AUTHORITY AND FREEDOM: THE MEDIEVAL ROOTS OF AN UNDERSTANDING OF RELIGIOUS FREEDOM

Rodney Moss[1]
St Augustine College of South Africa, Johannesburg, South Africa

Abstract

Some regard religious freedom as a product of the Enlightenment. However, the roots of a later understanding of religious freedom as articulated in *Dignitatis Humanae* of the Second Vatican Council lie in the Middle Ages.

These roots are threefold: first, the relative academic freedom of the period together with the scholastic theological method of doubting, secondly, the rise of constitutional government and the dualism of the Church and the State in medieval society and thirdly, the theological speculation on the freedom of conscience all eventually contributed to the idea that everyone has the right to live his or her relationship with God in a freedom that is constitutionally and judicially protected against any form of coercion.

However freedom of religion is not simply an affair of the individual. It is also an affair of the community for it is the freedom to commune with others.

1   INTRODUCTION

The Declaration on Religious Freedom, *Dignitatis Humanae*, of the Second Vatican Council affirmed in the words of John Courtney Murray that, "the realities of the Church to the world and of the world to the Church is to be lived in freedom".[1] Murray[2] states that two new signs of the times were recognised at the Council: first, a consciousness of the dignity of the human person which requires

---

[1]   Research Associate, Research Institute for Theology and Religion, University of South Africa, Pretoria, South Africa.

responsible action consequent on freedom and secondly, an increased awareness of human community where "self-fulfilment is the achievement of freedom for communion with others".[3] Christian freedom is never mere self-fulfilment for it is a freedom to commune with others. The realisation that this freedom involves communion with others introduces a paradox of the Christian faith: community implies some kind of authority and consequently links authority and freedom in the Church.

Authority and freedom must first relate to the human conscience since Christianity is, in principle, first a religion of the inner life. The Christian moral subject is obliged to be faithful to his or her human dignity by forming his or her judgment of conscience and following it faithfully even should he or she in good faith be mistaken. This obligation assures the realisation of *personal* destiny. However, "being a social subject, the person must assume and promote the objective sense of his personal relations".[4] Effectively this means that the moral subject must accomplish objective requirements since he or she is a social being. Social community relations are an integral part of our moral perfection.

Closely connected to freedom of conscience is the religious freedom that is the principal subject of this article. A person's spiritual and religious convictions are fundamental because they constitute the core of his or her existence. Religious freedom is a guarantee and a protection of the dignity of the moral person both in terms of his or her personal integrity and his or her personal relations. As such, religious freedom guarantees as much as possible the exercise of freedom of conscience while restricting that freedom in some measure to ensure that the moral subject behaves as a social being. Authority, then, must prevent the exercise of freedom of conscience and freedom of religion from compromising the rights of others. Any measures taken by authority must safeguard the common good and concomitantly allow the individual as much freedom as possible.

This article will attempt to discern the embryonic roots of religious freedom in the Middle Ages. Further, it will propose that the relative academic freedom of the medieval university had religious roots. Medieval theological disputation was an instrument of intellectual emancipation for, in order to gain a real intellectual freedom of judgment, one was required to identify and confront falsehood. In addition, I maintain that medieval politico-religious unity rested on a broad consensus where authority was rooted in "a

substantive, supra-human truth and law"[5] rather than on a later unlimited exaltation of freedom cut off from societal responsibility and norms. The former can issue in constitutional democracy, the latter in authoritarianism or anarchy. True religious freedom is in harmony with fully understood constitutional democracy where as in the Middle Ages, free persons were able to live under a limited government in which society and State were distinct. In a later development of doctrine, religious freedom was to become the first of all freedoms in a well organised society without which no other human and civil freedom could be safe.

This article will first sketch the exercise of medieval political freedom and then consider the practice of academic and theological freedom, for both are part of a search for truth within the commonwealth. Finally, it will look at freedom of conscience, which gives birth to religious freedom. It is in *Dignitatis Humanae* that the developed teaching of the Catholic Church on religious freedom as a human and civil right within the judicial-social order is to be found.

2   ECCLESIASTICAL AND CIVIL AUTHORITY IN THE MIDDLE AGES

First, a brief historical sketch will prepare the ground for a consideration of the sacral and royal dualism so characteristic of the medieval political order. Later, the collapse of this medieval commonwealth led to royal absolutism and later totalitarianism.

