Unit D 18: State and religion today

1. Summary

After it had seemed for some time that the issue of state and religion was settled, at least in Europe, relations between the state and religious communities have become more tense again in many countries. The courts - for example, the Swiss Federal Court - have interpreted the concept of religion very broadly and have determined that freedom of religion is worth protecting far beyond the narrowest context of belief. Freedom of religion - or as it is called in the Swiss Federal Constitution: Freedom of Faith and Conscience - is understood in a threefold sense: First, as individual religious freedom, i.e., the right of the individual to believe or not believe what he or she wants; second, as collective religious freedom, i.e., the right of groups to pursue their religious activities together; and third, as corporative religious freedom, i.e., the right of religious communities to give themselves the structures they desire.

2. Religion and the state - a perennial issue

Even people who see themselves as having no religion need religious freedom, because it guarantees that they do not have to belong to a religious community. This was not always the case in Europe either. In the Augsburg Religious Peace of 1555, it was still stipulated that the sovereigns should determine which faith their subjects should belong to: The rule was "Cuius regio eius religio," loosely translated as "whose rule is whose religion." This did not change until the Enlightenment.

2.1 The Concept of Religion from the Perspective of the State and the Law

In his introductory remarks, Konrad Sahlfeld (2004:1) pointed out that the Strasbourg organs of the ECHR (= European Convention on Human Rights) "have refrained from defining what exactly is meant by 'thought, conscience and religion'". The UN Human Rights Committee has also refrained from defining what is meant by "religion". Because, "in addition to the ECHR, other international conventions and constitutions do not define the concept of

religion but presume it to be known," it can be concluded that they want to "leave the clarification of the concept of religion to the courts" (Sahlfeld 2004:102; author's emphasis). According to Hafner (2011:130), the concept of religion can only be opened up "ex negativo" by the organs of the ECHR. What is to be understood by religion is not circumscribed by its content, "but is ultimately defined by the national legislation that limits it" (Hafner 2011:130). With reference to various Federal Court decisions (e.g. BGE 119 Ia 183f. or BGE 134 I 116), Hafner (2011:132) stated that the Federal Court "thus [makes] use of its definitional monopoly when circumscribing the concept of religion". Thereby - according to Hafner (2011:132) - a "discursive, communicative and above all also interdisciplinary approach... to the concept of religion" is required.

The Swiss Federal Supreme Court has stated the following on the concept of religion and the freedom of religion worthy of protection: "World views are protected by freedom of religion insofar as they are an expression of the religious or transcendental and have as their object an overall view of the world and of life" (BGE 119 IV 263). And the former federal judge Jörg Paul Müller paraphrased the freedom of religion and belief as follows: "As faith, every relationship of man to ultimately binding contents is protected under fundamental law" (Müller/Schefer 2008:254).

Definition of religion
Religion is
"- a subjectively or intersubjectively created,
- self-contained edifice of fundamental thoughts about
- how the human being (as individual, collective or corporate being)
+ with regard to the totality of the transcendentally founded real
+ within the framework of himself, his fellow world and his environment
in detail his (value) attitude and has to understand himself (value) behaviorally".
has to grasp".
Source: Tanner 2005:171/172.

Sahlfeld (2004:1) has expressed the opinion that in the end it does not matter what kind of concept of religion is preferred. But is this really the case? Is it possible to speak of a social institution such as religion - with its institutional actors and structures - without at least attempting to circumscribe what is to be understood by it? For the less conceptually and substantively clear it is what we are talking about, the more difficult it is to understand the phenomenon in question and the greater the danger of getting lost in empty words. Not

entirely without reason, therefore, Wolfgang Lienemann (2008:223) spoke of an "extensive emptying of the legal concept of religion in terms of content." In particular, a very open concept of religion without reference to transcendence appears problematic: "If the reference to God and transcendence is omitted from the definition of the concept, the concept of religion tends to become contourless. Almost every action could [thus] be called religious" (Hafner 2011:132).

However, a clear circumscription of the concept of religion does not mean that a religion is evaluated in terms of content. Only a multi-dimensional and multi-layered concept of religion makes it possible to grasp religious or ideological communities in all their diversity and yet holistically and to treat them equally.

Seen in this light, Peter Karlen's (1988:201) paraphrase already seems much clearer - even if it is not unproblematic from the point of view of religious studies: "As religion in the constitutional sense, man's ties to God, to several gods or otherwise to a supreme supernatural being ('être suprême', 'supreme being'), but also pantheistic, naturalistic and other ideas of the meaning of human existence based on transcendence, are protected".

With regard to freedom of religion, Sahlfeld (2004:103) summarized "religion" as follows: "The religion or worldview to be protected under Article 9 ECHR must first be classified in a broad grid in order to then be concretized - primarily individually. The decisive factor is the individual exercise of religion (freedom), which does not necessarily have to correspond to the official position of the concrete religious community. However, the self-understanding of the religious community is to be consulted in order to gain a (first) understanding".

Thus, freedom of religion means: first, **personal (faith) conviction**; second, **group- or religion-specific beliefs**; and third, the **neutrality of the (secular) state**.

2.2 State and Religion

The famous religious scholar José Casanova (2009:11) has put forward the thesis that secularization does not automatically mean democratization. This is shown, for example, by

the example of the Soviet Union: "In fact, secularization and democratization are two dynamic processes that do not always go hand in hand. Sometimes one can find democratization without secularization and very often secularization without democratization" (Casanova 2009:12). At no other time - and under no "religious regime" whatsoever - have such brutal and massive massacres and genocides occurred as in the "secular" decades between 1914 and 1989. And yet - according to Casanova (2009:12-14) - many inhabitants of European countries, such as Denmark and Switzerland, are convinced that religions - as opposed to secularism - are intolerant and "generate conflicts." Casanova (2009:14), surprisingly, concludes from this that the majority negative attitude of many Europeans toward religion "cannot possibly be empirically grounded in the collective historical experience of European societies in the twentieth century or in the actual personal experience of most contemporary Europeans."

One objection to this view, however, would be that, first, in large segments of the population - such as Switzerland - religion(s) are strongly anchored in everyday life. For example, Switzerland still has one of the highest baptism rates in Europe (cf. Krüggeler in Schweizerische Kirchenzeitung SKZ 2008:44). Secondly, recent studies (cf. e.g. Bochinger et al. 2012:214ff.) came to the conclusion that **not only secularization** but **also religious commitment** [= religious orientation] tends to increase and **consequently religion** is perceived **not only negatively and conflict-promoting but equally peace-promoting**. Thus **religion** can be **either integration-promoting** or **integration-inhibiting** (cf. on this Baumann 2000:177/178 and Jäggi 1997b:57). And third, it has long been known from attitude research that attitudes and changes in **attitudes** are **only very conditionally linked to corresponding actions** and **changes in action**. Rather, the link between attitude and action is rather indirect.

Siegfried Schumann (2012:78) also expressed great skepticism about the connection between attitudes and behavior. He points out that "attitudes can only be used to explain human behavior if they are acknowledged to have a 'biophysical basis'. As mere descriptions, they cannot be used to explain behavior" (Schumann 2012:78).

But what about the connection between democracy and the separation of church and state?

Referring to Alfred Stepan (2003), Casanova (2009:18) argued "that the main empirical-analytical theories of democracy, from Robert Dahl to Juan Linz (2009), do not include secularism or the strict separation of church and state among the institutional requirements of democracy, which prominent normative-liberal theories such as those of John Rawls and Bruce Ackerman tend to do."

This may seem surprising at first glance, but it is quite conceivable that there can be a democratic system with a guarantee of fundamental rights and religious freedom that is not based on a separation of state and church or religion. However - **in practice** - this has **hardly ever worked**.

Stepan (2003:213; cf. also Casanova 2009:18), for example, based on the question of whether religious systems can be politically compatible with democracy, proposed the model of "twin tolerations" as an alternative to the secularist concept of the state, in which he described "the minimal boundaries of freedom of action" ("minimal boundaries of freedom of action," Stepan 2003:213), "which must somehow be constructed for political institutions vis-à-vis religious authorities, as well as for religious individuals [and groups; ed. CJ] vis-à-vis political institutions" ("that must somehow be crafted for political institutions vis-à-vis religious authorities, and for religious individuals and groups vis-à-vis political institutions," Stepan 2003:213; retranslated from German after Casanova 2009:18).

