The State and the Churches in Germany:

A Story of Competition and Conciliation

Conclusions
from a lecture, held by Professor Dr. Michael Germann
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I. Canossa 1077

(1) Canossa 1077 is a symbol for a competition and a conciliation of state and church in Germany.

(2) Its background is a competition between the secular princes and the episcopate concerning the appointment of bishops. It presupposed an entanglement of secular and ecclesiastical competences. This entanglement originated from a practice which had developed in the 10th century and according to which the king would confer political and administrative functions upon the clergy. Involving the clergy in the royal functions seemed advantageous for both the king and the clergy. Constituting the bishop's ministry through investiture by the king presupposed the king's spiritual dignity (charisma). The king's subordination in Canossa set an end to this charisma.

(3) The failure of the 1111 agreement between Henry V and the then Pope Pascal II showed that conciliation between the secular power and the church could not be attained by simply cutting things apart.

(4) The success of the 1122 Worms Concordat derived from that it coordinated the mutual interests in a rather sophisticated, but effective way.

II. Augsburg 1555 and Osnabrück 1648

(5) The instruments of Augsburg 1555 and Osnabrück 1648 are most significant to the history of church-state-relations in Germany (and Europe), but not so much regarding the competition between the secular power and the church than regarding religious pluralism: For the first time in history, law, until then founded on the one Christian faith, had to deal with two or more blocks of religious convictions which were incompatible.

III. Berlin 1872

Bismarck, 14 May, 1872:

> "After the newly expressed and promulgated dogmata of the Catholic Church, I do not esteem possible for a secular power to get to a concordat, unless this secular power was effaced in a way that the German Reich, at least, cannot accept. Do not be afraid: To Canossa, we will not go – neither physically nor mentally."

(6) The allusion to Canossa is significant for the flashback, almost 800 years after the walk to Canossa, of medieval patterns of competition.

(7) The Kulturkampf can be explained as a competition between, on the one hand, the modern concept of a secular national state and, on the other hand, the just

evolving concept of the Church's role in modern society. The secular national state felt obliged not only to respect civil liberties but also to protect individual freedom from corporative social forces like the Church. The Roman Catholic Church felt challenged to define itself as a spiritual power of a determinant relevance in society, and was torn between claiming public power as an authority equal to the state, or its civil liberties under the liberal constitution, or its political participation transmitted by the catholic political party ("Zentrum"). Both the state and the church found themselves caught in a dialectic converse of their approaches: The state, by enforcing the liberal disposition of public affairs, in the end infringed the liberties of the church in a most flagrant way. The church, by enforcing its resolute anti-secularism, in the end competed with secular forces by the use of secular liberties for secular hegemony.

(8) The settlement of the Kulturkampf can be recognised as an armistice, but it did not resolve those antagonisms on a categorical level. It did not make the state or the church win or lose. On that account, there is no use asking who won and who lost. It rather seems to be instructive to ask what was the fault with the state's and the church's approaches. Both sides sought to define their claims in terms of "areas". The state claimed some subjects – as the university, school, public office, public remuneration, civil status, social relations in general – as an "area" which it was supposed to be responsible to defend against illiberal usurpation. Correspondingly, it imagined to draw a precise borderline between the "area" of such public affairs and the "area" of church affairs, like the doctrine, theology, worship, faith. The state imagined to keep impartial in church affairs by simply not judging the doctrine, by simply not arguing about theology, by simply not favouring a certain worship, by simply not enquiring faith. This was an illusion. The state could not decide on the public office of a dissident university professor of theology without giving or denying effect to the doctrines; it could not pay or withhold public remuneration without giving or denying effect to the ecclesiastical measures which determined the legitimation of the claimant; it could not adjudicate the ownership of a church building in a civil suit among disagreeing catholics without giving or denying effect to the canon law consequences of disobedience; and so on. Equally, the church did not know how to preserve its integrity without claiming its "areas" of interest as being excluded from any secular interest. It is evident that the university, school, public office, public remuneration, civil status, and social relations in general could not, whenever the interests of the church were touched, be excluded from any secular interest.