The decline and fall of the Roman Empire had left a political vacuum that only the Church was capable of filling.[6] The medieval state was thus reliant on the Church. Indeed, as Goerner notes, "unable to work at a satisfactory temporal basis for political unity for a variety of historical reasons, the medieval regimes rested on religious unity instead".[7] The political aspects of this sacral society, the great Church-State, were undeveloped in comparison with the religious and ecclesiastical aspects of the common life. Journet notes that

> …the extra-ordinary power of attraction, inherent in spiritual values … will inevitably begin to envelop, enwrap, and embrace all values of the temporal order, so that these latter … will be seen in a way to be based on them, or, more exactly, withdrawn behind them, hidden in them,

renouncing all the time … to assert their difference and emphasise their originality.[8]

Indeed, this politico-religious unity rested on a broad consensus: adherence to the Catholic faith, spiritual communion with the See of Rome and a temporal expression in the Holy Roman Empire.

John Courtney Murray[9] maintains that the Middle Ages were developing towards limited, constitutional government. He enumerates four basic principles of constitutional government that is limited in its powers and finds their roots in the Middle Ages. First, he talks about the distinction between the sacred and secular orders of human life: the temporal and terrestrial is not all. There is more: the human transcendent end. The powers of government do not reach these higher orders of human existence for they are limited to the terrestrial realm.[10] Secondly, the medieval world made a valid and necessary distinction between society and the State. Murray notes

> Historically, this distinction developed out of the medieval distinction between the *ecclesia* (*christianitas*) and the *imperium* … The imperial power played a role within Christendom − a limited role; it was charged with limited functions within the Great Society in as much as the *ecclesia* was a socio-temporal reality.[11]

Thirdly, Murray maintains that consequently, in the medieval world, the State was only one order within society: the order of public law and political administration. Society, on a larger scale, signified an area of comparative freedom, both personal and corporate whereas the State operated in a narrower area in which public authorities could apply coercive powers.[12] Fourthly, following on from this divide between society and State he draws a further distinction between the common good and public order. Here again the public order is a narrower concept: the area of coercive discipline, public peace, public morality and justice.

The next section will consider the development of political theory on the relationship between the Church and the State and the gradual move toward the secular State.

3   MEDIEVAL POLITICAL THEORY: CHURCH AND STATE

In antiquity the political society was an integrally religious organisation: *rex* and *sacerdos* were often one. This concept of the sacral society was adopted by the barbarian tribes which invaded the Western Empire in the Dark Ages. However, gradually Christian civilisation began to distinguish between kingship and priesthood so that one of the legacies of the Middle Ages was a distinction between politics and religion and the eventual radical secularisation of politics.

This section will outline the theories of Giles of Rome, Marsilius of Padua, John of Paris and St. Robert Bellarmine as serious attempts to tackle the problems presented by two hierarchies, the political and the ecclesiastical, within the one commonwealth of believers.

Giles of Rome is representative of the papalists who asserted the universal lordship of the Pope and even his ownership of everything. Giles represents a tendency towards an extreme form of the sacralisation of society. Goerner comments

> [H] is one of the most consistent and extreme formulations of the power of the … pope as a solution to the interrelated problems posed by human freedom and evil … Giles of Rome went further than most in formulating a doctrine of papal supremacy by means of which the Church was to redeem human freedom from the chaos of evil into which it seemed to plunge the race of man.[13]

While Giles defends the doctrine of the two swords, he effectively holds that the Pope has both swords.[14] He understands that the spiritual power (equated here with the priestly hierarchy and the Pope) is superior (concerned with spiritual and divine things) in dignity to the secular power (concerned with material things). Goerner in considering Giles' position notes:

> [W]hatever the spiritual roots of Giles' argument, the political of consequences of such a position in the public order is regularly disturbed by papal attempts to employ the instruments of this world for the solution of spiritual problems − the consequence is a tendency for the political structure to break down from its being repeatedly put to uses for which it is not fitted, uses furthermore, that tend to produce violent excitement in the body politic.[15]

We turn next to Marsilius of Padua for a re-assertion and assessment of religion by politics. His *Defensor Pacis* is an extreme and indeed brilliant counter to the papalist position occasioned by inept papal involvement in Italian politics – an involvement that stimulated a radical reaction. The reaction provoked by a person like Marsilius led inexorably to the generally held Western European idea of the divine right of absolute kingship.

A more balanced position is presented by John of Paris in his *Tractatus*. Here, Murray concludes that John of Paris had found a genuine middle way that is "indeed 'the great Catholic tradition' and, … if developed in *eodem sensus*, it may show the way to the solution of the contemporary problem, which has itself developed in the sense taken by the problem in the fourteenth century".[16] John of Paris was concerned about the political and ecclesiastical abuse of power and wished to provide a solution to it. First, he justified two hierarchies, the political and the ecclesiastical, within the one commonwealth of believers.[17] He believed that the same people had two ends to life: the natural life and eternal life. Each end had a set of governing institutions – Pope and king (or emperor). He envisaged that each authority would use different instruments of discipline, and most importantly, each set of offices would act as a check of the other. Additionally, both hierarchies, the ecclesiastical and the political, would be provided with a constitutional structure that should exclude extremism and prevent a tyrannical abuse of authority in either the Church or the State. In the State, he felt that there should be a mixed regime with the king being assisted by a type of senate of the best men (an element of aristocracy), and with the king being elected by and from the people (an element of democracy). In the Church and under the Pope, people were to be elected from and by each region so that so that each had some share in the government of the Church.[18]