In other words, for Stepan (2003:217) the "twin tolerations" optimize freedom for democratically elected governments on the one hand, and guarantee freedom for religious organizations in civil societies on the other. By this Stepan **means that public policy acts independently of churches and religious communities** and, conversely, **that churches and religions are free to associate and worship without interference from the state** (= "first-level tolerance," cf. Young 2007:20/21). Further, Stepan's concept is based on the fact that **the relationship between religion and civil society** (state) **cannot be regulated by laws alone**, but that **tolerance and acceptance between the different faith communities** is **necessary** on a second level ("second-level tolerance," cf. Young 2007:21). The difficulty of the theory of "twin tolerations" lies, in my view, in its **abstractness**, and that it **avoids** part of

the concrete - sometimes virulent **- conflicts between state and religious communities**. It is not enough to refer to the requirement of tolerance.

In addition, alongside the two categories of "democratic state" and "non-democratic regime," there is today a **third category of states** that Linz (2009:LVII) calls **"hybrid regimes."** These **are neither classically authoritarian regimes**, **nor** are they **democratic**, nor are they in transition to democracy. An example of this today is China. Such "**hybrid states**" **can be secular on paper** (e.g. Iraq after the fall of Saddam Hussein, Libya after the fall of Ghaddafi) or **religious** (e.g. various Gulf states, Iran or Tunisia according to the new constitution of 2013; on the Tunisian constitution, see Steinich in Neue Zürcher Zeitung of 12.6.2013 as well as Spörndli in WochenZeitung of 30.1.2014:11). According to Linz (2009:LVI), the **number of such hybrid regimes has increased in recent years**. This development could also be seen as confirmation of Casanova's thesis that **democracy and secularism** have **little to do with each other in principle** and can certainly occur separately. In many such states, there are elements of corporationism, i.e., top-down state organization along the lines of corporative states or fascist regimes. Linz (2009:191) also points out that "in all political systems ... some elements of corporationism ... [are] found, especially in the economy and in professional associations. But only in authoritarian systems has there been a serious attempt to shape an entire political system according to a corporate ideology" (Linz 2009:191). A recent example of this would be the vertically organized Histadrut unions in Israel.

Robert A. Dahl (1971:3, cf. Stepan 2003:216) has listed eight conditions that must be fulfilled in order to speak of democracy: **First, freedom to form and join organizations and associations**; **second, freedom of expression**; **third,** (universal) **suffrage**; **fourth**, (passive) **eligibility for public service**; **fifth**, the **right of politicians to compete** with others **for support** and to obtain votes; **sixth, free**, alternative, and conflicting **sources of information**; **seventh,** the **holding of free and fair elections**; and **eighth**, the **orientation** of the institutions that set **government policy toward elections** and other expressions of preference (e.g., voting). This requires, according to Stepan (2003:216), a "system of conflict regulation that allows competition to be opened around values and goals that citizens want to advance" (Stepan 2003:216). In principle, all groups - including religious or ideological groups - are allowed to advance their interests, but only **within the framework of the democratic rules** of the game

and **without the use of coercion or violence** (on the problem of terrorism, see ► Unit C 19: "Terrorism").

As mentioned, Casanova (2009:20) held that "the drastic secularization of most Western European societies took place after the consolidation of democracy, not before." If this is true, it follows that secularization need not be a condition for democracy. If so, one would have to ask **what then a non-secular, democratic state might look** like-something like modern Turkey under Erdogan, or Israel under a national-religious leadership? This is undoubtedly a challenge for those religious groups that are not comfortable with secularism as a model of democracy. They would therefore have to specify their own conceptions of democracy.

In one point, however, Casanova is certainly right: The relationship between secularization and democratization developed in Europe - and far beyond! - very different, multi-layered and complex, even contradictory; which led to very different regulations of the relationship between churches/religious communities and the state. From this point of view, it is very problematic to "lump the individual countries together" and to speak of "secularism in Europe" or of a "European model of democracy".

2.3 Freedom of Religion

For nearly 50 years ago, former German federal judge Ernst-Wolfgang Böckenförde (1967:90) pointed out that the secular state embodies and safeguards a "substance of the general" that cannot be justified by the body of thought or the ethical-normative self-understanding of a particular religion.

It is just the opposite: the secular state guarantees religious freedom for all its members. In the following, we will deal with the various aspects of religious freedom (note: the other fundamental rights are dealt with in detail in ► Unit D 15: "Human Rights, Fundamental Rights and the Constitutional State").

Konrad Sahlfeld (2004:99) has paraphrased the (religious) fundamental rights and the individual aspects of religious freedom as follows: "**Freedom of thought** ... means nothing other than that the state is prohibited from any form of indoctrination. **Freedom of religion** means that the individual citizen can decide on religious issues on his or her own responsibility, without state coercion. In this context, **freedom of belief** means the right of the individual not to be disturbed in his or her internal religious attitudes (so-called **forum internum**; **protection of inner conviction**); in **freedom of confession or practice** lies the right of the individual to perform acts of worship or other religiously motivated activities for himself or within the framework of a religious community without restriction by state measures (**protection of forms of religious expression**) - this is at the same time the only area that may be restricted; **freedom of conscience** protects the individual from having to answer to himself for his actions according to the categories of 'good' and 'evil' (**protection of conscience**). In summary, it can be stated: Freedom of religion - in this context, religion is equated with worldview - as an umbrella term encompasses freedom of belief, freedom of conscience and freedom of exercise" (Sahlfeld 2004:99; translated with DeepL).

But what specifically falls under freedom of belief and religion and where does it end? According to the Swiss Federal Court (BGE 119 Ia 178ff. (Schwimmunterricht): 183, cf. also Sahlfeld 2004:100), it includes "all kinds of ideas about man's relationship to the divine or the transcendent." This rather broad definition was further elaborated by the Federal Supreme Court in 1993: "The creed must, however, acquire a certain fundamental, ideological significance, thus corresponding to an overall view of the world; that is, a religiously based, coherent view of fundamental problems must be expressed with the creed, otherwise freedom of religion would expand into an elusive general freedom and freedom of action" (BGE 119 Ia 178ff. (Swimming Lessons I):183).

According to the Federal Supreme Court, "under the protection of freedom of religion ... are **not only the traditional beliefs** of the Christian occidental churches and religious communities, **but all religions, regardless of their quantitative prevalence** in Switzerland" (BGE 119 Ia 178ff. (swimming lessons): 184).

In the opinion of the Federal Supreme Court (BGE 119 Ia 178 (Schwimmunterricht I): 184), "not only the adherence to imperative beliefs" is worthy of protection, but the protection also extends to ideological or religious convictions that suggest certain religiously motivated actions or behaviors in a particular life situation - provided that these are "a direct expression of religious conviction" (BGE 119 Ia 178ff. (Swimming Lessons I): 184).

In this context, Pahud de Mortange (1998a:21/22, cf. also Sahlfeld 2004:101) raised the question whether "sects" or special religious groups could also invoke religious freedom. Jörg Paul Müller (2008:254, footnote 30) categorically rejects this question as "untenable". For the concept of faith and religion can - according to Müller/Schefer (2008:256) - neither be tied to the theological self-understanding of Christianity, nor can freedom of religion be linked to normative terms such as "sects" - which are problematic, especially from the perspective of religious studies (cf. also Sahlfeld 2004:101). This is also because the term "sect" usually results from a competitive relationship, is used by the large churches and religious communities in a (derogatory) way, and represents a clear foreign designation. For example, Müller/Schefer (2008:256) refer to a Federal Court decision (BGE 118 Ia 46 E4e: 58f. (infoSekta); cf. also Müller/Schefer2008:256), which even circumscribes the activity of Scientology as falling within the factual scope of protection of freedom of belief and conscience.

