

Academic Freedom and Tenure

THE CATHOLIC UNIVERSITY OF PUERTO RICO¹

The Catholic University of Puerto Rico (CUPR) was founded in 1948 in the southern coastal city of Ponce by the bishops of San Juan and Ponce. It opened the following year, on a 120-acre tract of land purchased from the Puerto Rican government. Originally affiliated with the Catholic University of America (Washington, D.C.), CUPR was chartered by the Board of Regents of the University of the State of New York in 1959, and it was canonically established by the Holy See in 1972. According to the university catalogue, "this ecclesiastical acknowledgment implies application of the norms of Canon Law and of the decrees of the Sacred Congregation for Catholic Education." CUPR has been accredited since 1953 by the Middle States Association of Colleges and Schools.

A Division of Commerce and Colleges of Education, Arts and Humanities, Sciences, and Business Administration were established in CUPR's early years. Schools of Law, Medicine, and Medical Technology were added in the 1960s and 1970s, and branches were established in Mayaguez, Arecibo, and Guayama. There are currently some 8500 students and 300 faculty members on the main campus in Ponce. The university subscribes to the concept of equal opportunity, and the catalogue states that some 93 percent of the students receive some form of economic aid, including both Puerto Rican and federal government assistance.

Among the organizations in which the university holds membership are the American Association for Higher Education and the American Council on Education. There is an inactive chapter of the American Association of University Professors, with seven members currently listed. Procedures for granting tenure conform with AAUP-supported standards.

The university catalogue's description of university life stresses close ties with the Catholic Church. It states that "Catholic University is an educational community in which the ideals of freedom of inquiry, freedom of thought, freedom of expression, and freedom of the individual are sustained." Although the vast majority of the faculty are Catholic, there are some non-Catholics, who must, according to the university statutes, completely respect Catholicism and be of good moral character. The faculty manual (revised edi-

tion of 1982) has three paragraphs on academic freedom:

The Catholic University of Puerto Rico . . . recognizes its dependency on Catholic theology with regard to the teaching of the magisterium and the right and responsibility of the Church to determine the Catholic faith, to define Catholic moral principles and to adopt disciplinary norms for the whole Church.

[It] recognizes the principle of academic freedom. This freedom is understood as the liberty to use to the fullest the methods proper to each discipline in investigation, to make known the results of such investigation and to discuss ideas within each discipline without undue restrictions.

Taking into account its origin, its nature and its history, restrictions placed upon investigation and discussion by the dogma, morals and law of the Catholic Church are not considered undue ones at the Catholic University of Puerto Rico.

The faculty manual goes on to state, in regard to professional conduct:

The faculty member shall abide by all norms established by the Institution in the Statutes, Catalogue and Faculty Manual and by other established rules and regulations as well as any that may be established in the future.

The faculty member should conduct himself in accordance with the values and ethical principles of the Catholic Church (both within and without the University) and be loyal to the Institution. Such loyalty presumes, among other things, the preservation of the good name of the Catholic University.

The faculty is required, at the beginning of each academic year, to attend the Mass of the Holy Spirit, at which time, following the recitation of the Nicene Creed, the assembled faculty takes the following oath: "I also swear to embrace and preserve each and every matter of faith and morals propounded by the Church, and in the same form which the Church proposes, whether they have been defined by a solemn judgment, or asserted and declared by the ordinary magisterium, especially those which refer to the mysteries of the Holy Church of Christ and its Sacraments, the Sacrifice of the Mass, and the Primacy of the Roman Pontiff."²

CUPR's board of trustees is composed of twenty-three members, of whom fifteen are clerics, including all of the eleven bishops of Puerto Rico. Of the remaining eight trustees, one is a student and one is a faculty

¹The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty member at whose request the inquiry was conducted, to the administration of the Catholic University of Puerto Rico, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

²This oath was decreed by the Holy See in May 1967 as the formula to be used in place of the Tridentine formula and Pope Pius X's antimodernist oath of 1910, formerly required of all teachers of theology in all Catholic institutions. The undersigned investigating committee has been told by Catholic theologians that the 1967 oath has fallen into general disuse in the United States in recent years.

member, each of whom is elected annually. The board's president is the Most Reverend Luis Aponte Martínez, the cardinal-archbishop of San Juan. The bishop of Ponce, the Most Reverend Fremiot Torres Oliver, serves as grand chancellor of the university and as chair of the board's executive committee. The latter body consists of six members, with the presence of four constituting a quorum.

