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## The Relationship between State and Religion in Europe

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### Abstract

The topic of the relationship between state and religion in Europe is obviously very ample and comprehensive. It is evident, too, that the topic is to some extent vague, a condition that allows for a global survey. Religion and the divine in different shapes accompany all human history, and man was perennially looking for adequate ways to express his relationship to God and the divine. With regard to the three monotheistic world religions Judaism, Christianity, and Islam, the Old Testament bears already witness of the relationship between state and religion.

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The New Testament and the subsequent history of occidental Europe build first on that basis, but then distance themselves considerably from it. The following essay gives an outline of that relationship, stressing both continuities and differences.

By giving an overview of the relationship between state and religion I will first enter the field of history. The first part deals with selected events in occidental history, addressing actual historical events as well as underlying thoughts and ideas. The second part sheds some light on the relationship between state and religion in the 20<sup>th</sup> and 21<sup>st</sup> century, taking into consideration the constitution of the Federal Republic of Germany as well as the role of religion in the European Union. A short statement will conclude the account of the relationship.

Christianity has an age of almost 2,000 years. In the course of this period it crystallized in three major forms or confessions: Catholic, Orthodox, and Protestant Christianity. The original Christian Church was split twice: for the first time in the year 1054 when long-standing differences between Christians of the Western and Eastern part of the empire finally caused a definitive break. Even if historians are well aware today that this date just indicates the final separation between Roman Catholics and Eastern Orthodox Christians, it is the year 1054 that marks this decisive schism between East and West.

In 1517 the second great break happened: Martin Luther nailed his 95 theses to the door of the castle church in Wittenberg, a small city in today's East Germany. Luther meant the document to be only the starting point of academic discussion, but since the news of his theses spread almost as fast (and successfully) as the wind, they finally led to the second great break in Christianity's history: the church was soon split into two irreconcilable factions, one following the teachings of Luther, the other opposing him and fighting his doctrine.[1]

The separation between Catholic and Protestant Christianity came into being and exists, obviously, until today, despite numerous attempts in the 20<sup>th</sup> century to reconcile the two confessions and to establish a kind of "Ecumenical Christianity".[2]

## **PART I: Selected Events in the History of the Relationship between State and Religion**

### **1. Stage: New Testament**

The New Testament contains only few texts which refer to the state in particular or to politics in general. Jesus announced the near end of the world and, in consequence, the disappearance of all government from earth. The gospel of John states clearly the position of Jesus: "My kingdom does not belong to this world." [3]

Despite this general reservation regarding political power, the New Testament comprises some important statements of the state and political power. Probably the most important statement is to be found in the gospel of Matthew where Jesus answers the question about paying taxes to the emperor in the following way: “Well, then pay to the Emperor what belongs to the Emperor, and pay to God what belongs to God.”[4]

Even if this passage refers to the citizens’ duty to pay their taxes and therefore to (merely) financial matters, the underlying – and much more important – message is clear: it says that Christians are citizens of two realms. They belong to the realm of God, but they belong at the same time to the realm of time and space, in which they lead their lives as corporal beings and which they have (at best) to improve according to the divine commandments.

Contrary to the Old Testament whose political order follows and implements the will of God, the New Testament rejects every form of deification of human power and establishes the basis for differentiation of the two realms men belong to.

## **2. Stage: St. Augustine**

Saint Augustine (354-430) has been named “Teacher of the Occident”.[5]

The period of the Christian Middle Ages can be divided into two parts, patristics and scholasticism, the first one stretching from the first centuries A.D., spanning the time of the “patres” (fathers of the Church), to the 13th century, the second one from the middle of the 8th century to the end of the Middle Ages, when primarily the Italian Renaissance replaced and supplanted medieval thought and lifestyle.

Augustine is the leading theorist and theologian for more than 700 years, who forged the basis for both the theoretical and the practical life of the people, for man’s self-understanding and the interpretation of God, man and world in an entirely new and lasting way. Patristic is Augustinism.[6]

His comprehensive work covers a theory of knowledge, theological considerations, reflections on the world and its creation, a theory of morality and psychology, and finally an examination of the state.[7]

Looking at the relationship of state and religion in early Christianity, the most important concept has been formulated by Augustine. In the year 426 he published his treatise on “De civitate Dei” (The City of God), begun already in 413. The main assertion is that there is not only one civitas (“city” or “state”), meaning the earthly political order, but two: the worldly city and the heavenly city.

Augustine sees both the individual and the course of history characterized by two principles or “loves”, as he expresses himself: on the one side the love of God and the submission to his law, on the other side the love of self, of pleasure, of the world and its worldly goods.

According to this dualism which does indeed characterize Augustine’s whole thought, he saw the Catholic Church as the embodiment of the heavenly city or Jerusalem, and the state, in particular the pagan state, as the embodiment of the City of Babylon. Even if the conclusion seems to be obvious that the City of God is identical with the Church as a visible society and the City of Babylon with the state as a power organization, this clear-cut division of the two entities does not hold true. In reality there is a certain intermingling and mixture of the two realms, for instance when an official of the state is governed in his behavior by the love of God, pursuing justice and charity in a Christian sense.