John of Paris was the father of the emerging constitutionalism of the Middle Ages, then so beloved by Murray. He advocated a mixed regime in both Church and State and for both Pope and king to be moderated by an aristocratic senate (for the king, the barons; for the Pope, the cardinals and ultimately a council of the episcopacy) on the one hand, and by the confirmation of popular election, on the other hand. The basis of his "constitutional solution" lay in the diversity of the authorities both within the Church and the State.

Next we turn our attention to the doctrine of Robert Bellarmine. Goerner comments, "In the doctrine of Bellarmine, the Church has sought a middle way between the extremes of Marsilianism, on the one hand, and, on the other, the radical clericalism of Giles."[19] Bellarmine never wrote of two societies but, rather of two powers in a single society, the Christian commonwealth which was effectively the Church, "Kings and pontiffs, clergy and laity do not make up two commonwealths [*respublicas*], but one, that is, one Church, for we are one body, Rom 12:5 and 1 Cor 12:13; but in all bodies, the members are connected and dependent, one on the other."[20]

In Bellarmine's view, the Church is the *respublica Christiana*. This means that there is no distinct political society. The Christian commonwealth has a multiplicity of different offices: a division between the spiritual and the temporal ensures the salvation of souls on the one hand and the maintenance of peace and order in secular life on the other hand. However, the temporal power must serve the spiritual power, which ultimately serves our ultimate end. This means that the organs of state power are to be subject to the organs of ecclesiastical power as the body is subject to the soul. Christians are to lead one human life, not a natural and a supernatural life. One can understand, then, the medieval mentality that saw heresy as a fundamental rupture of the common bond that bound together members of the *respublica Christiana.*

The above ideas show us that the medieval organisation of politics lay some of the foundations for modern constitutionalism, without which a concept like freedom of religion would be impossible. Government was beginning to be limited by law. At the core of medieval societal organisation lay the Gelasian dualism of two authorities, the sacred and the royal. In principle, this dualism was opposed to any form of totalitarianism and in this sense prepared the way for constitutionalism. However, with time the temporal inefficiency of the Empire gave way to national kingdoms that rested on more genuine political goals. Further disputes between popes and kings and the declining moral fibre of the medieval papacy led medieval society in the direction of royal absolutism, and for all practical purposes the religion of the State began to fall under the headship of royal authority. Murray proposes that medieval Europe was on its way to adopting limited constitutional government, when to paraphrase Murray, the appearance of royal absolutism signalled the death of the goose that laid the golden egg.[21]

The medieval growth of constitutionalism was a necessary first step towards freedom of religion. However, the medieval mind saw the problem more in terms of the "*libertas ecclesiae*" than in terms of the freedom of the individual conscience. The early imperial protection of religion was more "for the care of the Church, a respect for the immunity of the Church from imperial intervention in her internal affairs and in her apostolic office".[22] At this stage, it was a public care of religion limited to a protection of the freedom of the Church in its hierarchical essence rather than in the protection of the religious freedom of the individual members of the Church.

In the next section we will investigate academic and theological freedom in the Middle Ages and show that it was shaped, or at least influenced by, the Christian religion. The roots of academic life and freedom lay in the Middle Ages rather than in the later period of the Enlightenment.

4 ACADEMIC AND THEOLOGICAL FREEDOM IN THE MIDDLE AGES

In 1855, John Henry Newman wrote in his well-known evaluation of the emerging medieval university and its propensity for academic freedom:

> This is the very age of universities; it is the classical period of the schoolmen; it is the splendid and palmary instance of the wise policy and large liberality of the Church, as regards philosophical inquiry. If ever there was a time when the intellect went wild, and had a licentious revel, it was at the date I speak of. When was there ever a more curious, more meddling, bolder, keener, more penetrating, more rationalistic exercise of reason than at that time? What class of question did that subtle, metaphysical spirit not scrutinize? What premise was not traced to its first origin, and exhibited in its most natural shape? What whole was not analysed?[23]

Contemporary historical research would seem to reaffirm Newman's contention. Peter Classen, a renowned German secular historian writes: "For the first and perhaps only time in European history

scholarly teaching during the thirteenth century found fullest autonomy."[24]