In the sense of Art. 9 of the European Convention on Human Rights ECHR, fundamental religious rights can be divided into three circles (cf. Sahlfeld 2004:129): At the **core** or in the **first circle** is **freedom of belief** (**freedom of thought**; **liberté de pensée**) with reference to individual religiosity. According to Sahlfeld (2004:129), **freedom of conscience** is **at the center of this category of fundamental rights** because it is an "immanent moment of freedom of belief" (Sahlfeld 2004:129). The **second circle** consists of **the public manifestation of faith**, i.e., the **freedom of confession and the freedom of worship (manifest his religion; manifest sa religion**; Sahlfeld 2004:129). And the **third circle** consists of the **freedom to lead and shape one's life according to religious precepts and norms (in worship ,teaching, practice and observance; par le culte, l'enseignement, les pratiques et l'accomplissement des rites**; Sahlfeld 2004:129). A compelling consequence of both freedom of religion and freedom of association is the right to join together with others in

communities of faith or belief (**in community with others and in public; collectivement, en public**; Sahlfeld 2004:129).

Freedom of religion and the practice of religion are concretized by freedom of practice on the one hand, but also restricted on the other. Thus, since the 11th Additional Protocol to Art. 9 para. 2 of the ECHR, there has been a version of Art. 9 para. 2 concretized in Germany, Liechtenstein, Austria and Switzerland, which translates the right to "practice and observance" as the right to "practice customs and rites" (cf. Sahlfeld 2004:148). accordingly, practices or folk customs that are not directly grounded in the dogma of faith, but have a connection to religion, are also protected.

However, by no means everything that is justified on religious grounds is worthy of protection from the perspective of the secular state. Article 9 (2) ECHR, for example, does not protect all activities or practices described as religious, especially if they contradict fundamental rights.

Sahlfeld (2004:149) mentions polygamy in this context. This applies both in the form of polygyny [=one man has several wives] and polyandry [=one woman has several men]: "The fundamental decision of society not to permit polygyny is placed as a public interest before the individual interest in it" (Sahlfeld 2004:149). In this context, state law stands above religion-specific law - and this is also because otherwise the supremacy of state or secular law would be called into question. The U.S. Supreme Court formulated this in 1878 as follows: "So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriage shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances" (U.S. Supreme Court Reynolds v. United States, 98, U.S. 145; see also Sahlfeld 2004:149).

The neutrality of the state and thus also religious freedom reach their limits where fundamental values and norms of the secular state are.

An example of conflicts arising from this in Switzerland was the (second) Federal Court decision on dispensing on religious grounds from (mixed-sex) swimming lessons (BGE 135 I 79ff.) in 2008, in which - according to Felix Hafner (2011:128) - "the Federal Court [left] the ground of neutrality, taking a weighting of the religiously motivated obligation to keep children away from mixed-sex swimming lessons. According to the Federal Court, this obligation does not have the weight of an inner conviction that enjoys unrestricted protection, but is to be assigned to the external freedom of belief, which is amenable to a weighing of interests and may have to give way to overriding public interests" (Hafner 2011:128, cf. also below).

However, there are also restrictions on fundamental rights. However, these must meet the following criteria:

Art. 36 of the Swiss Federal Constitution: Restrictions on fundamental rights	
1	Restrictions on fundamental rights require a legal basis. Serious restrictions must be provided for in the law itself. Exceptions are cases of serious, immediate and unavoidable danger. danger.
2	Restrictions on fundamental rights must be justified by a public interest or by the protection of the fundamental rights of third parties.
3	Restrictions on fundamental rights must be proportionate.
4	The core content of fundamental rights shall be inviolable.

One possible limit to religious freedom is when other fundamental rights compete with religious freedom (cf. Hafner 2011:140). Because religious freedom in Switzerland - unlike in other countries - does not occupy a "preferred position", a conflict of fundamental rights cannot be decided by hierarchizing the fundamental rights. Rather, such a case must be judged "appropriately", namely "from the perspective of all affected fundamental rights and their requirements" (Hafner 2011:140). Naturally, this can lead to quite different weightings - and these can also shift over time.

One example of such a shift was the aforementioned Federal Court decision 119 Ia 178 (Schwimmunterricht I), which originally affirmed the right of Muslim parents to dispensation

of their daughter from mixed-sex swimming lessons. In 2008, the Federal Supreme Court overturned this decision (BGE 2C_149/2008 (Swimming Lessons II) and, in a balancing of interests between the religious freedom of the Muslim parents and the gender equality of the children, clearly decided in favor of the latter.

However, it is important to distinguish whether the state is involved in a conflict as an arbitrator or as an actor (cf. Hafner 2011:142). This applies, for example, to religious symbols in public institutions. That is why the Federal Supreme Court demanded neutrality in the case of the crucifix dispute in the classroom or the wearing of the headscarf by a teacher who converted to Islam (BGE 123 I 296, E. 2a of 12.11.1997) in a public school in Geneva - i.e. both were prohibited. Interestingly, the relevant federal court decision quotes Sura 33:59: "O Prophet, tell your wives and your daughters and the wives of the believers to pull down some of their covering over themselves. This is more likely to cause them to be recognized and not to be harassed," to show that the headscarf is a "strong religious symbol" (BGE 123 I 300). The Federal Supreme Court concluded from this that a ban on the headscarf at the (public) school did not violate religious freedom. In doing so, the court argued that the teacher's headscarf could hurt the religious feelings of students and parents (cf. Stüssi 2012:162). The European Court of Justice also protected the headscarf wearing ban against the teacher in the canton of Geneva in a decision and dismissed the corresponding complaint, which pleaded a violation of the positive freedom of religion of the teacher in question (cf. Hafner 2011:143).

2.3.1 Individual freedom of religion

In Switzerland, basic religious rights - i.e. freedom of faith and conscience - are protected both domestically and under international law. According to Jörg Paul Müller (1999:80), this "expresses the experience that man experiences in his faith an essential core of his existence, in which he is repeatedly threatened by the claim to power of the state or other social forces and must therefore be protected."

In this context, freedom of faith "fundamentally protects every relationship of man to ultimately binding contents." This protection of religious freedom is basically independent of

the spread of these beliefs or forms of belief (Müller 1999:82), i.e. of the number of believers.

In the broadest sense, (positive individual) freedom of religion includes the right to choose - or reject - a worldview (negative individual freedom of religion). Accordingly, freedom of religion covers not only coherent, self-contained belief or worldview systems, "but also - even fragmentary - interpretations of the world for the human understanding of life" (Müller 1999:83). What is decisive here - according to Müller (1999:83) - is "the personality-constituting or identity-creating function." Karl-Heinz Ladeur (2009:2449) has taken up this aspect and put forward the thesis that religious freedom has recently turned more and more into a kind of diffuse "right to identity" that exists in both the public and the private spheres.

Freedom of faith and conscience contains a core area that is absolutely protected (Müller 1999:87). This "innermost area of religious and ethical self-responsibility, the forum internum" is withdrawn from any state access (cf. Müller/Schefer 2008:267).

Any form of forced acceptance of a religious confession, any compulsion to convert to a faith or to perform a cult act is prohibited in principle (e.g. participation in a religious service, taking an oath, etc.; cf. Müller 1999:88). According to Müller (1999:88), baptism belongs to the religious core area of Christians, or circumcision to the religious core area of Jews. Also part of the absolutely protected core area of religious freedom is the withdrawal from a national church or a religious community (cf. Müller 1999:88). Therefore, leaving may not be made more difficult or delayed by state regulations (Müller 1999:88). On the other hand, a church or a religious community may require a written declaration of resignation.
Auch Judith Wyttenbach (2011:397) hat darauf hingewiesen, dass das Recht auf Austritt aus einer Religionsgemeinschaft oder einer Kirche einen wichtigen Bestandteil der (individuellen) Religionsfreiheit darstellt. Das Recht auf Austritt ist in Art. 15 Abs. 4 der Schweizerischen Bundesverfassung ausdrücklich festgeschrieben:

Art. 15 of the Swiss Federal Constitution: Freedom of Faith and Conscience

1 Freedom of faith and conscience is guaranteed.
2 Everyone has the right freely to choose his religion and his philosophical convictions and to profess them alone or in community with others.
3 Everyone has the right to join or belong to a religious community and to follow religious instruction.
4 No one may be compelled to join or belong to a religious community, to perform a religious act or to follow religious instruction.

Accordingly, the view and treatment of apostates can be regarded as a measure of the democratic (self-)understanding of a religious community.

A clear demarcation between freedom of faith and freedom of conscience is - according to Müller (1999:85) - difficult. Both belong together. However, as a result of its impact on the socio-cultural environment, freedom of worship more easily comes into conflict with other legal rights, which is why, according to Müller (1999:85), the question of demarcation from other fundamental rights arises more frequently here. An example would be when a religious gathering or ritual is associated with noise emissions.