Despite the need to limit the strong dualism, a certain division of mankind and of different realms is essential for Augustine’s thought. Actually, mankind is divided into two sorts. One part of mankind is oriented primarily at the worldly city and its goods, the other part, however, lives his life with regard to the heavenly city. The worldly city and the heavenly city oppose each other, and they pursue different goals.

The worldly city pursues the well-being of the outer man; the heavenly city pursues the well-being of the inner man. In the best case both cities cooperate, in the worst case the worldly city tries to persecute or steer and manipulate the heavenly one.[8]

Regarding the relationship of state and religion Augustine offers a picture of the separation of the two powers, an idea wholly alien to all earlier pre-Christian high civilizations like Mesopotamia, Assyria, Egypt, and even ancient Israel, where the state and the political order were formed in accordance with and on the basis of the divine law. This Augustinian division of the two powers will be followed by his successors, different accentuations notwithstanding.

### **3. Stage: Pope Gelasius**

Pope Gelasius (492-496) lived in the late fifth century, in a period that was marked by political disturbance and upheavals. The restlessness was caused by the decline and final break-up of the Roman Empire only few years ago. The last Roman emperor, Romulus Augustulus, was dismissed from office in 476, and this event implied the definitive collapse of the Roman Empire.

A consequence of the disappearance of the once huge and very powerful empire was the rise of the Goths under Theodoric, but the Visigoths and Vandals attacked Western Europe, too.

The unity of western Europe was severely challenged, new forms of government, new centers of rule, and new focuses of loyalty were about to supplant the old ones. The only factor of unity and stability was Christianity with its head, the pope in Rome.

In this situation, at the end of the fifth century, Pope Gelasius tried to overcome the turmoil in Europe. He promulgated the very important doctrine of the “Two Powers” or “Two Swords”, for sure his most important legacy. The doctrine contains two important aspects: the first one regards the distinction between religion and state in the sense of a clear separation of the two powers.

In this regard he follows the traditional understanding of the relationship between church and state. This assertion, however, is combined with the emphasis of the primacy of the pope’s office in relation to other bishops as well as in relation to the worldly ruler, especially the emperor. By maintaining not only the differentiation of the two powers or swords, thereby already pointing to the modern idea of separation of church and state, but also by stressing the superiority of the church in relation to the worldly power, pope Gelasius paves the way for the centuries to come. Indeed, this doctrine became “the prevailing attitude in church-state relations for more than a millennium after his death”.<sup>[9]</sup>



He can actually be seen as laying the groundwork for the modern idea of separation of church and state, even if Gelasius himself would have opposed such a concept.[10]

#### 4. Stage: Concordat of Worms

The history of medieval Europe is not only characterized by the spread of Christianity first in the West and then step by step into the East,[11] but it is also the history of repeated attempts of both the monarch and the Pope to dominate the realm of the other power. In the course of the second half of the first millennium the power of the church increased tremendously, reaching its first climax shortly after the end of this period, in the eleventh century.

The two representatives of the ecclesiastical and temporal power who got into a kind of power struggle are Pope Gregory VII (1073-1085) and the German king Henry IV (1053-1105). Pope Gregory VII repeatedly intervened in the realm of the worldly government with a strong claim to power, and the German king for his part tried to extend his rights of appointing selected persons to various church offices.

The climax of this long and intricate development was the historically famous “Investiture Conflict” which lasted for almost 50 years, from 1075-1122, beginning with a compilation of 27 declarations of Pope Gregory VII, the so called “Dictatus Papae”, [12] and ending in the Concordat of Worms.

The conflict was about the appointment or “investiture” of priests in politically important church offices. Here both, the emperor and the Pope, fought for the right of the final decision. Pope Gregory VII was an eager defender of the church reform which started already in 910 in the French community of Cluny and then spread in large parts of Europe.

The reform movement aimed not only at focusing on the teachings of the New Testament and at restoring the rule of St. Benedict, but it also intended to exclude all worldly influence on the church and its officials.

The priority of the spiritual power (“sacerdotium”) in comparison to the worldly power (“imperium”) had to be defended and maintained. Pope Gregory VII followed this directive. King Henry VII was pervaded by the task of a Christian ruler and the will to power in the sense of the Salian dynasty. He defended his right to appoint bishops, because the bishops as Princes of the Empire supported – or at least influenced – the royal power.

It was only the Concordat of Worms<sup>[13]</sup> in 1122 which concluded this long-lasting conflict between church and state, signing the very important compromise between the two powers. Pope Calixtus II and Henry V, emperor of the Holy Roman Empire, agreed to fix core competences of the worldly and religious powers.

The agreement eliminated, for instance, lay investiture, but left secular leaders some room for unofficial but significant influence in the appointment process. The worldly power was allowed to appoint bishops when they held land directly from the secular crown. In this case its representative had to consult the other bishops in the area. The king allowed the Church to appoint bishops on land held by the Church, promising not to interfere. He also had to surrender Church items that have come into his possession.[14]

The important conclusion in our context is not only the separation of the two powers of the mutual attempts to dominance, but the final compromise of 1122 which sought and reached a kind of distribution of competences, thereby leading to a balance satisfying both powers (for a certain period of time). The worldly-temporal “imperium” (earthly authority) was separated from the religious-spiritual “sacerdotium” (ecclesiastic authority), and each was assigned special tasks and competences.