(9) From there, we can deduce an essential prerequisite of a concept conciliating the sovereignty of the modern secular liberal state and the integrity of the church. There must be found a legal concept of religious liberty which overcomes dividing interests into "areas". The interests of the state and religious interests often meet in the same area. This is true for the university regarding theology, for the school regarding religious education, for some public offices regarding religious interests of citizens, for public remuneration regarding some legal bases referencing religious circumstances, for the civil status regarding a possible religious connotation, for social relations regarding their relevance in religious contexts. Religious liberty means that, in such areas, the interest of the state be balanced, or conciliated, with the religious interests in a way compatible to both.

IV. Weimar 1919 and Bonn 1949

1. key features

(10) Article 137 Section (1) of the Weimar Constitution declares abolished any establishment of a church, confession, religion, or ideology as official. This means **separation of Church and State**. The constitutional status of religion and religious communities is not based on their special metaphysical dignity or on any participation in the State's sovereignty. On the other hand, it does not intend to force religious activity away from public life, either. Its basic idea is to provide the legal prerequisites for a free development of religious life, as far as this will not violate colliding interests, and on a parity basis, which includes non-religious beliefs (see Section (7)).

(11) Article 137 Section (3) of the Weimar Constitution guarantees the **right to self-determination** to religious corporations. They are subject to the State's legislation, but the State only may impose "the law valid for all" on them. Since even a formally general regulation can affect a religious body, due to its specific concepts of religious life, in a more sensitive way than other subjects, "the law valid for all" must be judged by weighing the affected religious interests against those interests patronized by the law in question.

(12) With regard to the right to self-determination, Article 137 Section (5) of the Weimar Constitution offers to religious corporations certain legal forms of regulating and administering their affairs which exceed the civil law forms of action. These legal forms are enveloped in the forms of public law. For example, Churches may model the terms of employment of their ministers after the public service, if they deem this more appropriate than civil law labour contracts. Religious corporations are free to acquire this public law status and then to choose between public and private law forms of action. Public law status will be conferred upon them on a parity basis, provided that they can be judged capable to make a reliable and responsible use of it.

(13) By Article 140, the German constitution incorporates the related articles from the "Weimar Constitution". They today are valid as a part of the German Basic Law.

(14) Since 1949, they have been embedded in a system which has been conceived, more and more during its application, as a liberal system of religious freedom.

(15) Its **key features** are: the safeguard of religious freedom, the ban of religious discrimination, parity of religious communities, neutrality of the State towards religious and philosophical convictions, separation between State and Church and other religious bodies, the right of the religious communities to self-determination, and their access to special forms of operation. These features may be summarized by speaking of two pillars: the first one is the protection of religious freedom as a fundamental right by constitution. The second one is the special constitutional status of the Churches and all religious and philosophical bodies. Both combine to one consistent legal arrangement, serving the purpose of providing best conditions for religious freedom.

2. religious freedom

(16) **Religious freedom** is protected as a fundamental constitutional right under Article 4 of the German constitution ("Grundgesetz": "Basic Law"). As all fundamental rights under the German constitution, the right to religious freedom is effective

by pohibiting any State act which interferes with the protected interest and is not justified by law.

(17) The guarantee of religious freedom under the German constitution demands that any legal restriction be warranted by a constitutionally acknowledged interest which prevails over the interest in exercising religious liberty.

(18) The concept of fundamental rights under the German constitution makes a categorical difference between interferences effected by the State and interferences effected by private subjects. Fundamental rights only avert interferences effected by the State and subject them to the need of constitutional justification. Interferences effected by private subjects emanate from their own freedom. They do not need any further justification than that proper freedom. Thus, they do not directly meet with the limits set by constitution to the State's action, but only with the limits set by the State's legislation to protect one private subject against another. There is no direct effect of the right to religious freedom among private subjects, but only an indirect effect, relayed by statutory obligations and prohibitions, which the legislator creates in order to comply with his duty to balance the colliding private interests.