An important component of individual religious freedom is freedom of worship, which affects both collective and individual religious freedom, namely in the form of individually exercised acts of worship. Examples include confession, meditation, praying for health, etc. (cf. Müller 1999:85). The following aspect should not be underestimated - especially with regard to the headscarf controversy: Freedom of religion also includes the right to behave, dress and eat according to one's own religious convictions. Thus, for example, the Federal Court considers the Islamic rule that girls and women may only appear in public fully clothed to be worthy of protection under fundamental rights. According to the Federal Supreme Court, the dissemination of one's own religious views, i.e. missions, the recruitment of new followers and even criticism of other religious views are also considered to be worthy of protection.

Because all people have the right, on the basis of individual freedom of religion, to determine for themselves and individually what their own religious or ideological convictions are, all people also have a right to dissenting beliefs (cf. Kälin 2000:139). Therefore - from

the point of view of fundamental rights - no believer has to adopt a certain doctrine of his religious community: "Whether the sense of a believer agrees with prevailing currents within the respective religious community is irrelevant" (Kälin 2000:139). Therefore, heretics [= representatives of deviant beliefs] and apostates are particularly dependent on the protection of freedom of faith and conscience (cf. Kälin 2000:139).

2.3.2 Collective Religious Freedom

According to Jörg Paul Müller (1999:80/81), the concern for confessional peace was at the center of considerations when the (liberal) federal constitution of 1848 was created. Freedom of worship was therefore guaranteed; individual freedom of faith was less of a priority. It was not until 1874 that individual religious freedom was given greater weight in the constitution. At the same time, however, the Confederation and the cantons were empowered to intervene with the police to protect confessional peace. This right was also included in Art. 72 para. 2 of the new constitution of 1999.

In the 19th century, individual cantons severely restricted the exercise of religious freedom out of fear for confessional peace. In 1875, for example, a law in the canton of Geneva prohibited any act of worship on public land. On the basis of this law, the Geneva authorities refused to allow a Catholic Palm Sunday procession as late as 1981 (!). Although the Federal Supreme Court affirmed the admissibility of such a ban in principle in view of denominational disputes at the time, it rejected the law and thus the ban on the Palm Sunday procession under today's circumstances (BGE 108 1a 41ff. (Rivara), cf. also Müller 1999:81).

As already mentioned, cultural freedom represents a crucial sub-area of collective religious freedom. It protects collective religious acts such as religious services, processions, etc. Freedom of worship applies to all religious communities, regardless of their recognition under public law. Thus, on the basis of Art. 50 BV, the Federal Supreme Court granted forty imprisoned Muslims - out of a total of 251 prisoners at Regensdorf Penitentiary at the time - the right to pray together on Fridays, regardless of the fact that the Islamic religious communities have not yet been recognized under public law: "If only members of religious

communities recognized as national churches were allowed to come together for worship, there could no longer be any question of religious freedom" (BGE 113 Ia 304 E4c (Islamic worship): 307, see also Müller 1999:85).

In connection with disputes about the Church of Scientology, the question has arisen whether this and similar organizations also lie within the factual scope of protection of freedom of belief and religion (cf. e.g. Schefer 2005:52). The Federal Supreme Court has affirmed this in constant practice (BGE 118 Ia E4e 58f. (infoSekta); BGE 125 I 369ff. (Church of Scientology Basel): 372-374 and as well as 378).

However, legal entities as employers can demand a minimum conformity of religious and ideological convictions with their own goals and activities. This is shown by a Federal Court decision on the individual ideological orientation of an employee, which contradicted that of the employer. In the case in question, the court protected the employer who dismissed the employee on the basis of his worldview (BGE 130 III E4.2 (Moon sect)). Schefer (2005:94) commented: "The Federal Court considers it permissible that the trade union Unia dismissed its lawyer because he belonged to the Moon sect and had close ties to politically right-wing parties. The decisive factor for the court is that the union has a clear political/ideological orientation and therefore qualifies as a tendentious enterprise in this respect" (Schefer 2005:94).

A specific problem, but undoubtedly a component of collective religious freedom, is the right to religious propaganda and proselytizing. Thus, "the right to convince others of one's own faith and to proselytize ... has been subsumed by the European Court of Human Rights under the freedom of exercise of religion and there [under] the partial aspect of 'teaching' in Article 9(1) ECHR" (Walter 2008:269). However, some countries know a so-called "prosyletism ban" (Walter 2008:269), for example Greece, but also Islamic countries especially for Christians. Walter (2008:269), however, argues that state restrictions on proselytizing and prosyletism are not unlawful a priori (cf. Walter 2008:269) - namely if this endangers religious peace. According to Huster (2002:175), however, in a liberal state there can be no so-called negative (collective) religious freedom in the sense of a ban on certain expressions critical of religion - or criticism of the expression "positive (collective) religious freedom" of other religions - except in the case of aggressive behavior, militant proselytizing activities and the like. According to Huster (2002:175), however, "negative religious freedom" must not be a right of prevention. The Federal Court decision on the Geneva ban on the Palm Sunday procession also shows that such a restriction of religious freedom to protect confessional peace (in the sense of Art. 72 BV para. 2) is handled very restrictively.

Further questions arise in connection with so-called blasphemy cases. In terms of the ECHR, it is primarily the concrete practice of religion, such as visiting places of worship or religious services, that is to be protected, while the protection of "religious feelings" as a component of religious freedom is controversial (cf. Walter 2008:271). According to Walter (2008:271), "Against this background, the treatment of blasphemy cases from the point of view of duties of protection arising from freedom of religion should be very restrained and, at most, limited to extreme cases" (Walter 2008:271). One problem, among others, is that such a blasphemy ban would inevitably violate the fundamental rights of those of other faiths - such as freedom of expression and freedom of belief and conscience (or freedom of religion).

2.3.3 Corporate Religious Freedom

Corporate religious freedom is the "institutional dimension" of religious freedom, which guarantees "the religious community and its right to organization and autonomy" - or precisely its right to self-organization (Loretan/Weber/Morawa 2014:38). Although

corporate religious freedom is not explicitly mentioned in the Swiss Federal Constitution or in the European Convention on Human Rights (cf. Nay 2010:54), legal doctrine today agrees that Art. 15 BV and Art. 9 ECHR include corporate religious freedom (cf. Nay 2010:54).

According to Sahlfeld (2004:170), the question arises whether the right of self-determination and self-organization refers only to organizational-community issues in the narrow sense or should be interpreted more broadly. In practice, corporate religious freedom has been and continues to be interpreted rather broadly.

By withdrawing from the internal organization of religious communities, the state thereby strengthens their autonomy and thus corporative religious freedom of the religious communities. This corresponds to the state's neutrality toward the religious communities and to the modern understanding of the state.

2.4 On the Neutrality of the State Toward Religions

Jörg Paul Müller (1999:89) has emphasized that freedom of religion necessarily results in a requirement of neutrality on the part of the state vis-à-vis the various religious communities. The individual can assert this neutrality on the level of individual fundamental rights. On the other hand - according to Müller 1999:89 - according to Swiss legal understanding, the recognition of churches or religious communities under public law represents a limit to the neutrality of the state.

The neutrality of the state towards religious communities and churches is on the one hand a historical result of development, but on the other hand also a modern postulate. It should be borne in mind that the development of modern states in Europe and America was influenced and shaped in many ways by the churches.

2.4.1 The Böckenförde Dictum: The Religious as the Basis of the Secular State

The German constitutional judge Ernst-Wolfgang Böckenförde expressed this fact in the so-called "Böckenförde dictum" in such a way that the state lives on preconditions or is based on preconditions which it cannot create itself:

The Böckenförde Dictum
"Thus the question of the binding forces arises anew and in its own essence: ***the liberal, secularized state lives on presuppositions which it cannot itself guarantee.*** This is the great risk it has taken for the sake of freedom. On the one hand, it can exist as a liberal state only if the freedom it grants its citizens regulates itself from within, from the moral substance of the individual and the homogeneity of society. On the other hand, it cannot seek to guarantee these inner regulatory forces from within itself, that is, by means of legal coercion and authoritative command, without giving up its freedom and - on a secularized level - falling back into that claim to totality from which it emerged in the confessional civil wars. ... Thus it should be asked once again - with Hegel - whether not also the secularized, worldly state must ultimately live from those inner drives and binding forces which the religious faith of its citizens conveys. Of course, not in the way that it is regressed to a 'Christian' state, but in the way that Christians no longer recognize this state in its worldliness as something alien, hostile to their faith, but as the chance of freedom, which is also their task to preserve and realize."
Source: Böckenförde 1967:93-94, emphasis by the author.