## **5. Stage: Martin Luther**

Three events stand out as marking the end of the Christian Middle Ages: the assault on (and lastly capture of) Christian Constantinople by Sultan Mahomet II in 1453, the discovery of America by Christoph Columbus in 1492, and finally the launch of the Reformation inaugurated by Martin Luther (1483-1546).

All three events had a major impact on the men living at the verge of the declining Middle Ages and the evolving modernity. And even if the first two events were, for sure, more than just “outer” upheavals or world-historical changes, the deepest percussion was probably given by the attack on the Catholic Church and the ensuing breaking-apart of this old and venerable institution.

Martin Luther (1483-1546), an Augustinian priest, was said to have posted on Oct. 31, 1517 on the door of the castle church of Wittenberg 95 theses which are the immediate cause for the genesis of Protestantism. In his theses Luther attacked the sale of indulgences, the Church’s predilection for material possessions, and the respective negligence of its true mandate and mission: the education of human life which is informed and permeated by the teachings of the Gospel.

Luther developed the important idea of the “priesthood of all believers” which maintains that each individual is (also) a priest, regardless of his actual profession.<sup>[15]</sup>

God communicates directly with each individual human being through his word as laid down in the Scriptures. Luther emphasized the direct relationship between God and man, so that the need for intermediaries such as the saints or the clergy lost in importance.

In contrast to the belief of the Church which found its expression in dogmas and doctrines, the Bible was acknowledged as the only source of faith. The salvation of the individual person therefore depended entirely on the will of God and on the faith of the individual person, but no longer on any ecclesiastical authority.

With regard to the political position of Luther and his interpretation of the relationship of Church and state, he takes up the idea of the medieval dualism, but adds important modifications. In this context Luther had no extraordinary position. Other eminent theologians of the reformation like Jean Calvin (1509-1564) or Huldreich Zwingli (1484-1531) also blamed the political influence of the Catholic Church during the Middle Ages, its pomp and its attempts at denouncing and condemning dissident people.

It was Martin Luther who revised the doctrine of the “Two kingdoms” (Reiche) or “Two Governments” (Regimente), as he preferred to say, and who set a new accent at the end of the Middle Ages. He adhered to the doctrine of a worldly and heavenly government as laid down in the work of St. Augustine. But in opposition to former concepts of the relationship between church and state, which in the centuries before left ample room for the church to interfere with worldly events, Luther emphasized that the church as worldly institution should follow the provisions of secular law. The Church is located in the world and has therefore to obey the rules and the law of this world. I

n return, the worldly empire had to provide for order and peace so that the gospel could and should successfully be preached and spread. The church as institution in a given state is bound by its law and provisions, but this embeddedness of the Church is lastly nothing but the premise for carrying out its successful work of disseminating and spreading the gospel.[16]

That the outer, political order must be sustained and defended at almost any price became obvious when Luther fiercely condemned the “murderous, thieving hordes of peasants” one year after the outbreak of the German Peasants’ War in 1524.[17]

The state and its political order have a right of its own in Luther’s understanding, even if they lastly serve higher and more important ends.

## **6. Stage: The Peace of Westphalia**

The 16<sup>th</sup> and 17<sup>th</sup> centuries in Europe were characterized by religious tensions and finally a great confessional civil war, the so called 30-Years’ War, starting in 1618 and ending in 1648. In that (last) year the Peace of Westphalia was signed.

This treaty, or more correctly: this series of treaties meant not only the end of a tremendous war and power struggle in Europe; this treaty means the beginning of the creation of the principle of national self-determination.

The modern nation state came into being which until today determines the political landscape in Europe, and beyond. The decisive principle of the state is that of sovereignty, i.e. the fact according to which the state is the supreme power within its boundaries.[18]

The main feature of inter-national relations from the 16<sup>th</sup> century onward is, accordingly, the (hopefully peaceful) co-existence of sovereign powers. On this basis of co-existence a concept of balance of power was elaborated. It was, evidently, the concept of sovereignty that touched upon and changed the relationship towards church and religion sustainably.

The Peace of Westphalia confirmed the Peace of Augsburg or Augsburg Settlement of 1555 with its principle “Cuius regio, eius religio” (meaning: “Whose realm, his religion”, or “In the Prince’s land, the Prince’s religion”), and provided in this way for internal religious unity within a state: the religion of the prince became the religion of the state and of all its inhabitants.

This principle, in the Peace of Augsburg limited only to Catholic and Lutheran princes,[19] was now extended to all states of the Holy Roman Empire, putting Protestantism on an equal footing with Catholicism. The three mono-confessional blocks of a Protestant North, a Catholic South, and an Orthodox East were thereby established.

The Holy Roman Empire consisted at the time of the Peace of Westphalia of 234 bigger and smaller states, all of whom had full sovereignty over their territories.

