Francisco: Jossey Bass, 1973) 93-159.

<sup>2</sup>Ibid.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

#### ACADEMIC TENURE

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.<sup>3</sup>

In 1970 the AAUP endorsed the following interpretative comment related to the "limitations clause" quoted in (b) above: "Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure."<sup>4</sup>

Recently the AAUP felt it necessary to reexamine the limitations clause in order to clarify its meaning and the implications for the implementation of AAUP policies. The precise meaning of the limitations clause in the 1940 Statement is not explicit. It states the limitations of academic freedom should be stated clearly in writing but does not state a consequence. During the 1960s an interpretation evolved that seemed to say that an institution could place limitations on the academic freedom of its faculty and not be in violation of the 1940 Statement as long as the limitations were phrased with sufficient clarity and were presented in writing to the faculty member at the time of appointment. A subcommittee of Committee A carefully considered and rejected this interpretation of the limitation clause. Its report was published in the September-October 1988 issue of the AAUP's publication *Academe* with a request for comments from readers.<sup>5</sup>

The subcommittee and later Committee A as a whole rejected the above interpretation of the limitations clause as an indulgence and asserted that while institutions have an obligation to state in a forthright manner any limitations they may place on academic freedom, this does not exempt them from scrutiny for vi-

<sup>3</sup>AAUP, *Policy Documents and Reports* (Washington DC: AAUP, 1984) 3-9.

<sup>4</sup>Ibid.

<sup>5</sup>"The 'Limitations' Clause in the 1940 Statement of Principles," *Academe* (September-October 1988) 52-59.

olations of the 1940 Statement. Labeling violations as violations does not change their essential character as violations.

The Committee felt that it is better, if religious tests are to be imposed, to provide prior notice and specificity, but that stated limitations are not limitations on the AAUP in implementing and enforcing its standards. The bottom line is this: invocation of the limitations clause does not relieve an institution of its obligation to afford academic freedom to its faculty as called for in the 1940 Statement on Academic Freedom and Tenure.

This position is explicated further in the AAUP investigating committee's report on Concordia Theological Seminary of Fort Wayne, Indiana, which was published in the May-June 1989 issue of *Academe*:

While the investigating committee acknowledges the right of Concordia Theological Seminary to set limitations as it has on what its faculty can write and say, the committee believes that in so doing the seminary separates itself from the community of higher education that holds academic freedom central to institutional integrity. The committee believes that it is important to note, however, that many theological seminaries are able to define and administer their doctrinal requirements without infringing on essential elements of academic freedom. Conditions for academic freedom at a seminary, as at other institutions with specific "religious or other aims," must be examined on a case-by-case basis.<sup>6</sup>

The position of the AAUP on this matter is based upon the premise that academic freedom is a necessary and definitive characteristic of American institutions of higher education. Any institution which claims to be an institution of higher learning must be measured against the yardstick of the 1940 Statement.

Several recent developments related to teaching and research in theology in Catholic colleges and universities have given the AAUP cause for concern, especially in the context of the meaning of the limitations clause as explicated above. There is concern about the manner in which the requirement of an oath of fidelity will be implemented. Whether this concern is warranted apparently depends upon the subtleties of translation as to the degree of submission required and the groups who must take the oath. A recent article by Ladislav Orsy indicates that the ramifications of the oath may not be as restrictive as earlier media accounts indicated.<sup>7</sup>

There is also concern regarding the Vatican's forthcoming Schema on Catholic Higher Education. While the revised draft is a considerable improvement over the original, several articles regarding the imposition of external authorities into university affairs remain troublesome. The recent warm reception of representatives from American Catholic universities at the Third International Congress of Catholic Universities in Rome and the willingness of the Vatican to dialogue on these issues is a cause for optimism. Also encouraging is the observation that many if not most presidents of Catholic universities understand and appreciate the necessity of academic freedom in Catholic institutions of higher education in Amer-

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<sup>6</sup>"Academic Freedom and Tenure: Concordia Theological Seminary (Indiana)," *Academe* (May-June 1989) 57-67.

<sup>7</sup>Ladislav Orsy, "Profession of Faith and the 'Oath of Fidelity,'" *America* (April 15, 1989) 345-47, 358.

ica. I might add that some of our bishops are not doing too badly in this area either, and I cite specifically the warm words of support and encouragement given to this group earlier by Archbishop John May. A third area of concern is the action on the part of the Catholic University of America (CUA) to deny Father Charles Curran his right as a tenured faculty member to teach theology at that institution. Father Curran did request the assistance of the AAUP and when attempts to reach a mutually acceptable compromise failed, the AAUP authorized an investigation which could lead to the censure of CUA.

An AAUP investigating committee of three distinguished faculty visited CUA to ascertain the facts of the case. The administration met with the committee and cooperated with their investigation. A draft of the investigating committee's report has been circulated to Committee A for a vote as to whether or not it should be published. If Committee A approves publication of the report, it will probably be published in the September-October issue of *Academe*. If further efforts to achieve a settlement then fail, Committee A would review the case prior to the AAUP's 1990 Annual Meeting and the case would go before the Annual Meeting for a vote of censure. It is our hope that it will not come to that.

As we have just reviewed, there are a number of developments in process that could lead to the restriction of academic freedom for Catholic theologians. What can you do? First, support the Catholic Theological Society of America. If you are not a member, join. If you are a member, go out and convince one of your nonmember colleagues to join. Collective action will be far more effective than individual action in preserving your freedom to seek the truth as autonomous scholars. Second, get involved in university governance. Go back to your institutions and check your faculty handbooks to make sure you have in place strong provisions protecting academic freedom for all faculty at your institution. Get involved in the selection of deans and the president at your institution. Make sure you know how candidates for these positions feel about academic freedom. Become active in the faculty senate in your college or university and work to strengthen due process for faculty. Ironically, the CUA Faculty Senate was probably better prepared to deal with the Curran case than almost any other faculty body in the country because of its past experience; yet it failed to prevail. It is important that your faculty senate be prepared to deal with such issues should they arise. And finally, join the national AAUP and become active in the chapter at your institution. The AAUP has the expertise to help you devise mechanisms of governance to increase the role of faculty in the decision making process at your institution. It can help you formulate language to protect and promote academic freedom. It is prepared to help you deal with problems of academic freedom, but it would much rather help you prevent them.

These are challenging times, times that present opportunities to shape the character of your discipline for the future. I hope you will both meet the challenges and take advantage of the opportunities.

#### POSTSCRIPT

In the week following the meeting of the CTSA, the AAUP's Committee A met and recommended censure of Alabama State University, Southeastern Baptist Theological Seminary (North Carolina), and Concordia Theological Seminary

(Indiana). In his report to the Annual Meeting the chairperson of the committee acknowledged that the committee members were not completely of one mind in dealing with all the issues of academic freedom in church-related institutions and that the committee would be giving these issues further consideration. If you have input you would like the committee to consider, please send it to: Committee A, American Association of University Professors, Suite 500, 1012 Fourteenth Street, N.W., Washington, DC 20005.

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