(19) Legal equality bans unequal treatment by the State unless justified by a just reason. **Religious equality** means equal respect towards different uses of religious freedom. Thus, equality may compel the State to make differences in treating different demands. Legal equality creates differences.

(20) Some further provisions of the German constitution strengthen the collective exercise of religious liberty. Article 7 Section (3) of the German constitution guarantees **religious instruction** in public schools, which is integrated in public education while its content is determined by the respective religious community, and which, by its voluntary character, proves to implement religious freedom.

(21) These provisions need an interpretation that implements religious liberty in a way that, in the many areas of common interest, the interest of the state be balanced, or conciliated, with the religious interests in a way compatible to both.

3. religious neutrality

(22) The freedom of religion and the protection from religious discrimination imply the principle that **all State action must assume a neutral position towards religion**. The State must not arbitrate among the different religious positions, or even adopt one of them. Legislation, government, and jurisdiction must not rule under the particular terms of religious norms. The State must, above all religious and philosophical differences, be open as a "home" for all citizens (as it has been put by the German Federal Constitutional Court in 1965). A State identifying with a particular religious position would disintegrate all citizens who use their religious freedom to share a different religious position.

(23) The concept of neutrality is open for a large range of interpretations. Its constitutional context in Germany, however, produces some more concrete outlines:

(24) First, the constitution maintains **certain fundamental guidelines** which are **obligatory**, irrespective of any disagreement for reasons of religious or philosophical belief. As a preeminent example, Article 1 of the German Constitution solemnly proclaims the German people's commitment to "inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world". The German wording of this Article 1 ("Das deutsche Volk bekennt sich") even uses the same verb which in Article 4 denotes the "professing" of a

religious or philosophical creed as protected by religious freedom. Likewise, the constitution traces all legitimacy of State authority to the sovereignty of the People. From the perspectives of some antitheses which may be held on to by particular religious or philosophical beliefs, these decisions will appear as negative identifications by the State. Towards them, the State can not keep neutral.

(25) Second, the **symbols** dealt with in legal texts and proceedings, are **open for references to religious items**.

This is apparent with the Preamble of the German constitution: "Conscious of their responsibility before God and man [...] the German people [...] have adopted this Basic Law". – The legal regulations on oaths to be taken in court or when being assigned to a public office usually provide for a religious affirmation like "so help me God", although the oath taker is free to omit such a formula. – Public office rooms, for instance court rooms or public schools, mostly may be furnished with a Christian cross or crucifix. –

If the presence of Christian or other religious symbols stood for an identification of the State with the particular religious items which are represented by those symbols, it would infringe on the State's due neutrality. But the context given with this principle of neutrality permits to understand the presence of religious symbols as a reference to all dimensions of the human condition inaccessible to the State, a reference open to different religious or philosophical meanings.

The citizen being confronted with these references may insert to them his own religious or philosophical convictions. He is free to conceive his own grounds for civil ethics according to his proper religious or philosophical convictions: according to a religious or philosophical understanding of the State's purpose when participating in democratic and republican life; according to a religious or philosophical understanding of an oath when testifying in court or taking over a public office; according to a religious or philosophical understanding of human dignity when undergoing education in public schools.

To such religious or philosophical interpretations, the presence of symbols in civil life gives space, but does not prejudice or enforce them. I propose to call those symbolic elements in civil life "invitations to the citizen's identification". It is not the State, but the citizen, who then identifies with a religious or philosophical item. Such an invitation to identification does not jeopardize the due neutrality of the State. On the contrary, the due neutrality of the State is secured against the hidden identifications by a State's symbolism which would exclude any religious or philosophical interpretations of the represented reality.

(26) Third, the constitution, all the more, leaves **public life** primarily to civil society thus **open to the exercise of religious freedom**.

In consequence, public life is determined by religious and philosophical identifications, too. These identifications must not be attributed to the State, just because the State gives space to them, protects them as a use of religious freedom, and expects of all others to tolerate the inevitable encounter with them. Public manifestations of religious and philosophical creed must not be attributed to the State, even when the State attends to public life, moderates it, and organizes it.