This expresses the fact that "for the sake of religious freedom and interreligious peace, the secular state must maintain religious neutrality in principle, and that this state is at the same time dependent on a 'cultural base', i.e. on pre-legal, moral or religious convictions of people and citizens, which it cannot, however, create, order or guarantee itself" (Lienemann 2008:315).

Alois Müller (2005:47) has also stated that "the religious" is indispensable as a "pre-political" basis of the secular state: "The religious as a resource is not to be regarded as an existing natural raw material that can be used at will, but as a transcendent-related symbolic universe of meaning connected with the deep layers of a culture ... As a pre-political resource, the transcendent-related horizon of meaning in question here differs from all forms of a political and politicized religion. In a liberal state, whose primordial social bond must be independent of religion, the religious can only become socially and politically effective in a multiply mediated way" (Müller, A. 2005:47).

Such statements are not meant to be normative - that is, judgmental. Thus, the Böckenförde dictum stands as a conclusion at the end of an analytical article (cf. Böckenförde 2002:19 as well as Palm 2013:17). Thus, the secular state cannot simply cut itself off from its historical roots "and elevate itself, so to speak, to the status of a pure state of reason" (Lienemann 2008:315) or reinvent itself as a market regulator, so to speak.

2.4.2 Barriers to a Religious Appropriation of the Secular State

The same Böckenförde (in Neue Zürcher Zeitung of 23/24 June 2007:28, cf. also Lienemann 2008:316) argued against religious communities that place their religion-specific law above that of the secular state and thus want to replace it with a state that is better in their eyes because it is religious - such as the Muslims or the Baha'i - as follows: First, it is to be demanded of all religious communities in the secular state that they accept the separation of religion and state, but if possible without self-sacrifice (cf. also Böckenförde 2007:39ff.). Second, the secular state must insist on the insights and teachings of the Enlightenment and make all religious communities comply with the liberal, religious constitutional regulations and principles. Thirdly, in the event of a violation - for example, by Muslims - of these regulations, the state would have to "erect barriers that prevent the adherents ... from directly or indirectly stepping out of the minority position within the state. In this would lie no self-contradiction, but only the secularized state's own self-defense" (Böckenförde in Neue Zürcher Zeitung, 23/24 June 2007:28, cf. also Lienemann 2008:316).

At another point Böckenförde becomes even more radical: "If it were to be assumed that a religion, currently Islam, would actively resist religious freedom in the long run, i.e. would seek to dismantle it, insofar as political opportunities, for example through the formation of a majority, offered themselves for this purpose, then the state would have to ensure that this religion or its adherents remained in a minority position, i.e. that the diaspora reservation continued to have significance. If necessary, this would necessitate corresponding political arrangements in the area of freedom of movement, migration and naturalization" (Böckenförde 2007:39).

Lienemann (2008:317) argues somewhat differently, but in effect similarly: Because religious communities repeatedly try to influence state legislation - which can be a problem, especially in the case of large religious communities or majority religions, and can lead to the marginalization of socio-cultural and religious minorities - the state, he argues, must insist on "a self-restraint of (public) religions, and ... prescribe the liberal principles of regulation, which in turn are committed to human rights and thus also serve religious freedom" (Lienemann 2008:317). Accordingly, in the interest of confessional peace, "the links between religion and morality as well as between morality and law should be decoupled to the extent that this is compatible with the conditions of political peacekeeping" (Lienemann 2008:317).

But is this even possible for religious people? Would it not be more credible, instead of a constructed separation of religion and morality, but also of morality and law, to develop and legally implement a political vision of a comprehensive and egalitarian intercultural and interreligious society with corresponding state structures?

2.4.3 Integrative Function of Churches and Religious Communities in the Secular State?

The question arises whether and in what way churches and religious communities can contribute to the political integration of pluralistic societies - and conversely, to what extent the state should integrate religious communities. Grotefeld (2000:134) argues that the integration argument is not suitable to justify the recognition of churches and religious communities under public law, because their influence in society is rather low and continues to decrease. But even if this may be true at present, it cannot be ruled out - especially in connection with the current discussion about Islam - that the influence of the churches will increase again in the future. In addition, the influence of Muslim beliefs among (secularized) Muslims is likely to increase. For this reason, the integration argument should not be prematurely written off - for it is precisely in times of religious or ideological polarization that the integrative - and disintegrative! - importance of religions increases (cf. Baumann 2000:177/178 and Jäggi 1997b:57).

More than 10 years ago, Martin Baumann came to the conclusion in his study of Buddhist Vietnamese and Hindu Tamils in Germany that, depending on the case, religion can have a

disintegrative (Baumann 2000:177) or an integrative (Baumann 2000:178) effect. I came to the same conclusion myself in a study of Muslim immigrants in central Switzerland (cf. Jäggi 1997b). However, the importance of religion for the integration of foreign minorities was and is different depending on the group, religion and origin, and it also changes over time: for example, in the aforementioned study on Albanian and Turkish Muslims in Central Switzerland, I found that in the1990s religion played a rather minor role for the former, while for devout - non-fundamentalist - Turkish Muslims religion was a support for integration in Switzerland. However, there was also the opposite: Muslims with a more secular orientation tended to experience Islam as a barrier to integration because they were confronted with many prejudices (cf. Jäggi 1997b).

The lawyer Martina Caroni (2005:461) said: If "integration is a task of the state, which is to be mastered by the federal government, cantons and municipalities together with the foreigners' organizations and society" (Caroni 2005:471), religious communities should be involved for this. This is because, on the one hand, the religious communities themselves make an important contribution to integration by including believers of different nationalities and because, on the other hand, religious values and norms can themselves have an integrative effect. Furthermore, according to Caroni (2010:22), fundamental rights themselves promote integration "because they grant individuals a free space in which they can develop freely and without interference from the state or third parties" (Caroni 2010:22).

However, state support measures towards individual religious communities should never be an end in themselves, but always a means to an end, i.e. promotion of social integration, peaceful coexistence of all religious communities, etc. Furthermore, the promotion criteria must be clear, transparent and verifiable and subject to public political discourse - anything else would be discriminatory and a contradiction to the principle of state neutrality. Felix Hafner and Kathrin Ebnöther (2005:135) also emphasized that, based on the principle of legal equality, state funding measures for religious communities are only justified if there are objective reasons that are not religious in nature: "Purely religious reasons are not sufficient for different promotion measures" (Hafner/Ebnöther 2005:135).

2.5 Expectations of the Secular State from the Religious Communities

As we have seen, **the criteria for the state's relationship with religious communities** are generally considered to be **neutrality, tolerance and parity** (cf. Sahlfeld 2004:201). However, the question arises of the so-called **"res mixtae," i.e., issues that affect both religious/church and state spheres**. According to Sahlfeld (2004:201) sec: "It is the state that determines when and where the state sphere begins."

In Switzerland, in discussions about the recognition of Muslim communities, it is regularly pointed out that there are no representative contact persons or offices on the Islamic side (cf. Sahlfeld 2004:201). However, this argument loses weight with regard to the development of cantonal Muslim associations, all the more so as the recognition issue could accelerate this process. A bigger problem, in my view, is that the vast majority of Muslims in Switzerland are not institutionally - i.e. religion-specifically - registered anywhere, and thus they do not have representative bodies. The individual mosque associations have only a few dozen, a few hundred or, if the worst comes to the worst, a few thousand members - other mosques are organized as foundations.

An additional problem is that Muslims in Switzerland are still strongly fragmented by nationality and language. There are Bosnian, Turkish and Albanian mosques - with correspondingly diverse believers. Apart from a few thousand Swiss converts, the bulk of the faithful come from very different countries and hardly from Switzerland. But this question is likely to become increasingly self-evident in the coming generations, due to the large number of naturalized Muslims and the many Muslim children born in Switzerland.