Even if each state determined the relationship towards church and religion in his own way, the states emerged usually as the stronger party, and the church as the weaker party. From that period on the power relationship between Church and state was put upside down, compared to the Middle Ages.

It was the state, based on the principle of sovereignty, to dominate the Church by determining to what extent it can freely unfold and develop. "The state, not the empire, dynasty, or religious confession, was affirmed as the building block of European order."<sup>[20]</sup>

The Peace of Westphalia laid the basis for a new relationship between state and religion, thereby also ending the rivalry between emperor and pope which had characterized long periods of the history in Europe.

## 7. Stage: Age of Enlightenment

The most famous definition of the enlightenment has been given by Immanuel Kant (1724-1804). Kant formulates: "Enlightenment is man's emergence from his self-imposed nonage."



This nonage or immaturity is determined as follows: “Nonage is the inability to use one’s own understanding without another’s guidance. This nonage is self-imposed if its cause lies not in lack of understanding but in indecision and lack of courage to use one’s own mind without another’s guidance. Dare to know! (Sapere aude.) ‘Have the courage to use your own understanding,’ is therefore the motto of the enlightenment.”[21]

The invitation of, rather: pressure to use primarily one’s own understanding implies obviously the emancipation from positions and ideas of other people and institutions.

The Age of Enlightenment spans the period from the middle of the 17<sup>th</sup> century to (at least) the French Revolution of 1789. If we take as starting point the publication of the chief work of René Descartes (1596-1650), his “Meditations on the First Philosophy”, [22] than the enlightenment philosophy began in 1641. And there is ample reason to choose this year.

Descartes uses an intellectual tool which is characteristic for enlightenment philosophy in general: the method of doubt. He systematically doubts all the appearances in the outer world, than the ideas and thoughts in his inner world, and finally his own existence, concluding that everything can be put in question, except the very fact that he himself must exist when systematically doubting all and everything. In that way the principle “Cogito ergo

sum” (I think, therefore I am) emerged and served as basis for the individualism of the enlightenment thinking.

No longer had God or any other objective principle served as point of orientation, but the single individual, his value system and personal beliefs. In the field of political thought Thomas Hobbes (1588-1679) emphasizes similarly the life of the single individual, crowding religion out of the immediate interest of the state.[23]

As endpoint of the enlightenment the French Revolution can be chosen, not least because many scientists maintain that the thought of enlightenment ushered in this great and convulsing upheaval of the French Revolution, destroying once and for all large portions of European beliefs, convictions and institutions.

Two main features of enlightenment philosophy are first the critique of religion and the Church as its institutional embodiment, and second the critique of the state. Hand in hand with the critique of religion went the process of secularization in the sense of privatizing religion. Religion became more and more a private affair, an object of the single individual and no longer of the community or even the state.

However people judge this world transforming process – the most prominent treatise recently has been made by Ch. Taylor in his voluminous book on “The Secular Age”[24] -, the decisive feature is the growing distance between the state and the

established Church. The hitherto existing cooperation between these two entities was replaced by a primarily neutral stance of the state. And the state's relationship towards the Church affected, obviously, the topic of religion.

From now on people lived, or had to live, "etsi Deus non daretur" ("as if God didn't exist"), to name a famous statement of the Dutch scholar Hugo Grotius (1583-1645). Even if this was only a sharp formulation, it characterized more the relationship between church and state than the religious attitude of the single individual.

The enlightenment philosophy can be seen as the starting point for a development of religion which runs through the following steps, leading from "theism" (the firm belief in God) to "deism" (the assertion of God's existence by simultaneously abstaining from interfering in the world), to "atheism" (the outright renouncement of God's existence) which emerged in various thinkers in the 19<sup>th</sup> and 20<sup>th</sup> century (Ludwig Feuerbach (1804-1972), Karl Marx (1818-1883), Friedrich Nietzsche (1844-1900), Sigmund Freud (1856-1939).

The kind of religious belief affected, of course, the relationship towards the state, and vice versa. A mutual and growing distance was the consequence.<sup>[25]</sup> The outcome of enlightenment philosophy we can observe to some extent in Europe, where a vital religiosity is often times missing, even if would be wrong to generalize that trend.

Many people still believe in God, even if the relationship between Church and state took on a very different shape than centuries before.

## **8. Stage: The French Revolution**

The French Revolution began with the storming of the fortress-prison of the Bastille on July 14, 1789, and ended ten years later, in 1799 when Napoleon Bonaparte (1769-1821) finally seized power, extolling himself to the “First Consul”.

The French Revolution smashed and destroyed the traditional order in the realms of politics, replacing the monarchy of the Bourbons by the French republic, in the realm of economics, leaving room for the development of the modern national economy, and in the area of thought and religion by opening the minds for the radical ideas of the (French) Enlightenment.

In the wake of the French Revolution the “Sacrum Imperium Romanum” has been dismantled and the traditional order, which gave Europe its shape and identity, was abolished. In 1806 the “Holy Roman Empire” was dissolved, after a period of more than one millennium (800-1806).

The revolutionaries abolished the feudal order, freed the peasantry from its obligations, and proclaimed a “Declaration of the Rights of Man”, emphasizing the value of the single individual

and his personal liberty. The revolution established the supremacy of the middle classes in France and backed the interests of the peasants. It implemented the principle of equality before the law.