The State attends to the education of the youth by operating public schools, it attends to science by operating public universities, it attends to mass communication by operation public radio stations. In these fields of public life, since occupied by the State, the handling with religious and philosophical attitudes has to comply with the right to religious freedom.

The freedom of religion comprises its public dimension: the contribution of religious identification processes to education, the contribution of theology to science, the contribution of religious commitment to the public discourse. If the State excluded those religious items from the fora where the public interchange of ideas takes place, it would interfere with religious freedom. In addition, such an approach would discriminate religion against other manifestations of liberties, such as the freedom of art, of economy, or of politic discourse.

Due neutrality of the State can not be understood as pushing away religious and philosophical creed. Both religious freedom and prohibition of religious discrimination give priority to an understanding of neutrality which defends its openness towards religious manifestations.

(27) Fourth and last, the constitution expects the State to be ready for **interacting with religious manifestations** in the same way as it interacts with all other social manifestations.

This is important to the extent to which the expanding State cooperates with all social agents, and fosters them. The motto "la République [...] ne subventionne aucun culte" – the State shall not fund any denomination –, as proclaimed in the French law on separation of the Churches and the State by 1905, that motto would express neutrality only by a State which abstained totally from funding social activities. For the State which commits itself to social welfare, it does not. Fostering certain social activities while excluding all of them which are motivated by religious convictions would pervert the assumed indifference into discrimination.

Therefore, the State is obliged to fund religious schools to the same extent as all private schools, to support the conservation of historical buildings of the Churches to the same extent as that of all other monuments, to integrate the charity activities of the Churches to the same extent as all other private charity activities, and so on.

The due neutrality of the State demands to strictly separate the secular motives of the State's policies from the religious and philosophical intentions which are effective in civil society. The separation of the motives causes, all the more, a close coordination, respect and cooperation between their respective implementations in the same fields of life. The State meets religious manifestations in civil society, without identifying with them.

Due neutrality of the State implies due contacts with manifestations of religious freedom. A proven means of coordination and cooperation between the State and religious communities in Germany are **treaties**, adjusting the mutual concerns in their main common fields of interest.

V. Wittenberg 1993

(As to 1. through 4., read the excerpt of the Wittenberg Treaty, infra.)

1. the partners

2. the matters

3. the technique

4. the intentions

5. the predecessors

until 1933

- „Konkordat zwischen Seiner Heiligkeit Papst Pius XI. und dem Staate Bayern“ vom 29.3.1924
- „Vertrag des Freistaates Preußen mit dem Heiligen Stuhle“ vom 14.6.1929
- „Konkordat zwischen dem Heiligen Stuhle und dem Freistaate Baden“ vom 12.10.1932

(28) These concordats continued to wear the clothes of treaties under international law, but what was clothed by international law was something new, a new function of the contractual regulations. Now, after the state had lost its governance on the church and after the church had been separated from the state, it was about to stabilise the continued mutual expectations of the state and the church towards each other.

> “A totally new type of relations between state and church has arisen by this; I propose to call it the type of a church being separated, autonomous, and further secured by treaties or concordats, that is a church, which is fostered no longer as an established church but as one of many religious communities which are furnished with a legal status under public law by virtue of a treaty contracted with the state and thus, being protected against the state by treaty, clearly contrasts those other religious communities including those acknowledged as a corporation under public law.” (*Ulrich Stutz*, 1930)

(29) This approach could and must be extended to the protestant churches, too. Therefore, the concordats were followed by treaties with the protestant territorial churches:

- „Vertrag zwischen dem Bayerischen Staate und der Evangelisch-Lutherischen Kirche in Bayern rechts des Rheins“ vom 15.11.1924
- „Vertrag des Freistaates Preußen mit den Evangelischen Landeskirchen“ vom 11.5.1931
- „Vertrag zwischen dem Freistaat Baden und der Vereinigten Evangelisch-protestantischen Landeskirche Badens“ vom 14.11.1932

(30) That was the time when both sides just had begun, with some hesitation, to give up the idea of a correlation between a special legal status of the church and their special supervision by the state. This fading idea can be felt within this first generation of treaties.