2.6 Problem areas

Depending on whether one understands the secular state as a social subsystem alongside others - e.g. religious communities - or as a reference system superior to religions and secular law as the corresponding reference code (cf. Jäggi 2009:110 and 117), this results in completely different, even contradictory consequences. In the first case, it is a matter of negotiation processes between principally equals, while in the second case the religious

communities have to make more or less unilateral adaptations to the applicable reference system - i.e. to the state regulations.

According to the case law of the European Court of Human Rights, different levels of recognition are legitimate if they meet at least the following three criteria: First, the existence of a set of legal rules "which establishes in a concrete and foreseeable manner the conditions, procedures and benefits deriving from a recognition under public law"; second, equal access to the recognition procedure for all religious communities that meet the access criteria; and third, neutrality of the state authorities and no discrimination by the state authorities in the recognition procedure (cf. Loretan/Weber/Morawa 2014:127). The difficulty, however, is that the "equality-compliant criteria" must be defined in such a way that individual religious communities, which are structured and organized very differently, are not disadvantaged or favored as a result of the criteria chosen.

The criteria for recognition in the individual cantons are "importance and permanence" (Jura) of a religious community, its "social significance" (Fribourg and Solothurn) or "leur importance sur le plan cantonal" (Valais, cf. Fischli-Giesser 1997:97). Andre cantons require a minimum duration of effect of religious communities of 30 years (Zurich) or of 20 years (Bern) (cf. Tanner 2008:216). These criteria are far from clear and unambiguous.

The canton of Zurich additionally expects proof of a minimum membership of 3000 and the canton of Bern of 500 persons (cf. Tanner 2008:216). However, firmly circumscribed minimum membership numbers can lead to further injustices: For example, if a religious community is numerically strong locally but weak at the cantonal level, it may be disadvantaged depending on the counting method. The right of the state - in Switzerland, the canton - to establish "reasonable, moderate and proportionate conditions or to demand concessions from the religious communities" (Loretan/Weber/Morawa 2014:144) can also constitute discrimination, depending on the definition of these restrictions.

A rather secondary, but especially in the context of the Islam discussion emotionally charged problem, is the question whether religious symbols in public spaces and buildings - for example in state schools - are to be tolerated or not. Without entering here into the

somewhat absurd discussion of whether the cross or crucifix or other religious signs constitute "religious" or "cultural" symbols (cf. on this Czermak 1998:22-29 and Geis 1998), it is undoubtedly the case that beyond the German-speaking world opinions on religious signs in state or public areas are extremely controversial. While Max-Emanuel Geis (1998:58), for example, affirms the permissibility of religious symbols in state schools on the grounds of "cultural tradition," Cermak (1998:40) rejects this - surprisingly with the argument of "positive tolerance" - and says: "State schools should ... make it comprehensible that religious freedom or neutrality is not an arbitrarily, possibly electorally, manipulated good, but a 'moral achievement' ... as the result of a centuries-long painful process." Cermak (1998:40), the state "may not use a religiously charged symbol in the state school." One might conclude somewhat wickedly that thus only symbols emptied of their original religious content and thus hardly identity-creating are allowed. But how is tolerance to be promoted if religious symbols - and thus also religious values - are banned from the public sphere? Wouldn't it make much more sense to allow different religious symbols in the sense of promoting mutual tolerance?

Finally, the question arises as to the extent to which religious communities recognized under public law must be required to have a positive or at least neutral attitude toward the secular state and to ensure that their members have a "democratic basic attitude". In this regard, Loretan/Weber/Morawa (2014:144) wrote: "If NGOs [= non-governmental organizations] have no obligation to be pro-government, pro-state, or otherwise conservative-traditional, it is difficult to require the same of religious communities. Furthermore, religious groups need by no means conform to majority sentiments or views, however empirically verified, and may well hold religious ideas diametrically opposed to majority opinion" (Loretan/Weber/Morawa 2014:144).

2.7 Conclusions

In the current situation, the following measures are desirable from the perspective of the secular state:

The state should include the neutral but benevolent relationship with religious communities and especially a possible recognition of individual religious communities under public law in its instruments of socio-political integration. Conversely, the state must refuse public-law recognition to a religious community in the event of repeated, serious violations of fundamental rights - in the sense of an incentive for internal religious democratization. It should be borne in mind, however, that - just like integration policy - any consensus between the state and religious (communities) can only ever be a provisional one. It must be regularly renegotiated.

What is needed is a permanent discourse in society as a whole, in institutionalized form. This discourse can also take unconventional and creative forms, for example in the sense of Young's "different 'styles and terms' of communication" (Young 1996:120ff. and Thomassen 2008:23).

The state should establish a permanent, parity-based body in which, in addition to elected representatives of the state, mandated representatives of the churches and religious communities recognized under public law are represented. This body would have the task of improving the relationship between the state and religious community(ies), guaranteeing the enforcement of fundamental rights in the religious communities and, if necessary, investigating violations of fundamental rights.

In order to strengthen the negotiating position of churches and religious communities, it would be welcome if the state would grant religious communities an explicit right to invoke fundamental rights - such as collective and corporate freedom of religion - which is not possible for legal entities in Switzerland today (cf. Müller/Schefer 2008:263, Hafner 2001:717 and 2011:144, and Sahlfeld 2004:161).

It must also be clarified - especially today under the impression of jihadist activities - what is to be done with religious communities that fundamentally reject the basic democratic order and thus the guaranteed fundamental rights or whose members are involved in acts of violence.

3. Control Questions

1. What are the three types of religious freedom and what is meant by them?
2. What is the meaning of "Cuius regio eius religio" and when and where was it decreed?
3. To whom did the ECHR bodies and the UN Commission on Human Rights leave the definition of "religion" - and why?
4. How did Tanner and Karlen define religion? Where are similarities and where are differences?
5. Why did Lienemann fear an "emptying of the legal concept of religion"?
6. What does Casanova say about secularization and what are the objections to it?
7. According to Art. 9 ECHR, into which three circles or sub-areas can fundamental religious rights be divided and what does each include?
8. Explain Stepan's model of "twin tolerations".
9. What are hybrid regimes and which countries are or were examples of them?
10. What conflict of fundamental rights was at stake in the swimming lessons judgment I + II?
11. Where does the neutrality of the state and thus the freedom of religion reach its limits?
12. Why is the right to leave a religious community guaranteed by individual religious freedom?
13. To which aspect of religious freedom did the Swiss Federal Court refer when it overturned the ban on the Palm Sunday procession in Geneva as unconstitutional?
14. What should be said about the ban on blasphemy from the perspective of religious freedom and fundamental rights?
15. Why can the state apply stricter standards to a religious community in the case of recognition under public law than to a religious community organized purely under private law?
16. What is meant by the Böckenförde dictum? 17.
17. Why can the public-law or public recognition of religious communities lead to better integration of their members?

18. Name three problems concerning the equal treatment of religious communities by the state.
19. List three measures that can be used to settle outstanding issues between the state and religious communities.

4. Links

Migraweb: Staat und Religion
http://www.migraweb.ch/de/themen/religion/staat-und-religion/

Deutschland: Erste muslimische Gemeinde erhält Kirchenstatus
http://www.zeit.de/gesellschaft/zeitgeschehen/2013-06/islam-kirche-hessen-koerperschaft

Beziehungen zwischen Staat und Religionsgemeinschafen in der Schweiz
Text von Felix Hafner
http://www.ekr.admin.ch/pdf/referat_anerkennung_debe3c.pdf

Übersicht über die Religionsgemeinschaften in der Bundesrepublik Deutschland mit dem Status der Körperschaft öffentlichen Rechts gem. Art. 140 Grundgesetz in Verb. mit Art. 137 Abs. 5 Weimarer Reichsverfassung
http://www.uni-trier.de/index.php?id=27001

Diskussion um Anerkennung: Der Islam und das Grundgesetz
http://www.lto.de/recht/hintergruende/h/diskussion-um-anerkennung-der-islam-und-das-grundgesetz/

Die öffentlich-rechtliche Anerkennung von Religionsgemeinschaften in der Schweiz
Text von Adrian Loretan / Quirin Weber /Alexander Morawa
http://www.bmk-online.ch/files/22-08-2013_Gutachten-kombiniert.pdf

5. Cited literature and further reading

Augsberg, Ino
2013: Vom Staatskirchenrecht zum Religionsverfassungsrecht – Eine Beitrag zur Begriffsdiskussion. In: Holzner, Thomas / Ludyga, Hannes (Hrsg.): Entwicklungstendenzen des Staatskirchen- und Religionsverfassungsrechts. Ausgewählte begrifflich-systematische, historische, gegenwartsbezogene und biographische Beiträge. Paderborn/München/Wien/Zürich: Ferdinand Schöningh. 73 - 92.