In 1984, the lay president of CUPR, Jaime B. Fuster (currently a member of the United States Congress), was replaced by the Reverend Tosello Giangiacomo, C.S.Sp. In the summer of 1986, the outgoing academic vice president, Nylda Gotay de Hatton, was replaced by Dr. Lillian Ramos.

THE DISMISSAL OF PROFESSOR QUILICHINI

Jeannette Quilichini Paz, who holds B.A. and M.Ed. degrees from CUPR, joined the faculty of the English and Foreign Language Department in a part-time position in the fall of 1974. She had obtained a civil divorce the year before from her husband, whom she had earlier married in a Roman Catholic ceremony. The following year, in 1975, she was offered a full-time position as assistant professor of English. When she accepted this appointment, she says that she was told by Vice President Gotay de Hatton that, although the faculty manual is silent on the matter, if she remarries she knows "what will happen." Professor Quilichini reports having stated in reply that she did not agree at all with what the vice president was implying and that no one had the right to interfere with her private life. In August 1982 she was awarded tenure.

On July 3, 1986, Professor Quilichini remarried, and a month later, on August 4, the new academic vice president, Lillian Ramos, on her first day in office, called in Professor Quilichini and told her that she had learned of Professor Quilichini's remarriage and that she was initiating dismissal proceedings. Two days later Professor Quilichini had an interview with the dean of the college, the Reverend Félix Lázaro Martínez. In these interviews she did not deny the fact of her remarriage.

On August 13, President Giangiacomo wrote to inform Professor Quilichini that she was being placed on paid suspension from teaching because she had remarried in a civil ceremony without having had her previous Catholic marriage annulled according to the norms of the Roman Catholic Church.³ He also informed her of her right under institutional policy to a hearing on the matter.

The hearing was held on September 15, 1986, before an official examiner, Professor of Law Fratallone di Gangi, who was appointed by the president. The administration was represented by an attorney, as was Professor Quilichini. During the hearing, the administration alleged that Professor Quilichini was in clear violation of institutional policy by remarrying and that her failure to adhere to a central tenet of the Catholic Church in her personal life was ground for dismissal. Professor Quilichini, through her attorney, asserted that both the constitution of Puerto Rico and United

States federal statutes protected her from intrusion by the university into her private life.

The official examiner reported to President Giangiacomo on October 27. He upheld the charge against Professor Quilichini, asserting that she was aware of her contractual obligation to remain in good standing with the Roman Catholic Church and its norms, which were applicable to both her professional and her personal life. In accord with CUPR's dismissal procedures, the president's recommendation for dismissal, with the official examiner's concurrence, was forwarded to a three-person *ad hoc* committee of the university senate for review. Without conducting a further public hearing or calling any witnesses, the *ad hoc* committee conveyed to President Giangiacomo its acceptance of his recommendation. By letter dated October 30, 1986, President Giangiacomo notified Professor Quilichini that the university senate had recommended her dismissal, which he made effective the next day. She was offered no severance salary.

Professor Quilichini, through her attorney, filed an appeal of the president's decision with the board of trustees on November 5, 1986. By letter dated January 8, 1987, President Giangiacomo informed her that the executive committee of the board had met and upheld his action by unanimous vote. Professor Quilichini's attorneys initiated litigation against CUPR on February 9. She currently holds a part-time position on the faculty of the Inter-American University in Ponce while seeking a full-time position elsewhere.