> The motives are reflected by the enumeration of reasons for the treaty which the government of Baden gave:
>
> 1. clearing essential legal relations which have become unclear;
> 2. strengthening the constitutional guarantees to the legal status of the church;
> 3. taking account of certain interests of the contracting parties which have been ignored by the law in force;

4. dealing with both of the important religious communities in Baden on a parity basis.

(31) The final representative of this generation of concordats and treaties was the concordat between the Reich and the Holy See of 1933. It was already signed by Hitler, half a year after his appointment, the concordat being the fruit of intense endeavours which had been developed during a couple of years before, finishing a very hesitating policy of the Reich, overcoming now serious objections within the Vatican's policy, which had to be newly defined towards Hitler, giving to Hitler an enormous success as regards his reputation among an important number of doubtful catholics (and protestants) in Germany, who had feared a hostile policy towards the church and now were appeased by this document of alleged good will; in fact appeasing the Roman Catholic Church in Germany for some time until the flagrant breach of the concordat by Hitler made clear that the totalitarian character of the national socialist Reich tolerated no such illusion.

(32) The 1933 concordat can be viewed as "Ianus-headed", having two faces: the one looking back to the concordant stipulations under the Weimar Constitution, the other looking forward to the increasingly disconcordant competition between the church and the policy of the national socialist state.

until 1990

(33) The second generation of church and state treaties began with the treaty of Loccum (a former monastery near Hannover) of 1955.

> Vertrag des Landes Niedersachsen mit den evangelischen Landeskirchen in Niedersachsen vom 19.3.1955

(34) The development of concordats with the catholic church was somewhat paralysed by the controversy on the continuation of the 1933 concordat. The Federal Constitutional Court set an end to this controversy by deciding that the 1933 concordat continued to be in force, but bound as a party only the Federation, not the Länder. As regards the controversial matters, all above the provisions concerning schools, the federal competences did (and do) not pertain to the Federation, but to the Länder. Thus, the Federation continued to be obligated, but could not fulfill its obligations lacking the legal competences.

(35) The second generation did not intend to discontinue the legal status of the existing treaties, but to renew it under the modified theoretical presuppositions of the "coordination theory".

(36) The coordination theory vanished in the end of the 1960s. Since then, the theory conceives the churches' autonomy not as a sovereign power independent from law, but as a civil liberty under the law, guaranteed by constitution.

(37) While the theory vanished, the treaties persisted. The modified theory explained the treaties as an instrument of dealing with the civil liberties of the church under the law, legally conform to the constitution (to the separation of state and church, to religious freedom, to religious equality, to neutrality of the state, to democracy), conform to the theory of the constitutional state, and politically reasonable

6. „Le temps des concordats est passé..."?

(38) Yet, the great impetus to regulate the church-state-relations by treaty which had stimulated the 1955 Loccum treaty, this great impetus seemed, after the fall of the coordination theory in the end of the 1960s, to be finished and a little bit old-fashioned.

(39) „Le temps des concordats est passé...“ (*Alain Boyer*, 1993:) – this remark does not refer to Germany, but could often be quoted in Germany in the early 1990s.

(40) After the German reunification, in 1990, many expected that this constitutional, allegedly old-fashioned framework would not work well for the post-communist Länder. That could have been seen this way, in particular regarding the instrument of treaties between the state and the churches: If even the Loccum type treaties in the “old” Federal Republic, since there the big popular churches (“Volkskirche”) and their roots in society had been eroding, had lost their impetus – the much farer from the conditions under which the Loccum type treaties had once come into life were the social dispositions and the political attitudes towards the churches which were left by the communist regime of the GDR.

(41) For those who thought that the law of the “old” Federal Republic on state-church-relations was old-fashioned, it must have been astonishing what happened instead.