The institution of the university and the concomitant notion of academic freedom arose in the High Middle Ages. It was during this period that the Church exercised an unparalleled influence upon both European culture and society. William J Hoye comments: "Both the idea of the university and the idea of academic freedom can be called gifts of medieval Christianity to the modern world, albeit in a secularised form."[25] Hoye demonstrates earlier in his article that the first known mention of academic freedom in Western history is in an official papal document. In 1220, a conflict between the University of Bologna and the civic authorities led university authorities to appeal for support to Pope Honorius III. The Pope encouraged the university to defend its "scholastic freedom" (*libertas scolastica*) and resist civic attempts to undermine the independence of academic life.[26]

There are many instances of the academic liberties enjoyed in the earliest universities: legal privileges granted by ecclesiastical or secular authorities, universities such as Bologna where student hegemony reigned, a recognised *studium generale* which granted the right to teach anywhere, the freedom of movement characteristic of teachers and students and the supranational character of university life. Moreover, ecclesiastical independence from temporal authorities and the corporate self-government of the guilds provided the universities with models of autonomy.[27]

However, medieval religious thought provided a further paradigmatic model for religious freedom of thought. The early universities were open to the emerging influence of Aristotle who recognised that the search for truth must be free and independent.[28] This freedom, however, was more than the absence of intimidation and coercion; rather, it was a positive, self-determinative and motivating force. For Aristotle, theology provided a model for free thought. He wrote: "Evidently then we do not seek it for the sake of any other advantage; but as the man is free, we say, who exists for his own and not for another, so we pursue this as the only free science, for it alone exists for its own sake".[29] Christian theology too attempts to pursue truth for its own sake as Christianity identifies God with truth itself. Theology in academic life can then guarantee a certain intellectual freedom. Moreover, the scholastic theological method of doubting *(dubitatio)* became an instrument of intellectual emancipation: "Whoever wants to seek truth without having known

9

doubt beforehand is like someone who does not know where he is going."[30] The method, *quaestio disputata*, uses doubt to excite inquiry and interrogation in order to perceive truth. Intellectual freedom of judgment requires the so-called false opinions of opponents to be conveyed and presented in a clear fashion. It also calls for the citation of biblical arguments to support these opinions.[31]

A further aspect of the "freedom" of the medieval theological method is found in the relationship between authority and reason. Respect for authoritative binding texts, the unchangeable collection of given authorities, creatively combined with the scholar's own reason is a special hermeneutic referred to by scholars as "pious or reverent interpretation" *(pia interpretation; exponere reverento)*.[32] This understanding of authoritative texts, then, arises from two sources: the faith that binds and the reader's own reason.[33] A further measure of the freedom of the theological method was Aquinas' deduction that even the literal meanings of biblical texts can have several meanings. He argued that

> … it is part of the dignity of Holy Scripture that a plurality of meanings is contained under one and the same letter so that it thus harmonizes with different understandings of the human readers. Thus each one is astonished to find in divine scripture the very truth that he has conceived in his own mind.[34]

Texts, therefore, do not have one specific meaning. Even the literal meaning of a text may in turn refer to further realities.

We may conclude then that the medieval theological method was concerned not with individual truths as such, but with the **truth.** The truth is identified with God and consequently academic life itself is a quest for **the truth** that sets us free.

In the next section, we look at the search for freedom, and specifically religious freedom, which began to move to a consideration of the individual conscience as religious freedom is indeed only a matter of applying freedom of conscience.

5   MEDIEVAL VIEWS ON CONSCIENCE

Here, religious freedom involves the consideration of two related questions. First, there is the subjective question of the rights of

conscience in the medieval context which is the subject of this section. The second question concerns the more objective constitutional question. Religious freedom is rooted in objective truth and is consequently the concern of society and the State.[35] The consideration of the rights of conscience in this section is based on the premise that, in order to be legitimately exercised, religious freedom must have as a norm a right conscience. The views of Peter Abelard, the so-called Franciscan teachers of the thirteenth century and Aquinas will be considered as being representative of the medieval teaching on conscience.

Abelard teaches that all that is contrary to the individual conscience is sinful[36] as God judges the intention and the disposition rather than the objective reality which he considers to be more secondary in nature.[37] In the assessment of sin, and in the definition of sin, the judgment of the conscience is an essential element because without guilt there can be no sin.

Louis Janssen summarises Abelard's position in the following four points. First, to act contrary to one's conscience is always a sin − for in the very definition of sin − the judgment of conscience is a constitutive element. Secondly, to follow an erroneous conscience in good faith is not properly speaking a sin. In this area, ignorance is never culpable nor the result of ignorance. Thirdly, in the last case the act itself lacks merit as the direction taken by the will is not in one's best interests. Fourthly, unbelief even due to invincible ignorance or non-culpable error, will exclude the subject from salvation.[38]

The Franciscan teachers of the thirteenth century reacted to Abelard's position on the judgment of conscience as a constitutive element of sin. They insisted on the objective aspects of sin as an opposition to the law of God while aware that to act against conscience with a good intention is itself sin. Their concern, however, was to safeguard an objective moral order.[39] Certain acts, such as faith or charity are intrinsically good; others, like fornication are essentially bad. In some cases, then, when conscience forbids what is essentially good or recommends what is bad in itself, it does not oblige. Indifferent acts, such as eating and drinking oblige the conscience.[40] Thus the position of the Franciscan school is that the conscience cannot exert any power over good and bad acts in themselves. It can, rather, create obligations only in the sphere of indifferent acts.