Professor Quilichini sought assistance from the American Association of University Professors on November 5, 1986, through her attorney (and brother), Carlos Quilichini. By letter dated November 18, the Association's staff communicated with President Giangiacomo on the concerns presented by Professor Quilichini's case. It questioned the stated ground for suspending and then dismissing Professor Quilichini for cause; it asked that she be reinstated and that any further consideration of her status be in accord with the standards governing dismissal set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and Regulations 5 through 8 in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

President Giangiacomo replied on December 2, 1986, as follows:

... The issues raised in your letter are internal matters of the Catholic University of Puerto Rico, however, out of courtesy we will explain certain facts that perhaps are not known to you.

³Commenting on a draft text of this report sent to him prior to publication, the attorney for the CUPR administration took exception to this sentence. According to the attorney, "it gives the impression that [Professor Quilichini's previous] marriage existed and could later be dissolved."

Catholic University of Puerto Rico is a university of the Holy Roman Catholic Church. As such it is subject to the tenets of the Holy Roman Catholic Church, the Canon Law and principles of the Church that guide it. Catholic University of Puerto Rico cannot depart from the Church's principles, including the adherence of its faculty to Church standards that are binding upon the Roman Catholic members of the faculty, even in their private life.

... We cannot accept that your Association pass judgment on what constitutes compliance or noncompliance with the laws, rules or standards of conduct imposed by the Church. Even the Constitutions of the United States and of the Commonwealth of Puerto Rico prevent intrusions by lay authorities on matters of religion. The Canon Law of the Holy Roman Catholic Church requires that members of the faculty of Catholic Universities must abide faithfully with the doctrine of the Holy Roman Catholic Church and comply with the principles of the Church in their private life.

For your information, ecclesiastical marriage within the Roman Catholic Church is a sacrament. It is the doctrine of the Church that marriage within the Church was elevated to the dignity of a sacrament by Our Lord Jesus Christ and is part of Divine Law. Under the Church doctrine and under Canon Law, the sacrament of marriage is indissoluble and binding for life unless its nullity has been established by an Ecclesiastical Tribunal.

If a Roman Catholic who has entered into the sacrament of marriage in the Church obtains a divorce in a civil court, such Roman Catholic is, in the eyes of the Church, separated from the other spouse *a mensa et thoro*, and is still eligible to receive the Sacrament of Holy Communion, but continues to be married to the other spouse. Since the sacrament of marriage is for life, unless it has been declared null and void by an ecclesiastical court, any subsequent civil marriage ceremony is, according to the Holy Roman Catholic Church, null and void and marital life under that subsequent civil marriage is sinful. We are aware of the fact that civil law considers this second marriage as valid, however under Church Law, which governs our University, it is considered an adulterous union. When the professor to which your letter refers was employed, she was told that remarriage would disqualify her for her position. She was also familiar with the provisions of the Faculty Manual which require compliance with Church Law.

Catholic University of Puerto Rico has followed due process in the case and the action taken is justified. This University as an integral part of the Holy Roman Catholic Church must adhere to the laws of the Church and will demand compliance of its faculty members with Church Law.

The arguments expressed in your letter of November 19, 1986, and any other arguments that the principles of Church Law be dispensed with, cannot be given favorable consideration.

The staff, responding on December 11 to President Giangiacomo, provided further clarification of the Association's concerns:

... We have no quarrel with the concept that professing Catholics should consider themselves bound, in their private lives and in other respects, by applicable Catholic tenets. Nor are we unaware that the Catholic University of Puerto Rico was established by the Holy See and considers itself subject to the norms of Canon Law. What is of basic concern to us is that the administration of the university appears to have assumed ecclesiastical authori-

ty for itself by dismissing a tenured member of its faculty after it found that in her private life she acted contrary to the tenets of the Church.