1993-09-15 Vertrag des Landes Sachsen-Anhalt mit den Evangelischen Landeskirchen in Sachsen-Anhalt

1993-11-01 Vertrag zwischen dem Freistaat Thüringen und der Jüdischen Landesgemeinde Thüringen

1994-01-20 Vertrag zwischen dem Land Mecklenburg-Vorpommern und der Evangelisch-Lutherischen Landeskirche Mecklenburgs und der Pommerschen Evangelischen Kirche

1994-03-15 Vertrag des Freistaats Thüringen mit den Evangelischen Kirchen in Thüringen

1994-03-23 Vertrag des Landes Sachsen-Anhalt mit der Jüdischen Gemeinschaft in Sachsen-Anhalt vom 23.3.1994

1994-03-24 Vertrag des Freistaates Sachsen mit den evangelischen Kirchen im Freistaat Sachsen

1994-06-07 Vertrag des Freistaates Sachsen mit dem Landesverband der Jüdischen Gemeinden

1996-06-14 Vertrag zwischen dem Land Mecklenburg-Vorpommern mit [sic] dem Landesverband der Jüdischen Gemeinden in Mecklenburg-Vorpommern

1996-07-02 Vertrag zwischen dem Heiligen Stuhl und dem Freistaat Sachsen

1996-11-08 Vertrag zwischen dem Land Brandenburg und den evangelischen Landeskirchen in Brandenburg

1997-06-11 Vertrag zwischen dem Heiligen Stuhl und dem Freistaat Thüringen

1997-09-15 Vertrag zwischen dem Heiligen Stuhl und dem Land Mecklenburg-Vorpommern

1998-01-15 Vertrag zwischen dem Heiligen Stuhl und dem Land Sachsen-Anhalt vom 15.1.1998

2003-11-12 Vertrag zwischen dem Heiligen Stuhl und dem Land Brandenburg

2005-01-11 Vertrag zwischen dem Land Brandenburg und der Jüdischen Gemeinde – Land Brandenburg

2003-11-19 Staatsvertrag über die Beziehungen des Landes Berlin zur Jüdischen Gemeinde zu Berlin

2006-02-20 Vertrag des Landes Berlin mit der Evangelischen Kirche Berlin-Brandenburg-schlesische Oberlausitz

(42) Thus: The era of concordats has **not** gone. „Le temps des concordats" n'est pas „passé..."

(43) A closer look on the quoted sentences by *Alain Boyer* can help to explain that:

> „la France est un des seuls pays où le chef de l'Etat continue à nommer des évêques, comme c'est le cas pour l'archevêque de Strasbourg et l'évêque de Metz dans le cadre du statut local. L'Eglise se souvient des compromissions avec des Etats totalitaires, facilitées ou entraînées par les concordats. Elle apprécie la liberté que signifie la séparation qu'elle ne rejette plus sur le plan dogmatique depuis Vatican II. L'Eglise n'a plus de prétention hégémonique sur la société mais elle veut participer, avoir son mot à dire."

This reflects a perception of concordats which derives from experiences totally different from the German experiences since Weimar 1919 and Loccum 1955: In Germany, the concordats are **not** an instrument supporting exceptions from the consitutionally guaranteed rights of the churches; the concordats have **not** been a reason to deal with the totalitarian governments during the 20th century; the concordats have **not** weakened the separation of the state and the churches, sacrificing the churches' freedom for the sake of unconstitutional privileges, or sacrificing the state's sovereignty for the sake of a church with hegemonial ambitions.

7. evolution of ideas

(44) Apart from this, the new generation of treaties after 1990 show some differences in detail which reflect a more modern approach:

The treaties of the first and second generations had stipulated that, regarding the successions in the bishops' chairs, the government were entitled to formally doubt an elect's loyalty to the public order, and that the elect was supposed, after his appointment, to take an oath on the constitution.

For the first generation, these acts were considered to continue the mutual supporting which the parties were familiar with; for the second generation, these acts were considered to be acts of mere courtesy.

The treaties of the third generation after 1990 were much more reserved and cautious about these acts of courtesy.