The conviction was widespread that man was perfectible, and that the improvement of human life can be accomplished without God, by reason alone. Scientific knowledge would provide society with the means to a better life. A mood of optimism started to spread, a new era of world history was about to begin. The ideas of liberty, equality, and fraternity were proclaimed.<sup>[26]</sup>

In the course of the French Revolution the clerics were made into state employees who had to declare their loyalty with the new revolutionary government. Half of the clerics agreed, the other half did not. After the Pope had condemned the new French constitution as a godless device, many clerics withdrew their signature. In the following years between 2,000 and 5,000 priests were killed, 30,000 to 40,000 priests fled the country, and 20,000 quitted their profession. The revolutionaries prohibited the church bells' ringing, punished every public ritual act, and burnt down 2,000 churches. The principal victim of the Revolution was the Church: it lost not only a big share of its priests, it lost most of its worldly power, and it lost large parts of its real estate.<sup>[27]</sup>

Another important consequence must also be taken into account: the sacral foundation of the state and of history was abolished. History was no longer seen as oriented towards a preceding ideal or

even God, but it was understood as a more or less inner worldly process without any (deeper) meaning. The pure secular state came into being, an entity completely cut off from any world-transcending power. God and his will were no longer publicly relevant; they were permitted relevance only in the private life of its citizens.

It is this concept of state, religion, and history that was promulgated in the French Revolution, but it obviously caused – in Europe and beyond – strong reactions and counter-reactions. The United States, for example, formulated at the time of the beginning of the French Revolution, actually in the same year 1789, its first ten Amendments to the Constitution of 1787, the so called “Bill of Rights”, regulating among others the relationship between state and religion, interestingly not in the sense of condemning religion altogether, but in the sense of establishing a “wall of separation” between the two areas of Church and state.[28]

Even if not all European states followed the example of the French, it had a certain effect on the minds of the people influencing (in both a negative and positive way) also governments in other European states.

## **Part II: Remarks on the Current Relationship between state and Religion**

In order to give an impression of the current situation of religion in Europe I first refer to the European Union and its principle of freedom of religion, and second to Germany and some of its constitutional provisions.

### **1. Religion in the European Union**

Since the year 2000 the EU has an own “Charter of Fundamental Rights”.<sup>[29]</sup> This Charter contains binding rights which entitle its citizens to certain human rights and oblige the EU and its member states to guarantee these rights to all its citizens. With regard to religion, Art. 10 states:

“Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.”<sup>[30]</sup>

Even if the EU is no state in the classical sense, but a legal construction *sui generis*, an entity of an own and unique nature, it usually operates like a state and obliges actual member states and its citizens to act in accordance with its rules and provisions. In article 10 the Charter does indeed guarantee the freedom of religion, and this freedom has mainly three different dimensions:

1. Everybody is given the right to profess his religion freely, either alone or in community with others, in public or private, and he is permitted to manifest his religion in teaching, practice, worship and observance.
2. Everybody is given the right to change his religion, and this implies that he is free to leave a certain religion or creed system and to adopt any other one.
3. The principle of “freedom of religion” implies lastly the possibility not to belong to any religion or religious group; it means therefore also “freedom from religion”. Nobody can be forced to believe in any supernatural essence, but everybody is absolutely free to believe in what he wants or to reject any kind of belief.

Everybody can easily see that this freedom of religion is comprehensive and encompasses different dimensions: the right to practice one’s religion, given, by the way, to Moslems in the same fashion as to Buddhists or Christians, the right to change one’s religion, according to one’s own predilection or actual taste, and finally the right not to belong to any religion and to live an absolutely religion-free life.

Both aspects of freedom: the (negative) “freedom from” (religion) is covered in the same way as the (positive) “freedom to” religion in its various forms.



The EU as such is bound to absolute neutrality; it does not contain a reference to God, but tries to offer maximum freedom – obviously understood in a very particular sense, i.e. in the way of the modern, secular state which observes the rule of the separation of state and religion.

## 2. State and Religion in Germany

The German “law regulating the relationship between Church and state” has two different meanings: it firstly guarantees freedom of faith, conscience, and creed, and it secondly stipulates the guarantee of some religious institutions.

- With regard to the first aspect the German constitution says in Art. 4: “Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.” This provision resembles, obviously, the more precise formulation in the Charter of Fundamental Rights of the EU, conceding its citizens actually the same rights.
- Much more interesting is the second aspect, the guarantee of religious institutions. With regard to the Constitution of the Weimar Republic the German Constitution stipulates the following provisions:[31]
  1. There shall be no state church. (Art. 137 I)
  2. The freedom to form religious societies shall be guaranteed. (Art. 137 II)

3. Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. (Art. 137 III)
4. Religious societies shall acquire legal capacity according to the general provisions of civil law. (Art. 137 IV)
5. Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious societies shall be guaranteed the same rights upon application, if their constitution and the number of their members give assurance of their permanency. (Art. 137 IV)
6. Religious societies that are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law. (137 VI)
7. Sunday und holidays recognized by the state shall remain protected by law as days of rest from work and of spiritual improvement. (Art. 139)
8. To the extent that a need exists for religious services and pastoral work in the army, in hospitals, in prisons, or in other public institutions, religious societies shall be permitted to provide them, but without compulsion of any kind. (Art. 141)