The Catholic University of Puerto Rico advertises itself in its catalogue as an independent institution of higher learning in the United States, accredited as such by the Middle States Association of Colleges and Schools, and enjoying membership in numerous national organizations, several of which have endorsed the 1940 *Statement of Principles on Academic Freedom and Tenure*. The catalogue notes that for some years a local chapter of the American Association of University Professors has existed at the university. It does not characterize the university as an arm of the Roman Catholic Church, authorized to act on behalf of the Church against members of the academic community because of perceived shortcomings in their religious commitments relating to their private lives. On the contrary, the catalogue refers to the university as "an educational community in which the ideals of freedom of inquiry, freedom of thought, freedom of expression, and *freedom of the individual* are sustained" (emphasis ours).

Accordingly, we severely question any assertion that Professor Quilichini's personal relationship with her church can appropriately be used by the university administration as adequate cause for dismissing her from her tenured position on the faculty. The administration has made no attempt of which we are aware to demonstrate before a duly constituted body of faculty peers that Professor Quilichini, by her actions, is in any way unfit to continue teaching English courses as she has since 1974. Under the 1940 *Statement of Principles* and derivative Association-supported standards, it is incumbent upon the university administration to show to the satisfaction of the academic community that the fact of Professor Quilichini's remarriage has rendered her unfit to retain her tenured teaching position.

As stated in [our] November 18 letter to you, under the provisions of the 1940 *Statement* and the complementary 1958 *Statement* a faculty member may be suspended only where there has been a showing of immediate harm to herself or others, and a dismissal must be related, directly and substantially, to the fitness of the faculty member as a teacher or researcher. Dismissal is not to be used to restrain a faculty member in the exercise of her rights as an American citizen. Procedures assuring academic due process in a case of dismissal, as we noted in our earlier letter, are set forth in the 1940 and 1958 *Statements*. We view these requisite safeguards of academic due process as applicable in Professor Quilichini's case as in all other dismissal cases at American colleges and universities brought to our attention.

On December 23, 1986, with no apparent resolution of Professor Quilichini's case in the offing, the Association's general secretary authorized an investigation. Notified of the investigation and the proposed visit to CUPR by the undersigned *ad hoc* committee, the administration, through its attorney, José Guillermo Vivas, informed the staff, by letter dated January 7, 1987, that it would not cooperate. Mr. Vivas characterized the investigation as an unlawful intrusion and entanglement in religious matters at a church-sponsored institution. The investigating committee visited Ponce on February 6 and 7, 1987, and met with Professor Quilichini and about a dozen members of the faculty. The administration did not meet with the committee or otherwise cooperate with it.

Grounds for Dismissal

In his letters to Professor Quilichini and subsequently to the Association's staff, President Giangiacomo asserted as the only ground for suspending and then dismissing Professor Quilichini the undisputed fact that she had remarried in a civil ceremony without having secured an annulment of her previous Catholic marriage. Failure to comply with Church dogma, he stated, was a violation of institutional policy constituting a dismissable offense.

The 1982 CUPR faculty manual, under which the administration moved to dismiss Professor Quilichini, includes as a possible ground for suspension and/or dismissal of a faculty member "professional or personal conduct that violates the moral or doctrinal principles of the Catholic Church." The manual prohibits activity by a faculty member deemed offensive to Catholic dogma and morality both within and without the university. Similarly, the CUPR statutes require a faculty member to have had a Catholic upbringing and training, or if not a Catholic, to be completely respectful of Catholicism and be of good moral character.

Testifying at Professor Quilichini's hearing, CUPR's attorney asserted that a faculty member must obey all the norms set forth by the institution, *including those that may be adopted in the future*. He pointed out that candidates for positions at the university have been informed since 1977 that they cannot be appointed if they are "canonically irregular." He noted that the ecclesiastical ties with Rome carry with them "the application *ex-proprio vigore* of the norms of Canon Law and the decrees of the Sacred Congregation for Catholic Education." Citing the doctrine of the indissolubility of a marriage performed in the Catholic Church, CUPR's attorney further noted that remarriage of a previously married Catholic constitutes adultery in the eyes of the Church and is therefore a violation of university policy. Following from this analysis, he asserted the authority of the university administration to dismiss a faculty member who violates a basic tenet of the Catholic Church, citing Canon Law 810, which reads as follows:

1. In Catholic universities it is the duty of the competent statutory authority to ensure that there be appointed teachers who are not only qualified in scientific and pedagogical expertise, but are also outstanding in their integrity of doctrine and uprightness of life. If these requirements are found to be lacking, it is also that authority's duty to see to it that these teachers are removed from office, in accordance with the procedure determined in the statutes.
2. The Episcopal Conference and diocesan Bishops concerned have the duty and the right of seeing to it that, in these universities, the principles of Catholic doctrine are faithfully observed.

As far as the investigating committee could ascertain, the stated policies of CUPR bearing on the personal lives of Catholic faculty members had not been invoked previously to dismiss a tenured faculty member for cause. However, the investigating committee heard reports that nontenured faculty and staff members may have experienced nonrenewal of their appointments for the same or for similar reasons, albeit unstated. The

committee notes with irony a statement by Jesús María Pagán, director of the Office of Public Relations at CUPR, who said in a press release on Professor Quilichini's suspension that CUPR's statutes were revised in 1981 to reflect the views of the Conference of Bishops of Puerto Rico on the norms of morality that should guide the conduct of Catholics; and that the new interpretation was not to be applied retroactively to those Catholics who had contracted canonically invalid marriages before 1981 (*El Mundo* [San Juan], August 26, 1986). If adultery is a violation of university policy, as CUPR's attorney claims, then it appears that adultery contracted for before 1981 (but committed since then) is acceptable to CUPR's administration. Prearranged sin, it seems, is preferable to impulsive iniquity.

Professor Quilichini's attorneys have argued that the suspension and dismissal of Professor Quilichini were "not based on academic considerations internal to the university, but on external considerations relating to ecclesiastical discipline and religious dogma. As such, her dismissal is contrary to the privacy and proprietary rights specifically guaranteed by the constitution of the Commonwealth of Puerto Rico." They have asserted that the action to dismiss Professor Quilichini may also violate United States federal statutes regulating student loans and government grants to CUPR.

The investigating committee notes the provision in the 1940 *Statement of Principles on Academic Freedom and Tenure* that "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." (In 1970, the Association stated that "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.") Although CUPR's statutes do claim a religious exemption in regard to academic freedom, in Professor Quilichini's case the committee has found no direct evidence that her academic freedom was abridged in the sense of restriction on anything that she wrote or said, nor for that matter is the committee aware of any such abridgment at CUPR. In the committee's judgment, however, the vagueness of the restrictions relating to Catholic faith and morals can pose a distinct threat to academic freedom. Indeed, the committee can find no reason why, given CUPR's restrictions and the administration's asserted prerogatives, Catholic faculty members who violate their obligation to attend Mass on Sundays, or who do not contribute to the upkeep of their parish church, or who commit any other Church-defined sin could not be dismissed or punished by CUPR's administration in some way if it was looking for an excuse to do so. Selective implementation of these restrictions would create an intolerable climate for academic freedom.

The issue of direct concern in Professor Quilichini's case, however, is not academic freedom but personal freedom. It was her private conduct rather than her conduct as a teacher and researcher or any intramural or extramural statements she may have made that was the administration's ground for dismissal. At no time has the administration suggested that Professor Quilichini improperly introduced controversial

material into the classroom or that her professional performance at CUPR was in any way substandard. Indeed, she has received consistently high evaluations of her classroom teaching. At her hearing, Dean Martínez stated that except for the issue at hand—her remarriage—Professor Quilichini was an exemplary teacher and that her conduct had never been the cause of any scandal or adverse comments.

The central issue, then, is whether or not the administration's stated ground for acting against Professor Quilichini constitutes adequate cause for suspension and dismissal under the standards supported by the Association and the general community of American higher education. Regulation 5(a) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* states that "Adequate cause for dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens." A statement in the 1973 faculty manual (under which Professor Quilichini was initially appointed) merits emphasis: "The professor's private life lies within the scope of his sacred privacy, and the Catholic University does not interfere with it in any way."