Baumann, Martin
2000: Migration Religion Integration. Buddhistische Vietnamesen und hinduistische Tamilen in Deutschland. Marburg: diagonal-Verlag.

2012: Religionsgemeinschaften im Wandel – Strukturen, Identitäten, interreligiöse Beziehungen. In: Bochinger, Christoph (Hrsg.): Religionen, Staat und Gesellschaft. Die Schweiz zwischen Säkularisierung und religiöser Vielfalt. Zürich: Verlag Neue Zürcher Zeitung. 21 – 75.

Bierhoff, Hans W.
2002: Einführung in die Sozialpsychologie. Weinheim / Basel: Beltz.

Bochinger, Christoph
2012: Einleitung. In: Bochinger, Christoph (Hrsg.): Religionen, Staat und Gesellschaft. Die Schweiz zwischen Säkularisierung und religiöser Vielfalt. Zürich: Verlag Neue Zürcher Zeitung. 12 – 19.

Böckenförde, Ernst-Wolfgang
1967: Die Entstehung des Staates als Vorgang der Säkularisation. In: Buve, Sergius (Hrsg.): Säkularisation und Utopie. Ebracher Studien. Ernst Forsthoff zum 65. Geburtstag. Stuttgart: Kohlhammer. 75 – 94.
2002: Der freiheitliche säkularisierte Staat … In: Schmidt, Susanna / Wedell, Michael (Hrsg.): „Um der Freiheit willen…" Kirche und Staat im 21. Jahrhundert. Festschrift für Burkhard Reichert. Freiburg / Basel / Wien: Herder. 19 – 23.
2007: Der säkularisierte Staat. Sein Charakter, seine Rechtfertigung und seine Probleme im 21. Jahrhundert. Vortrag gehalten in der Carl Friedrich von Siemens Stiftung am 26. Oktober 2006. Robert Spaemann zum 5. Mai 2007. München: Carl Friedrich von Siemens Stiftung.

Buser, Denise
2014: Die unheilige Diskriminierung. Eine juristische Auslegeordnung für die Interessenabwägung zwischen Geschlechtergleichstellung und Religionsfreiheit beim Zugang zu religiösen Leitungsämtern. Berlin: Lit. ReligionsRecht im Dialog Bd. 16.

Caroni, Martina
2005: Integration von Migranten: Zusammenarbeit von Staat und Religionsgemeinschaften? Verfassungsrechtliche Möglichkeiten und Grenzen der Zusammenarbeit von Staat und Religionsgemeinschaften im Integrationsprozess. In: Pahud de Mortanges, René / Tanner, Erwin (Hrsg.): Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht. Freiburger Veröffentlichungen zum Religionsrecht. Zürich: Schulthess. 459 – 487.
2010: Religion und Integration – Gedanken zum Umgang mit religiösen Minderheiten. In: Pahud de Mortanges, René (Hrsg.): Religion und Integration aus der Sicht des Rechts. Grundlagen – Problemfelder – Perspektiven. Basel/Genf: Schulthess. 11 – 37.

Casanova, José
2009: Europas Angst vor der Religion. Berlin: University Press.

Czermak, Gerhard
1998: Zur Unzulässigkeit des Kreuzes in der Schule aus verfassungsrechtlicher Sicht. In: Brugger, Winfried / Huster, Stefan (Hrsg.): Der Streit um das Kreuz in der Schule. Zur religiös-weltanschaulichen Neutralität des Staates. Baden-Baden: Nomos. 13 – 40.

Dahl, Robert A.
1971: Polyarchy. Participation and Opposition. New Haven: Yale University Press.

Frankfurter Allgemeine Zeitung
10.12.2004: Böckenförde, Ernst-Wolfgang: Nein zum Beitritt der Türkei zur EU. 35.

Fischli-Giesser, Liz
1997: Le statut de droit publique d' « autres » communautés religieuses. In: Loretan, Adrian (Hrsg.) : Rapports Eglise-Etat en Mutation. La situation en Suisse romande et au Tessin. Freiburg/Ue.: Universitätsverlag. 93 – 105.

Geis, Max-Emanuel
1998: Zur Zuverlässigkeit des Kreuzes in der Schule aus verfassungsrechtlicher Sicht. In: Brugger, Winfried / Huster, Stefan (Hrsg.): Der Streit um das Kreuz in der Schule. Zur religiös-weltanschaulichen Neutralität des Staates. Baden-Baden: Nomos. 41 – 58.

Grichting, Martin
1997: Kirche oder Kirchenwesen? Zur Problematik des Verhältnisses von Kirche und Staat in der Schweiz, dargestellt am Beispiel des Kantons Zürich. Freiburg/Schweiz: Universitätsverlag.

Grotefeld, Stefan
2000: Politische Integration und rechtliche Anerkennung von Religionsgemeinschaften. Überlegungen aus sozialethischer Sicht. In: Kraus, Dieter (Hrsg.): Schweizerisches Jahrbuch für Kirchenrecht. 1999. 107 - 143.

Hafner, Felix
1992: Kirchen im Kontext der Grund- und Menschenrechte. Freiburg/Schweiz: Universitätsverlag.
1996: Trennung von Kirche und Staat: Anspruch und Wirklichkeit. In: Basler Juristische Mitteilungen. Nr. 5 / Oktober 1996. 225 – 256.
2011: Religionsfreiheit im Kontext der Menschenrechte. In: Loretan, Adrian (Hrsg.): Religionsfreiheit im Kontext der Grundrechte. Religionsrechtliche Studien. Teil 2. Zürich: Theologischer Verlag. Edition NZN. 121 - 161.

Hafner, Felix / Ebnöther, Kathrin
2005: Staatliche Förderung religiöser Aktivitäten. In: Pahud de Mortanges, René / Tanner, Erwin (Hrsg.): Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht. Freiburger Veröffentlichungen zum Religionsrecht. Zürich: Schulthess. 131 – 161.

Hangartner, Ivo
2005: Rechtlicher Grundrahmen der Kooperation von Staat und Religionsgemeinschaften. In: Pahud de Mortanges, René / Tanner, Erwin (Hrsg.): Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht. Freiburger Veröffentlichungen zum Religionsrecht. Zürich: Schulthess. 91 – 112.

Huster, Stefan
2002: Die ethische Neutralität des Staates. Eine liberale Interpretation der Verfassung. Tübingen: Mohr Siebeck.

Jäggi, Christian J.
1997a: Türkisch- und albanischsprechende Muslime in der Innerschweiz - Allgemeine Identität und Integration. Meggen: Inter-Edition. Reihe Minderheiten 1. Bezugsadresse: www.verein-inter-active.ch.
1997b: Türkisch- und albanischsprechende Muslime in der Innerschweiz - Religiöse Identität und die Rolle der Religion in der Integration. Meggen: Inter-Edition. Reihe Minderheiten 2. Bezugsadresse: www.verein-inter-active.ch.
2009: Sozio-kultureller Code, Rituale und Management. Neue Perspektiven in interkulturellen Feldern. Wiesbaden: VS Verlag für Sozialwissenschaften.
2016: Doppelte Normativitäten zwischen staatlichen und religiösen Geltungsansprüchen – am Beispiel der katholischen Kirche, der muslimischen Gemeinschaften und der Bahá'í-Gemeinde in der Schweiz. Münster: Lit-Verlag.

Kälin, Walter
2000: Grundrechte im Kulturkonflikt. Freiheit und Gleichheit in der Einwanderungsgesellschaft. Zürich: NZZ-Verlag.

Karlen, Peter
1988: Das Grundrecht der Religionsfreiheit in der Schweiz. Zürich: Schulthess Polygraphischer Verlag. Zürcher Studien zum öffentlichen Recht.

Krüggeler, Michael
2008: Die Kindertaufe in einem „säkularisierten" Umfeld. In: Schweizerische Kirchenzeitung SKZ (176/2008) 444 – 446.