These provisions which are identical with those of the Weimar Republic are complemented with two very important basic rights from the very first part of the constitution. These are:

1. The guarantee of religious instruction at school: Art. 7 of the German constitution stipulates: “Religious instruction shall form part of the regular curriculum in state schools.” (Art. 7 III, sent. 1) And: “Without prejudice to the state’s right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned.” (Art. 7 III, sent. 2)
2. Prohibition of positive or negative discrimination because of religion or world-view. Art. 3 III of the constitution prescribes accordingly: “No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinion.”

It is easy to see that the German constitution observes and respects the principle of neutrality in relation to religion. The constitution, for example, does immediately exclude and forbid a “state church”, using exclusively the term “religious community”, thereby laying the basis for the equal treatment of various religions.[32]

Church and state are two different spheres which follow different rules, and none has the right to interfere in the realm of

the other domain. Despite this separation, the state is by law obliged to protect religion and foster religious education.

The neutrality of the state does not only forbid a close connection between state and religion (negative relation), but it also opens – cautiously – possibilities for provisions which enable religion and religious institutions to follow their interests in Germany (positive relation). And these activities are protected by the constitution in a particular way: if a person wants to practice religion, that person is protected by the constitution in the same way as the person who denies religion.[33]

### **PART III: Some Scattered, Concluding Remarks**

1. The Western model of the relationship between state and religion favors the idea of a distance and separation between the two spheres. A “state church” is, as we have seen, prohibited, the German constitution talks about “religious societies”. The question arises: is the freedom of the single person better served in a religiously neutral state than in alternative, religious models? Does freedom not also imply, perhaps first and foremost, the positive relationship of human beings towards important ends, in particular to the transcendent, to God?[34] Fulfilling relationships set people

free, not the simple negation of possible ties (as freedom is mostly understood).

2. The secularization of the state, or state power, does not necessarily imply the secularization of the civil society. The state is committed and obliged to religious neutrality, the civil society, however, is completely free. And indeed, the majority of Germans and of the people living in Germany belongs to religious communities. Of about 82 million people living in Germany today almost 24 million people are members of the Roman-Catholic Church, about 22 million people are members of the Protestant Church, and more than 4 million people are Muslims.[35] This means, again, that a religiously neutral state does not oppress, forbid or even exclude religion, but it leaves ample room within society for the practice of religion, actually of all kinds of religion (no matter whether a person is Christian, Muslim, Buddhist, Jew, Hindu, Shik, etc.).
3. The influential modern systems theory of the German sociologist Niklas Luhmann (1927-1998) intends to explain modern, complex societies by differentiating various systems within society.[36] Such systems are, for instance, politics, economy, science, art, religion, law, sports, music, entertainment, etc. Each of these systems follows its own rules, and each stands in relation with other systems. Systems

are defined by boundaries between themselves and their reference to a more or less chaotic environment; various forms of communication connect (or divide) different systems. Particular systems cannot be said to be more or less important for society. According to the interests and inclinations of the individuals or the society as such, a particular system prevails in importance, but this prevalence is subject to change.

With regard to our topic the question must be raised whether religion can be assigned the same role and importance than, for example, economy or law. Do all systems have the same meaning for men? Is the relationship of man to the transcendent and God not more meaningful and important than other merely inner-worldly relationships? Does religion not enjoy an extra-ordinary status?

And if religion constitutes meaning in a pre-eminent way, as it has done most of the time in world history and also today in most parts of the globe – weakened and enfeebled particularly during and since the enlightenment in Europe, and almost only in Europe –, does it than not deserve a better and more extensive protection than other systems? The role of religion in modern societies and its relationship to the state has to be thought over.<sup>[37]</sup>

## References

1. Cfr. the article by Rendtorff, Trutz: Kirche und Staat. Die gespaltene europäische Christenheit, in: Das Europa der Religionen. Ein Kontinent zwischen Säkularisierung und Fundamentalismus, ed. by Otto Kallscheuer, Frankfurt/Main: Fischer, 1997, pp. 141-159.
2. Excellent overviews of the history of Christianity are, to name just three: Edwards, David L.: Christianity. The First Two Thousand Years, New York: Orbis Books, 1997, or: Küng, Hans: Das Christentum. Wesen und Geschichte, 3. ed., Munich: Piper, 1994 (English translation: Christianity: Essence, History, and Future, New York: Continuum, 1997), and: Lauster, Jörg: Die Verzauberung der Welt. Eine Kulturgeschichte des Christentums. München: Beck, 2014.
3. The New Testament: John 18, 36.
4. The New Testament: Matthew 22,21. The standard English version reads as follows: „Therefore render to Caesar the things that are Caesar’s, and to God the things that are God’s.“ Cfr. <http://biblehub.com/matthew/22-21.htm> (last accessed on Nov. 30, 2016).
5. Hirschberger, Johannes: Geschichte der Philosophie, Bd. 1: Altertum und Mittelalter, Freiburg i. Br. 1991: Herder, p. 345.
6. Cfr. *ibid.*
7. See, as just one example, the very instructive account of Copleston, Frederick, in his “A History of Philosophy”, vol. II:

- Medieval Philosophy. From Augustine to Duns Scotus, New York: Doubleday 1993, pp. 40-90.
8. See for more details the account of St. Augustine himself in “The City of God”, Book XII 8, Book IX 28, Book XIV 1 and 4, Book XVIII 54, and Book XIX 5. A very good edition of his political positions is contained in St. Augustine: The Political Writings, ed by Henry Paolucci, Chicago: Gateway, 1985.
  9. Gelasius I, in: New World Encyclopedia, online at: [http://www.newworldencyclopedia.org/entry/Gelasius I](http://www.newworldencyclopedia.org/entry/Gelasius_I) (last accessed on Nov. 30, 2016).
  10. For the background of Pope Gelasius’ position and the historical setting in which pope Gelasius is to be situated, see the concise article in the New World Encyclopedia, Fn. 7, and the chapter in “Geschichte der Katholischen Kirche. Ein Grundriss, ed. by J. Lenzenweger et al., Graz et al.: Styria, pp. 121-130.
  11. Christopher Dawson shows in his treatise on „Religion and the Rise of Western Culture“ that until the 6th century Christianity spread mainly from the higher developed East to the West, but from then onwards it divulged rather in the West and finally from the West into the East. Reference: Dawson, Christopher: Religion and the Rise of the West, New York: Doubleday, 1957 (Gifford Lectures).
  12. The English text of the document and some comments are available



at: <http://www.unamsanctamcatholicam.com/history/79-history/215-revisiting-dictatus-papae.html> (last accessed on Dec. 2, 2016).

13. The English text of the document is available at: [https://books.google.de/books?id=CtOqPwL3uQ0C&pg=PA408&lpg=PA408&dq=concordat+of+worms+document&source=bl&ots=Fo1uayVW2D&sig=cYpklHieT6l7y6zHocpwJX-R7yU&hl=de&sa=X&ved=0ahUKEwjsp\\_6bqt\\_QAhVID8AKHb3JDD4Q6AEIPzAE#v=onepage&q=concordat%20of%20worms%20document&f=false](https://books.google.de/books?id=CtOqPwL3uQ0C&pg=PA408&lpg=PA408&dq=concordat+of+worms+document&source=bl&ots=Fo1uayVW2D&sig=cYpklHieT6l7y6zHocpwJX-R7yU&hl=de&sa=X&ved=0ahUKEwjsp_6bqt_QAhVID8AKHb3JDD4Q6AEIPzAE#v=onepage&q=concordat%20of%20worms%20document&f=false) (last accessed on Dec. 2, 2016).
14. Each description of medieval history or Church history contains accounts of the “Investitures Conflict” including the doctrines of infallibility and supremacy by Pope Gregory VII, and Henry’s travelling to the castle of Canossa near Parma. A thorough and balanced account is to be found in: *Kirchengeschichte*, vol. II: *Das Mittelalter*, ed. by. Karl Bihmeyer et al., 18th ed., Paderborn et al.: Schoeningh, 1982, pp. 157-175.
15. The idea of “the priesthood of all believers” is laid down in different places of the Old and New Testament. Examples would be: “You shall be to me a kingdom of priests and a holy nation.” (Exod. 19,6), or: “You also, as living stones, are being built up as a spiritual house for a holy priesthood to offer up spiritual sacrifices acceptable to God through Jesus Christ.” (1 Peter 2,5) Other quotations could easily be added and are easy to find in the Bible.

16. In his treatise on „Secular Authority” (1523) Luther clearly exposes his point of view on the two governments: “These two kingdoms must be sharply distinguished, and both be permitted to remain; the one to produce piety, the other to bring about eternal peace and prevent evil deeds: neither is sufficient without the other.” Luther, Martin: Secular Authority, in: The Great Political Theories, vol. 1 (Original Texts), ed. by. Michael Curtis, New York et al.: Harper, 2008 (reprint), p. 240-241.
17. A well-balanced assessment of Luther’s anger and wrath can be found in the monography on Luther by Friedenthal, Richard: Luther. Sein Leben und seine Zeit, Munich: Piper, 1967, especially pp. 495-524.
18. The idea of sovereignty was most prominently developed by the French jurist and political philosopher Jean Bodin (1530-1586) in his book “On Sovereignty. Six Books of the Commonwealth” (orig. 1576). The “suprema potestas” of the modern state is directed both against its citizens as subjects to the law and against other states which are all entirely independent from interference.
19. See the assessment of “The Significance of the Treaty of Westphalia” by Lee, Stephen J. in his Aspects of European History 1494-1789, 2. ed., London et al.: Methuen, 1984, pp. 117-123.