The investigating committee finds that the CUPR administration's actions against Professor Quilichini were based on purely ecclesiastical considerations relating to her remarriage. The administration did not suggest any other impropriety; it did not accuse her of bringing her remarriage to the attention of students or colleagues, or, in any way, of creating a scandal that would reflect badly on the institution. One can debate the reach of the concession in the 1940 *Statement of Principles on Academic Freedom and Tenure* that church-related institutions may, with advance notice, limit freedom of teaching and publication. The investigating committee is, however, unable to find any basis in the 1940 *Statement of Principles* for extending to a church-related institution an additional prerogative to regulate a faculty member's private life unconnected to her professional duties. In sum, the committee concludes that the CUPR administration made no attempt to demonstrate, as it was required to do under the 1940 *Statement of Principles*, that Professor Quilichini had become unfit to continue teaching, as she had successfully for thirteen years, in her tenured position on the faculty.

Safeguards of Academic Due Process

The CUPR faculty manual states that "the President can suspend a faculty member pending investigation of charges against him, if his continuance would produce immediate harm to himself or others." The standard is consistent with that set forth in Regulation 5(c)(1) of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. The investigating committee finds no evidence, nor does the administration allege, that Professor Quilichini's continued presence in the classroom posed an immediate danger to herself or to her students. Indeed, the committee heard reports that other faculty members with similar marital status, i.e., with canonically invalid marriages, have taught and continue to teach at CUPR.

Once the CUPR administration moves to dismiss a faculty member for cause, the faculty manual provides

for a hearing of the charges before a presidentially appointed examiner, a review of the examiner's finding by a three-member *ad hoc* committee of the university senate, and, finally, consideration of the record by the board of trustees. In the proceedings before the official examiner, the parties may be represented by legal counsel, introduce witnesses, and receive a transcript; there is no opportunity provided for the faculty member subjected to dismissal to appear before the senate's *ad hoc* committee (where two of three members constitute a quorum) or before the board or its representative.

The procedures set forth in the 1940 *Statement of Principles* and the 1958 *Statement on Procedural Standards* call *inter alia* for a preliminary proceeding involving an elected faculty committee; a hearing of record on the charges, conducted by a faculty body different from the previous committee; ample time for preparation for the formal hearing; the burden of demonstrating adequate cause for dismissal being borne by the administration; opportunity to appear before the board before it reaches a final decision; and, should a decision to dismiss result from these procedures, afford-ance of at least one year of notice or terminal salary. The provision for terminal notice or salary need not apply in the event there has been a finding that the conduct which justified dismissal involved moral turpitude. According to the 1970 Interpretive Comments on the 1940 *Statement*, "The concept of 'moral turpitude' identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally."

According to the minutes of the university senate for September 4, 1986, President Giangiacomo, acting as the president of the senate, asked for the nomination of a committee but did not identify to the senate the issue which the committee would consider. Moreover, the results of the *ad hoc* committee's deliberations were not reported back to the university senate.

The investigating committee finds that Professor Quilichini was not afforded opportunity to challenge, in a hearing of record before faculty peers, the single, undisputed charge against her as constituting adequate cause for dismissal. The committee finds that she was denied the procedural protections to which she was entitled under the 1940 and 1958 *Statements*. In addition, the committee finds no evidence that Professor Quilichini's remarriage affronted the moral sensibilities of the academic community of the Catholic University of Puerto Rico or of the wider Puerto Rican community. Indeed, the committee encountered a great deal of sympathy for Professor Quilichini; any outrage against moral sensibilities appeared to be directed against the administration of CUPR.⁴

⁴The attorney for the CUPR administration, in his comments on the prepublication text of this report, asserted that the report "reflects the prejudiced attitude of AAUP against the religious tenets of the Roman Catholic Church and of Catholic University of Puerto Rico," that AAUP has "no authority to interpret the ecclesiastical law of