Aquinas attempts to throw further light on the obligatory value of conscience[41] with his emphasis on the intellectual and rational. He states that the proper object of the will is not good in itself, but rather the good is in so far as it is known. Consequently, the obligation which a law of God imposes on us is only binding to the extent to which we have knowledge of it. Conscience is none other than the application of knowledge to an act.[42] We may conclude, then, that it is by an act of knowledge that we are obliged to observe the laws that are made by others.

Medieval thought on the freedom of conscience seems to have been moving towards an understanding that truth alone has proper rights. Certainly the erroneous conscience is endowed with an internal personal freedom but the respect accorded conscience is not due to the error, but rather to the person in error who is still endowed with human dignity. However, the erroneous conscience has no right to external social freedom; no right to public expression. In fact, at best, the erroneous conscience can only raise the issue of tolerance or intolerance. Only truth has rights and error has no rights within the public sector of society. The internal freedom of conscience has no rights in the public forum. Murray observes, "The internal personal religious freedom of the erroneous conscience creates for us no external social freedom."[43] He further gives four reasons arising from the medieval tradition as to why in medieval thought it was held that error ought to be repressed by the public authorities: error and evil are contrary to our rational and moral nature, they are contrary to the common good of society constituted by the good and the true, they injure the rights of others especially the right to protection from error and evil and lastly, error and evil involve moral wrong doing and a defection from the truth.[44]

Later in section 7 in considering *Dignitatis Humanae* we observe a veritable development of doctrine: religious freedom, removed from the realm of conscience began to be viewed constitutionally. It became a human and civil right forming a harmonious part of the larger constitutional order of freedom. Public powers were not deemed competent to judge whether a conscience was erroneous or not. Rather, "religious freedom [was] an affair of the social and civil order, it [was] an immunity that attaches to the human person within society, and it [had] its guarantee in civil law".[45]

Freedom of conscience had become rooted in the social context of human existence: a person has the right to immunity from all

external coercion in his or her search for God, the investigation of religious truth and the acceptance or rejection of religious faith.

In the next section we turn to the question of religious tolerance in medieval Europe. It is possible to speak of some genuine tolerance towards Jews and Moslems but there was an absolute intolerance towards the heretic, the disturber of the peace and unity of Christendom.

6   RELIGIOUS TOLERATION IN MEDIEVAL EUROPE

What may be said about religious tolerance in medieval Europe? The very word "Christendom" implies a civilization based on a unity of faith for the sake of strength and cohesion. Any perceived subversion of the faith was socially and politically divisive and hence the heretic became the outlaw in Christendom. The intolerance of medieval society and the church towards heretics can only be described as absolute. The heretic was a fifth columnist who subverted not only the true faith but the cohesion of society. However, there was a tolerance of the Jews and other non-believers such as Moslems. These had a special kind of existence within but apart from Christendom. It can hardly be denied that there were frequent forced conversions of non-Christians but there was always some protest at the violation of the principle that any person had the inherent right in terms of conscience to accept or reject the faith.[46] Thus Aquinas writes, "Among the unbelievers, there are some, such as Jews and heathens, who have never received the faith. These unbelievers must not be forced to the faith because to believe is a matter of free will."[47] In the debate on whether this relative freedom should be extended to tolerate the celebration of their religious rites. Aquinas favours the Jews: "There is a real good in that they continue to observe their rites; they have rites in which formerly the truths of the faith were prefigured, that faith which we ourselves hold."[48] Regarding unbelievers he is more reserved. According to Lecler, Aquinas concludes that pagan rites contain neither truth nor usefulness.[49] He did however formulate a somewhat private solution which embraces the famous distinction between *thesis* and *hypothesis*: worship based on erroneous belief should not continue but it may be tolerated "either to obtain a greater good or to avoid a greater evil" which would arise from the restriction.[50] This "solution" merely justified a situation that already exists but which, from the fourteenth century, in regard

particularly to Moslems in Spain, deteriorated rapidly in regard to Moslems in Spain in particular.