20. Kissinger, Henry: *World Order*, New York: Penguin Books, 2014, p. 26. In various publications Kissinger praises the Peace of Westphalia as the most important basis for “the pluralistic international order” which exists until today. He states: “With the end of the universal Church as the ultimate source of legitimacy and the weakening of the Holy Roman Emperor, the ordering concept for Europe became the balance of power – which, by definition, involves ideological neutrality.” (Ibid., p. 27)
21. Kant, Immanuel: *Beantwortung der Frage: Was ist Aufklärung?* In: Kant, I.: *Schriften zur Anthropologie, Geschichtsphilosophie, Politik und Pädagogik*, ed. by W. Weischedel, Darmstadt: Wissenschaftliche Buchgesellschaft, 1983, pp. 53-61, here p. 53.
22. Descartes, Rene: *Meditationen über die Grundlagen der Philosophie*, in: idem: *Philosophische Schriften in einem Band*, Hamburg: Meiner, 1996, part III.
23. Hobbes, Thomas: *Leviathan oder Stoff, Form und Gewalt eines kirchlichen und bürgerlichen Staates*, ed. by Iring Fetscher, 5. ed., Frankfurt /Main: Suhrkamp, 1992, especially chapters III and IV.
24. Taylor, Charles: *A Secular Age*, Cambridge, Massachusetts, 2007.
25. A comprehensive and modern definition of the Enlightenment is given by Jonathan Israel in his book on “Democratic Enlightenment. Philosophy, Revolution, and Human Rights 1750-1790”, Oxford: Oxford University Press, 2011. His proposal: “Enlightenment (...) is defined here as a partly unitary phenomenon (...) consciously committed to the notion of bettering humanity in this world through a fundamental,

revolutionary transformation discarding the ideas, habits, and traditions of the past either wholly or partly.” It operated usually “by revolutionizing ideas and constitutional principles, first, and society afterwards, but sometimes by proceeding in reverse order” (p. 7). In comparison to Kant, for instance, Israel stresses the correlation between theory and its practical consequences of which also religion and the Church can bear witness.

26. For more than a mere description of the French Revolution, which are countless, see: Arendt, Hannah: *On Revolution*, New York: Penguin, 2006, especially chapter V.
27. Küng, Hans: *Das Christentum*, see Fn. 2, p. 828-829.
28. Article 1 of the American Bill of Rights reads: „Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof (...).”
29. The Charter of Fundamental Rights was formally adopted by all EU member states in Dec. 2000. At the time it was more a “solemn declaration” than a legally binding document, which it became only on Dec. 1, 2009 with the entering into force of the Treaty of Lisbon. For more details see, for example: Olsen, Jonathan et al.: *The European Union. Politics and Policies*, 6. ed., Boulder: Westview Press, 2017, p. 161.
30. See the text online at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2012.326.01.0391.01.ENG&toc=OJ:C:2012:326:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2012.326.01.0391.01.ENG&toc=OJ:C:2012:326:TOC) (last accessed on Dec., 20, 2016).

31. Article 140 of the German Basic Law states in simple words: “The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of August 11, 1919, shall be an integral part of the Basic Law.” The reason for the adoption of the provisions of the Weimar Republic is that the Parliamentarian Council which elaborated the Basis Law between September 1, 1948 and May 8, 1949, could not find an agreement on a different relationship of Church and state. It is important to note that these provisions of the Weimar Republic have the same weight and relevance than the other provisions of the German Basic Law. See, for instance: Seifert, Karl-Heinz Hoemig, Dieter: Grundgesetz für die Bundesrepublik Deutschland, 6. ed., Baden-Baden: Nomos, 1999, pp. 27-31 and 731-746.
32. See the interpretation by one of Germany’s most prestigious legal professors on the topic of “Church Law”: Badura, Peter: Staatsrecht. Systematische Erläuterung des Grundgesetzes für die Bundesrepublik Deutschland, 2. ed., München 1996, pp. 755-774 (Das Staatskirchenrecht).
33. Interesting reflections on the current state of the German Church Law can be found in the article of Mueckl, Stefan: Aktuelle Herausforderungen für das Staatskirchenrecht, in: Aus Politik und Zeitgeschichte, no. 24, 2013, pp. 48-53.
34. I here refer to an idea, similarly formulated by Hannah Arendt in an article on “What is Freedom?” Arendt says: “Originally people experience freedom and bondage only in interaction with other people and not in relation with themselves. Human beings

can be free only in relation to each other”, in: Arendt, Hannah: Between Past and Future, New York: Penguin Books, 2006, pp. 142-169, here 142.

35. See for more details: <http://www.dbk.de/en/katholische-kirche/katholische-kirche-deutschland> (last accessed Dec. 30, 2016).
36. Luhmann, Niklas: Social Systems, Stanford: Stanford University Press, 1996.
37. See on the subject, for instance, the article by Ernst-Wolfgang Böckenförde on “Der säkularisierte, religionsneutrale Staat als sittliche Idee – Die Reinigung des Glaubens durch die Vernunft“, in: Böckenförde, Ernst-Wolfgang: Wissenschaft – Politik – Verfassungsgericht, Aufsätze, Frankfurt am Main: Suhrkamp, 2011, pp. 84-93, or the book by Friedrich Wilhelm Graf: Die Wiederkehr der Götter. Religion in der modernen Kultur, München: Beck, 2004.

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