

Contents

A. Historical Development	17
I. THE DEVELOPMENT OF CHURCH-STATE RELATIONS IN ENGLAND – <i>Augur Pearce</i>	17
1. Introduction	17
(a) Ecclesial state or established church?	17
(b) The Brandenburg comparison	18
2. The middle ages – 597-1532	19
3. Reformation to Revolution – 1532-1688	20
(a) Chronology of the Period	20
(b) The Legislation of the 1530s	22
(c) The ecclesial State	24
(d) Private initiative in conformity with the public religion	25
(e) Alternative religion – the penal laws	26
(f) The universality of the public religion	28
(g) Electoral Brandenburg – Territorial religious autonomy	28
(h) Electoral Brandenburg – Doctrinal basis of the public religion	29
(i) Electoral Brandenburg – Vehicles of ecclesiastical oversight	30
(j) Electoral Brandenburg – limiting the princely prerogative	31
4. The »long eighteenth century« – 1688-1828	32
(a) Prelude - The return of the Jews	32
(b) Chronology of the Period	33
(c) The Coronation Oath, the Bill of Rights and the principle of parliamentary consent	35
(d) The Toleration Act 1689	37
(aa) Individual alternative religion	37
(bb) Alternative congregations and their preachers	37
(cc) Religious societies	38
(dd) Alternative religious trusts	38
(ee) Privileges of alternative religion	39
(e) Later developments affecting alternative religion	39
(f) The universality of the public religion	40
(g) Brandenburg-Prussia – The harmonisation of a patchwork of laws of religion	43
(h) Brandenburg-Prussia – The legal position of Catholicism	44
(i) Brandenburg-Prussia – Institutional expression of a »State« role in relation to religion	46
5. The »displaced nineteenth century« – 1828-1920	48
(a) Chronology of the Period	48

(b)	Voluntary religion – registration, fiscal privileges, and marriage	50
(c)	Non-Christian religions and Non-religion	51
(d)	Continuing inequalities	52
(e)	Schools: a private religious initiative	53
(f)	The Tractarian reaction	55
(g)	The voluntary face of the Church of England	57
(h)	Separation of Prussian protestant rules and structures from government agencies and the general law	58
(i)	Stricter and narrower – the Prussian churches under the later Hohenzollern	60
6.	The mid- and late twentieth century – 1920-2000	64
(a)	The fate of public religion in Wales	64
(b)	The two faces of the Church of England	65
(c)	Public religion and the law of marriage and gender	68
(d)	Private religion – statute aiding ecumenism	70
(e)	Private religion – the issue of ministerial discipline	72
(f)	Public and private religion – dialogue and partnership with government	74
(g)	Private non-Christian religion	75
(h)	Prussian religion under the Constitutions of 1919-20	77
7.	The new millennium – 2000-10	79
(a)	Human rights »brought home«	79
(b)	Human rights and public religion	80
(c)	Equality law, civil partnership and the public services debate	81
(d)	Latest developments	83
(e)	Conclusion	83
II.	TRANSFORMATION OF CHURCH RELATIONS – THE SCANDINAVIAN EXPERIENCE – <i>Lars Friedner</i>	85
1.	Sweden	86
2.	Norway	88
3.	Denmark	89
4.	Conclusions	90
B.	Interactions between Religious and Secular Law	91
III.	LEGAL PROTECTION IN ECCLESIASTICAL COURTS – <i>Mark Hill</i>	91
1.	Introduction	91
2.	Church of England Courts	92
(a)	Chancellors	92
(b)	Registrars	94
(c)	Consistory courts	94

(d) Appellate courts	95
(e) The Court of Faculties	96
(f) Judicial review	96
3. Muslim Courts and Tribunals	97
(a) Marriage	97
(b) The Mahr	98
(c) Divorce	98
(d) Children	100
(e) Religious Councils	101
4. A pluralist legal system?	102
(a) Official or State pluralism	102
(b) Non-state or non-official pluralism	103
 THE GERMAN PERSPECTIVE – <i>Michael Germann</i>	107
1. Short Inventory: Ecclesiastical Courts in Germany	107
(a) Courts of the Roman Catholic Dioceses	107
(b) Courts of the Protestant Churches	107
(c) Courts of Smaller Christian Churches and Non-Christian religious communities	109
2. Constitutional Framework: the establishment and operation of ecclesiastical courts are acts of religious self-determination	109
3. Legal Effects: religious autonomy as opposed to public power	110
(a) Ecclesiastical courts do not replace state courts	110
(b) Foreign ecclesiastical courts may replace foreign state courts	111
(c) Ecclesiastical courts can be set up as arbitral courts but they usually are not	111
(d) Ecclesiastical courts bring religious autonomy to bear in state courts	112
4. Pluralism	115
 IV. RELIGIOUS DISPUTES REGARDING EMPLOYMENT IN GREAT BRITAIN – <i>Lucy Vickers</i>	117
1. Introduction	117
2. Religious disputes between religious leaders and their religious communities:	118
3. Religious disputes and non-clergy employees of religious organisations:	119
4. Protection against discrimination	121
(a) The Equality Act 2010.	123
(b) Protection under other discrimination provisions	126
5. Future religious employment disputes?	128
6. Conclusion	130