A further restriction on freedom of religion in medieval Europe involved a dichotomy: freedom to accept the faith but no freedom to abandon the faith. Aquinas expresses the principle thus: "To receive the faith is a matter of goodwill, but to preserve it once it has been accepted is a matter of necessity."[51] For Aquinas this "necessity" is not just "moral": heretics "must be compelled, even physically to fulfil what they have promised and to preserve what they have received".[52] In medieval society the heretic had either to return to the faith or face the ultimate penalty, death. The believer was not free, then, to go back on his or her commitment.

In the next section in looking at the Second Vatican Council's *Dignitatis Humanae* we move forward some four to five hundred years and from medieval Christendom's still sacral conception of society to a fully secular view of State and Church. A lot is owed to Leo XIII who did much to move beyond the medieval principle of two powers in one society to the acceptance of two distinct societies, two distinct systems of law and two distinct powers. The former societal concept had persisted well into the nineteenth century in many Catholic countries under the *ancient regime.* Now, in what may only be termed a development of doctrine, Leo XIII moved Catholic thought forward and prepared the ground for the Second Vatican Council and its Declaration on Religious Freedom.

7   *DIGNITATIS HUMANAE*

As we observed in the last section, the nineteenth century saw a decisive break in Catholic political thought: a move from the sacral to the secular character of society and the State. Civil society now sought to be differentiated from the religious community, the Church. Indeed, Murray observes the following:

> The political function of secular rule was being differentiated from the function of ecclesiastical authority − The order of civil law and political jurisdiction was not simply being differentiated from the order of moral law and ecclesiastical jurisdiction; a complete rupture was made between the two orders of law and the two authorities, and they were set at hostile variance, each with the other. [53]

This progress in Catholic socio-political thought, the transcendence of the sacrality of society and the State, is climaxed in the Declaration on Religious Freedom.

Government was now firmly secular. In regard to religion its role was limited to the protection of the free exercise of religion within society − in other words, the protection of the freedom of the Church and of the protection of the human person in religious affairs. Mention was made of Leo XIII in the last section.[54] This great pontiff had reiterated in many texts that the essential claim that the Church made on civil government was merely the ancient claim for the freedom of the Church.[55] Murray expresses a regret that Leo was not able to further his contribution by stressing the duty that governments have towards ensuring of freedom of their citizens. However, *Dignitatis Humanae* more than answered this lacunae.

The Declaration is clear: the secular society and the secular State have the duty to protect the free exercise of religion in both the personal and social realm.[56] The Church and other religious communities availing themselves of this freedom are themselves to protect and foster the value of religious freedom itself.[57] In fact, the Declaration put aside the post-Reformation and nineteenth century theory of civil tolerance (embryonically present in the Middle Ages):

> A new philosophy of society and state had been elaborated, more transtemporal in its manner of conception and statement, less time-conditioned, more differentiated, a progress in the under-standing of tradition. Briefly, the structured elements of this philosophy are the four principles of social order, stated and developed in their exigencies, in *Pacem in Terris* - the principles of truth, justice, love and freedom. The declaration of the human and civil right to the free exercise of religion is not only in harmony with but also required by, these four principles.[58]

A closer analysis of the implications of the Document reveal that religious freedom as a civil right is a self-imposed restriction on the part of secular government as it denies itself the right to interfere with the free exercise of religion unless this freedom involves a civil offence against public order.[59] In similar vein the Declaration is self-denying on the part of the Church: secular society and the secular

State are uninvolved in the aims and purposes of the Church or any religious body. As expressed by Murray: "The Church has no secular arm."[60] The function of government is purely secular: it is confined to the free exercise of religion within society.

It is important to realise that the Declaration did not undertake to present a theology of freedom as such. Rather, as a document addressed to the world at large, it chose not to begin with revelation and doctrine known by revelation and accepted by faith, but with a juridical concept of religious freedom as a civil and human right founded on the dignity of all people. Consequently, it sought to state clearly to the world the stance of the Catholic Church on religious freedom as a civil and human right. It did not address theological problems such as the relationship between Christian freedom and religious freedom. Murray notes that, "the Declaration is at pains to distinguish sharply the issues of religious freedom in the juridico-social order from the larger issue of religious freedom".[61] Here, the issue of religious freedom is fundamental. Closely linked to conscience and human dignity it is the first of all freedoms in contemporary society and without which no other human and civil freedom can be safe.

8   CONCLUSION

The Middle Ages have often been undervalued. The roots of much of the best of contemporary thought were laid in this period. For instance, the source of the modern concept of academic freedom is popularly regarded as arising from the Enlightenment. However, as I hope is evident from this article the historical beginnings of academic freedom date back to the origins of the idea of the university during the High Middle Ages. Indeed, academic freedom derives from the idea of freedom of thought, and particularly freedom of academic thought. Any freedom of thought must give rise to religious freedom.