(45) **The idea** of the new generation of treaties: The sovereign state is contracting with the holders of civil liberties: **free churches within** the state. The sovereign state is representing its public responsibility for the public interest; the churches are representing their respective responsibility for their mission to be involved in society and, to this end, making use of their civil liberties.

(46) So, the idea has changed: After the treaties between the state and the churches have been, under the premises of an established church before 1919, a privilege; or under the premises of the theory of "correlation" between particular rights and subordination, an instrument of continuing "special" relationships; or under the premises of the coordination theory, the only medium for a communication between sovereigns – they are, under the premises of a constitutional framework which is founded on, and centered in, religious freedom, an appropriate medium for a communication between the sovereign state and a free church.

Appendix: texts

"Weimar" Constitution 1919

Article 137.

(1) There shall be no state church.

(2) The freedom to form religious societies shall be guaranteed. The union of religious societies within the territory of the Reich shall be subject to no restrictions.

(3) Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.

(4) Religious societies shall acquire legal capacity according to the general provisions of civil law.

(5) Religious societies remain corporations under public law insofar as they have been such heretofore. Other religious societies shall be granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. If two or more religious societies established under public law unite into a single organization, it too shall be a corporation under public law.

(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.

(7) Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies.

(8) [...]

Fundamental Law (Grundgesetz) 1949

Article 4. (1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion is guaranteed.

(3) [...]

Article 7. (1) The entire school system shall be under the supervision of the state.

(2) Parents and guardians have the right to decide whether children shall receive religious instruction.

(3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction.

[...]

Article 140

The provisions of Articles 136, 137, 138, 139, and 141 of the German Constitution of August 11, 1919 shall be an integral part of this Basic Law.

Treaty of the Land of Saxony-Anhalt and the Protestant Territorial Churches in Saxony-Anhalt ["Wittenberg Treaty"] of 15 September, 1993

The Land of Saxony-Anhalt [...]

and

the Protestant Territorial Church of Anhalt,

the Protestant Territorial Church in Braunschweig (Brunswick),

the Protestant Church of the Saxonian Ecclesiastical Province

as well as

the Protestant Church in Berlin-Brandenburg,

the Protestant Lutheran Territorial Church of Saxony,

the Protestant Lutheran Church in Thüringen (Thuringia)

[...]

- expressing their common will to maintain, while respecting the fundamental right of religious freedom and of the mutual independance of State and Church, the autonomy and the public mission of the Church,
- intending to support, in a liberal society and in a state neutral towards religious and philosophical convictions, the educational, cultural, and caritative activities of the churches in the Land of Saxony-Anhalt,
- respecting and developing the rights and duties which have risen in history and which have, in particular, condensed in the treaty of the Republic of Prussia with the Protestant Territorial Churches of 11 May, 1931 [and others],
- aiming at giving, under new political conditions, the basics of the relations between the State and the Church, as a part of a liberal system, a comprehensive and durable shape,

have agreed on the following:

Article 1 Freedom of faith and autonomy.

Article 2 Cooperation.

Article 3 Faculties of Theology.

Article 4 Ecclesiastical universities.

Article 5 Religious instruction.

Article 6 Ecclesiastical schools.

Article 7 Protection of the ecclesiastical property.

Article 8 Ecclesiastical corporations, institutes and foundations.

Article 9 Dedication of ecclesiastical buildings.

Article 10 Preservation of ecclesiastical buildings.

Article 11 Patronates.

Article 12 Chaplaincy.

Article 13 Remunerations.

Article 14 Ecclesiastical taxes.

Article 15 Administration of ecclesiastical taxes.

Article 16 Gifts and collections.

Article 17 Exception from fees.

Article 18 Ecclesiastical institutions for social and educational purposes.

Article 19 Religious holidays.

Article 20 Protection of the confessional secret.

Article 21 Ecclesiastical graveyards.

Article 22 Broadcasting.

Article 23 Registration of the ecclesiastical membership with the civil status.

Article 24 Ecclesiastical courts.

Article 25 Parity.

Article 26 Dispute settlement by courtesy.

Article 27 [...].

Article 28 [...].