THE GERMAN PERSPECTIVE – <i>Hinnerk Wißmann</i>	133
1. Introduction	133
(a) Comparative Approach UK – Germany	133
(b) Cases of religious disputes	133
2. What does this mean for the state courts in cases concerning religious disputes?	135
(a) Disputes between religious employees and non-religious employers	135
(b) Disputes within religious organisations	136
3. The religious pluralisation as well as the Europeanisation require adjustments of the German system, which, however, should not undermine the substance of freedom of religion	138
V. BALANCING RELIGIOUS AUTONOMY AND OTHER HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION – <i>Ian Leigh</i>	141
1. Introduction	141
2. The Status of Religious Organisations	142
3. Clashes between autonomy and other human rights	146
(a) Internal Disputes	146
(b) Procedural Standards, Human Rights and Religious Adjudication	148
(c) Private Life Cases	153
4. Conclusion	157
SCOPE AND LIMITATIONS OF FREEDOM OF RELIGIOUS ASSOCIATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS – <i>Katharina Pabel</i>	159
1. Introduction	159
2. Religious Communities and Religious Freedom	159
3. The Freedom of Religious Associations	160
(a) The Freedom of Religious Association	162
(b) The Autonomy of Religious Communities	164
4. The Limitation of the Freedom of Religious Associations	167
5. Particular Cases	168
(a) The Regulation of employment in Churches	168
(b) »Procedural Standards, Human Rights and Religious Adjudication«	171
VI. AUTONOMY AND ESTABLISHED CHURCHES: THOUGHTS ON ENGLISH ESTABLISHMENT(S) IN THE TWENTY-FIRST CENTURY – <i>Peter W. Edge</i>	173
1. Introduction	173
2. What is meant by establishment?	176
3. The developing situation	177
(a) Church of England involvement with the State	177

(b) State involvement in Church of England doctrine	183
(c) State involvement in Islamic doctrine	184
4. Asymmetrical disestablishment?	186
C. Questions of Status and Organisation	189
VII. THE PARTICIPATION OF RELIGIOUS COMMUNITIES IN PUBLIC LIFE – THE BRITISH EXPERIENCE – <i>Peter Cumper</i>	189
1. Introduction	189
2. The role and status of religious schools	190
3. Religious Education	195
(a) The Secular Approach	197
(b) Christian criticisms of RE	198
(c) Minority Faith Perspectives	199
(d) RE, Faith and Religious Communities	200
4. Religious communities, human rights and publicly funded schools	201
5. Conclusion	205
PARTICIPATION OF RELIGIOUS COMMUNITIES IN PUBLIC LIFE – GREAT BRITAIN AND GERMANY – <i>Antje von Ungern-Sternberg</i>	209
1. Introduction	209
2. Religion in public life: two models	209
3. The religious minority's perspective: equal access to privileges	212
(a) Factual impediments: state funding for faith schools (Great Britain)	213
(b) Legal impediments: organisational requirements for religious communities (Germany)	214
4. The State's perspective: neutrality	217
(a) Neutrality and objectors	217
(b) Neutrality and religious communities	218
5. Conclusion	222
VIII. THE LEGAL STATUS OF MUSLIM COMMUNITIES IN ENGLISH LAW – <i>Julian Rivers</i>	225
1. Assimilation to a Church-State Model	225
2. Equality, Multiculturalism and Security	229
3. Developments in the »status« of organized religions	231
(a) Gains in public sector collaboration	232
(b) Losses of internal autonomy	236
4. Conclusions	240

THE LEGAL STATUS OF MUSLIM COMMUNITIES IN GERMANY –	
<i>Gernot Sydow</i>	241
1. Introduction: relevance of the concept of a particular »legal status« under German law	241
2. Muslim communities as representative dialogue partners	242
3. Legal status and legal capacity of Muslim organisations in Germany	245
(a) Freedom of religion of Muslims and Muslim organisations	245
(b) Recognition of religious associations as corporations under public law	247
4. Future developments: creating a new legal status for religious communities?	248
Contributors to this Volume	251