Ladeur, Karl-Heinz
2009: The Myth of Neutral State and the Individualization of Religion. The Relationship between State and Religion in the Face of Fundamentalism. In: Cardozo Law Review 30/2009. 2445 – 2471.

Lienemann, Wolfgang
2008: Grundinformation Theologische Ethik. Göttingen: Vandenhoeck & Ruprecht / UTB.

Linz, Juan J.
2009: Totalitäre und autoritäre Regimes. Potsdam: WeltTrends.

Loretan, Adrian / Weber, Quirin / Morawa., Alexander H. E.
2014: Freiheit und Religion. Die Anerkennung weiterer Religionsgemeinschaften in der Schweiz. Münster: Lit. ReligionsRecht im Dialog. Bd. 17.

Luhmann, Niklas
1999[4]: Grundrechte als Institution. Ein Beitrag zur politischen Soziologie. Berlin: Duncker & Humblot.

Müller, Alois
2005: Ist der freiheitliche Staat auf vorpolitische Ressourcen des Religiösen angewiesen und welcher Platz soll den Religionsgemeinschaften im öffentlichen Raum zukommen? In: Pahud de Mortanges, René / Tanner, Erwin (Hrsg.): Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht. Freiburger Veröffentlichungen zum Religionsrecht. Zürich: Schulthess. 35 – 89.

Müller, Jörg Paul
1999: Grundrechte in der Schweiz. Im Rahmen der Bundesverfassung von 1999, der UNO-Pakte und der EMRK. Bern: Stämpfli Verlag.

Müller, Jörg Paul / Schefer, Markus
2008[4]: Grundrechte in der Schweiz. Im Rahmen der Bundesverfassung, der EMRK und der UNO-Pakte. Bern: Stämpfli Verlag.

Nay, Giusep
2010: Strukturelle Entwicklungen in der staatlichen Rechtsprechung und Gesetzgebung der Schweiz. In: Gerosa, Libero / Müller, Ludger (Hrsg.): Katholische Kirche und Staat in der Schweiz. Kirchenrechtliche Bibliothek. Band 14. Münster: Lit Verlag. 53 – 63.

Neue Zürcher Zeitung
23./24.6.2007: Böckenförde, Ernst-Wolfgang: Wie können die Religionen friedlich und frei beisammen leben? Über den säkularen Staat, seine Neutralität und die Probleme, mit denen er im 21. Jahrhundert konfrontiert ist. Interview. 28.
12.6.2013: Steinich, Annette: Neue Verfassung in Tunesien: Seilziehen zwischen Islam und Demokratie. http://www.nzz.ch/aktuell/international/uebersicht/seilziehen-zwischen-islam-und-demokratie-1.18097290.

Pahud de Mortanges, René
1998a: Allgemeine Einführung und die Rechtslage in der Schweiz. In: Pahud de Mortanges, René (Hrsg.): Religiöse Minderheiten und Recht. Minorités religieuses et droit. Freiburger Veröffentlichungen zum Religionsrecht. Band 1. Freiburg/Schweiz: Universitätsverlag. 11 – 26.
1998b: Fragen zur Integration der nichtchristlichen Religionsgemeinschaften in das schweizerische Religionsverfassungsrecht. In: Schweizerisches Jahrbuch für Kirchenrecht. 1998. Bern: Peter Lang. 89 – 108.
2012: Die Auswirkungen der religiösen Pluralisierung auf die staatliche Rechtsordnung. In: Bochinger, Christoph (Hrsg.): Religionen, Staat und Gesellschaft. Die Schweiz zwischen Säkularisierung und religiöser Vielfalt. Zürich: Verlag Neue Zürcher Zeitung. 145 – 173.
2014: Das rechtliche Inkorporationsregime für Religionsgemeinschaften. Eine neue Betrachtungsweise des schweizerischen Religionsverfassungsrechtes unter Einbezug des NFP 58. In: Arens, Edmund / Baumann, Martin / Liedhegener, Antonius / Müller, Wolfgang W. / Ries, Markus (Hrsg.): Integration durch Religion? Geschichtliche Befunde, gesellschaftliche Analysen, rechtliche Perspektiven. 179 – 212.

Palm, Julia
2013: Berechtigung und Aktualität des Böckenförde-Diktums. Eine Überprüfung vor dem Hintergrund der religiös-weltanschaulichen Neutralität des Staates. Möglichkeiten des Staates zur Pflege seiner Voraussetzungen durch Werterziehung in der öffentlichen Schule. Schriften zum Staatskirchenrecht. Band 60. Dissertation. Frankfurt/Main: Peter Lang.

Sahlfeld, Konrad
2004: Aspekte der Religionsfreiheit im Lichte der Rechtsprechung der EMRK-Organe, des UNO-Menschenrechtsausschusses und nationaler Gerichte. Luzerner Beiträge zur Rechtswissenschaft. Band 3. Zürich / Basel / Genf: Schulthess.

Schefer, Markus
2005: Grundrechte in der Schweiz. Ergänzungsband zur dritten Auflage des gleichnamigen Werks von Jörg Paul Müller. Bern: Stämpfli.

Schumann, Siegfried
2012: Individuelles Verhalten. Möglichkeiten der Erforschung durch Einstellungen, Werte und Persönlichkeit. Schwalbach/Ts.: Wochenschau-Verlag.

Schulz, Heiko
2011: Sind Religionen konfliktfähig? Vorüberlegungen zum themenspezifisch relevanten Begriffsfeld. In: Dalferth, Ingolf U. / Schulz, Heiko (Hrsg.): religion und Konflikt. Grundlagen und Fallanalysen. Göttingen: Vandenhoeck & Ruprecht. 23 – 45.

Stepan, Alfred
2003: Arguing Comparative Politics. Reprinted Edition of 2001. Oxford: Oxford University Press.

Stüssi, Marcel
2012: Models of Religious Freedom. Switzerland, the United States, and Syria by Analytical, Methodological, and Eclectic Representation. Berlin: Lit. ReligionsRecht im Dialog. Band 12.

Tanner, Erwin
2005: Un-Sicherheitsfaktor Religion? Staats- und verwaltungsrechtliche Überlegungen zur inneren Sicherheit und Religion am Beispiel des Islams. In: Pahud de Mortanges, René / Tanner, Erwin (Hrsg.): Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht. Freiburger Veröffentlichungen zum Religionsrecht. Zürich: Schulthess. 163 – 213.
2008: Die muslimische Minderheit und ihre Religion. Strukturrechtliche und institutionsrechtliche Grundfragen im Bereich des Religionsrechts der Schweizerischen Eidgenossenschaft. Berlin: Lit. Publikationen des Instituts für Föderalismus Freiburg Schweiz PIFF. Band 49.

Walter, Christian
2008: Religionsfreiheit in säkularen im Vergleich zu nicht-säkularen Staaten: Bausteine für ein integratives internationales Religionsrecht. In: Pluralistische Gesellschaften und Internationales Recht. Referate und Thesen von Georg Nolte, Helen Keller, Armin von Bogdandy, Heinz-Peter Mansel, Andrea Büchler, Christian Walter mit Diskussion. Berichte der Deutschen Gesellschaft für Völkerrecht. Band 43. 30. Tagung in Halle (Saale) vom 21. bis 24. März 2007. 253 – 292.

WochenZeitung
30.1.2014: Spörndli, Markus: Tunesien: Demokratische Signale aus dem Maghreb. 11.

Wyss, Martin Philipp
2005: Übertragung von staatlichen und öffentlichen Aufgaben an Religionsgemeinschaften. In: Pahud de Mortanges, René / Tanner, Erwin (Hrsg.): Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht. Freiburger Veröffentlichungen zum Religionsrecht. Zürich: Schulthess. 113 – 129.

Wyttenbach, Judith
2011: Kooperation von Staat und Religionsgemeinschaften in der Schweiz im Kontext der Grundrechte. In: Loretan, Adrian (Hrsg.): Religionsfreiheit im Kontext der Grundrechte. Religionsrechtliche Studien. Zürich: TVZ. 377 – 413.

Young, John F.
2007: Rapture or Rupture? Religion and Civil Society. In: Marga, Irimie / Sander, Gerald G. / Sandu, Dan (Hrsg.): Religion zwischen Kirche, Staat und

Gesellschaft – Religion between Church, State and Society. Hamburg: Dr. Kovač. 11 – 21.