A further bastion of future religious freedom was the concept of constitutional government limited in its powers. The State was limited in three ways. First, medieval Europe was the first society to make a distinction between the sacred and the secular in human affairs and to limit the State to temporal affairs, debarring the powers of government from the spiritual realm. Secondly, the distinction between the *ecclesia* and the *imperium* meant that the State was only one order within society. The purposes of the State were not co-

extensive with the purposes of society. Thirdly, following from the distinction between society and the State was the further distinction between the common good which was the concern of society as a whole and public order which devolved upon the State. This distinction was and is a bulwark against totalitarianism and safeguards individual and community rights. Moreover, the internal affairs of the Church were immune from interference by the public powers. Internal ecclesiastical affairs were no more the concern the public powers than the affairs of the internal forum of conscience.

According to Pope John XXIII, a right conscience, excluding indifferentism and mere subjectivism is the norm for legitimate religious freedom.[62] Theologians of the Middle Ages did much work in developing the tradition concerning the necessary freedom of the internal act of conscience. They were unanimous in teaching that no external force may coerce the conscience of any human being to accept any form of belief or unbelief. The erroneous conscience, however, remained a problem: error in medieval thought was without rights and consequently freedom of conscience had no external forum. However the seed was sown and in *Dignitatis Humanae* we read:

> He is bound to follow this conscience faithfully in all his activity so that he may come to God, who is his last end. Therefore he must not be forced to act contrary to his conscience. Nor must he be prevented from acting contrary to his conscience, especially in religious matters.[63]

In conclusion, then, the relative academic freedom which developed in medieval Europe, the emerging but later aborted rise of constitutional government and the theological speculation on the freedom of conscience did much to lay the groundwork for a later more developed teaching on religious freedom in the Roman Catholic Church. *Dignitatis Humanae* was the explicit conceptualisation of this groundwork. People are to live their relationship with God in a freedom that is constitutionally and judicially guaranteed against any form of coercion. However, this freedom of religion is not simply a matter of individual freedom but is a matter of community as well, because it is the freedom to commune with others. This means that

this freedom somehow involves an obedience to authority, for in every kind of community there is always some kind of authority:

> The freedom or immunity from coercion in religious matters which is the right of individuals must also be accorded to men when they act in community. Religious communities are a requirement of the nature of man and of religion itself.[64]

Murray captures this inevitable but necessary tension between freedom and authority in the religious community. This tension has been a key theme of this article:

> But by situating this perennial polity [i.e. freedom and authority] within a living context of community, it can serve to make the tension healthy and creative, releasing the energies radiant from both poles for this one common task, which is to build the beloved community.[65]

9 WORKS CONSULTED

Ackrill, J L (ed.) 1988. *A new Aristotle reader.* Princeton: Princeton University Press.

Classen, P 1983. Studium und Gesellschaft im Mittelalter. *Schriften der Monumenta Germaniae Historica* 29. Stuttgart: Anton Hiersemenn.

Flannery, A (ed.) 1975. *Declaration on religious liberty. Dignitatis Humanae, Vatican Council 11.* The Conciliar and Post-Conciliar Documents. Collegeville, MN: Liturgical.

Goerner, T A 1965. *Peter and Caesar: The Catholic Church and political authority.* New York: Herder & Herder.

Hooper, J L (ed.) 1994. *Bridging the sacred and the secular: Selected Writings of John Courtney Murray.* Washington: Georgetown University Press.

Hoye, W J 1997. The religious roots of academic freedom. *Theological Studies,* 58(3), 409-428.

Janssen, L 1965, *Freedom of conscience and religious freedom.* New York: Alba House.

John XXIII 1963. *Pacem in Terris. The Pope Speaks*, 9, 23-24.

Journet, C 1965. *The Church of the Word incarnate: An essay in speculative theology,* Vol 1. The Apostolic Hierarchy. London: Sheed & Ward.

Lecler, J 1966. Religious freedom: An historical survey. *Concilium* 18, September.

Murray, J C 1951. Contemporary orientation of Catholic thought on Church and State in the light of history. *Cross Currents,* 5.

Murray, J C 1961. *We hold these truths.* New York: Sheed & Ward.

Murray, J C 1965. *The problem of religious freedom.* London: Geoffrey Chapman.

Scholz, R (ed.) 1929. *De Ecclesiastica Potesta.* Weimer: Verlag Heim Bohlaus.

ENDNOTES

1   Courtney, *Murray, freedom, authority and community*, 210.

2   Ibid, 212.

3   Ibid, 213.

4   L Janssen, *Freedom of conscience and religious freedom*, 75.

5   E A Goerner, *Peter and Caesar,* 183.

6   E A Goerner notes, "The available institutions, leaders, and operative political principles were simply inadequate for the creation of even an approximation of a rational political order. The Church was the only institution capable of attempting to remedy this defect" (ibid, 179-180).

7   Ibid, 180.

8   C Journet, *The church and the Word incarnate*, Vol. 1, 219.

9   J C Murray, *We hold these truths*, 202.

10   J C Murray, *The problem of religious freedom*, 28.

11   Ibid, 28-29.

12   Ibid, 29.

13   E A Goerner, *op.cit.,* 28.

14   Giles of Rome, *De Ecclesiastica Potestate,* 111.9, 191-193; 111.12, 209.

15   E A Goerner, *op.cit.*, 56.

16   J C Murray, "Contemporary orientation of Catholic thought on Church and
     State in the light of history", 24.

17   *Tractatus* III. 181.5 quoted in E M Goerner, *op.cit*, 118.

18   Ibid, xix. 236. 21-237.14 quoted in E M Goerner, *op.cit*, 118.

19   E A Goerner, *op.cit*, 252.

20   *De Potestate*. 7.157 quoted in E A Goerner, *op.cit*, 144.

21   J C Murray, *We hold these truths* (New York, 1961), 51-53; 205-215.

22   J C Murray, *The problem of religious freedom*, 48.

23   J H Newman, *The idea of a university*, 353.

24   P Classen, "Studium und Gesellschaft im Mittelalter", 195.

25   W J Hoye, 'The religious roots of academic freedom", 414.

26   Ibid, see P Claasen, *op.cit*, 242.

27   Ibid, 414-417.

28   The beginning of Aristotle's Metaphysics provided the classical expression of
     freedom of thought. The most liberal knowledge is "theologia", the
     knowledge of the ultimate - the paradigm of free thought.

29   Aristotle, *Metaphysics* 1.2, English translation from *A new Aristotle reader*,
     J L Ackrill (ed.), 259.

30   Thomas Aquinas, in *Metaphysicum Aristotelis Commentaria*, lib 3, lect. 1, n 3
     quoted in Hoye, W J, "The Religious Roots of Academic Freedom", 423.

31   I cannot but agree with William Hoye's contention, "Intellectual intolerance
     would be less likely if the well-defined forms of the *questio disputata* were to

be introduced into academic life itself" (W J Hoye, "The religious roots of academic freedom", 424).

32   Ibid, 425.

33   Medieval hermeneutics would allow that biblical texts can have several meanings - literal, spiritual, moral, anagogical - the literal meaning being primary.

34   Thomas Aquinas, *De Potentia*, q.4, a.1c quoted in Hoye, W J, "The Religious Roots of Academic Freedom", 21.

35   See chapter 3, 6-9.

36   P Abaelardus, *Exposito in epist. Pauli ad Rom*, capxiv (PL, tl 178, col. 953-959) quoted in L Janssen, *op.cit*, 25.

37   Ibid, col 959.

38   L Janssen, op.cit, 30.

39   Ibid, 30-31.

40   Ibid, 31.

41   Thomas Aquinas. In 11 Sent. d 39, q.3.a3 quoted in L Janssen, *op.cit.*, 34.

42   Thomas Aquinas, *De Veritate,* q17, a3 in carp quoted in L Janssen, *op.cit.*, 34.

43   J C Murray, *The problem of religious freedom,* 11.

44   Ibid.

45   Ibid, 23.

46   J Lecler, *Religious freedom: An historical survey*, 10.

47   Thomas Aquinas, *Summa,* 11a 11ae,q10,a.8c quoted in L Lecler, *op.cit,* 10.

48   Ibid, 11a 11ae, q10,a 9 quoted in L Lecler, *op.cit*, 10.

49   L Lecler, *op.cit.*, 10.

50   Ibid, 11a 11ae, q 10, a 11 quoted in L Lecler, *op.cit* , 10.

51   Ibid, 11a 11ae, q10, a 8 d 3 quoted in L Lecler, *op.cit,* 11.

52   Ibid, 11a 11ae, q10, a 8c quoted in L Lecler, *op.cit.,* 12.

53   J C Murray, *Bridging the sacred and the secular*, 191.

54   Ibid, 15.

55   J C Murray, *op.cit*, 192.

56   *Dignitatis Humanae* 4, Flannery, A (ed.), 1975, *Vatican Council 11* The Conciliar and Post-Conciliar Documents, 802-803.

57   Ibid, 12, 809.

58   J C Murray, *op.cit*, 198.

59   *Dignitatis Humae* 3, *op.cit.*, 802.

60   J C Murray, *op.cit.*, 194.

61   Ibid, 189.

62   *Pacem in Terris, The Pope Speaks,* 9 (1963), 13-48.

63   *Dignitatis Humae* 3, *op.cit*, 801-802.

64   Ibid, 3, *op.cit.*, 802.

65   J C Murray, *op.cit.*, 221.