

Toleration and Repression: German States, the Law and the ‘Sects’ in the Long Nineteenth Century

Manfred Henke*

Groß Grönau

At the beginning of the period, the Prussian General Law Code did not provide for equal rights for members of ‘churches’ and those of ‘sects’. However, the French Revolution decreed the separation of church and state and the principle of equal rights for all citizens. Between the Congress of Vienna (1815) and the revolution of 1848, Prussian monarchs pressed for the church union of Lutheran and Reformed and advocated the piety of the Evangelical Revival. The Old Lutherans felt obliged to leave the united church, thus eventually forming a ‘sect’ favoured by the king. Rationalists, who objected to biblicism and orthodoxy, were encouraged to leave, too. As Baptists, Catholic Apostolics and Methodists arrived from Britain and America, the number of ‘sects’ increased. New ways of curtailing their influence were devised, especially in Prussia and Saxony.

This article sheds light on a period of transition in Germany between the late absolutist General Law Code of 1794 and the provisions on religion in the republican constitution of Weimar passed in 1919. During that period the rise of free churches was eased by gradual changes in the legal system. What changes were made? How did they relate to long established concepts of the states’ legal prerogatives in matters of religion? What was the legal content of the term ‘sect’? And why could the nineteenth-century jurist Hermann Fürstenau observe that if a German state wanted to introduce ‘complete religious liberty’ it would have ‘to treat all religious societies as sects’?¹

Various aspects of this subject have been discussed from a denominational perspective, but without asking what policies the states

* Hauptstraße 53B, 23627 Groß Grönau, Germany. E-mail: Manfred.henke@nach-history.com.

¹ Hermann Fürstenau, *Das Grundrecht der Religionsfreiheit nach seiner geschichtlichen Entwicklung und heutigen Geltung in Deutschland* (Glashütten im Taunus, 1975; first published 1891), 257–8.

pursued when dealing with 'sects'. The rather deficient state of scholarship is reflected in a slim volume summing up the results of a joint research project undertaken by members of established and free churches initiated in the course of preparations for the five hundredth anniversary of the Lutheran Reformation. Its title, *Heilung der Erinnerungen. Freikirchen und Landeskirchen im 19. Jahrhundert*, suggests that relations between established and free churches have been bitterly antagonistic, so that a healing of memories is still needed.² A voluminous study of dissent in nineteenth-century Germany refers to state action against sects, insinuating that the authorities aimed to suppress religious dissent but lacked the necessary legal instruments to do so effectively.³ In an ambitious attempt to find precursors of the free churches in deviant religious groups since the Reformation, Karl Heinz Voigt, a noted historian of German Methodism, points to the need for further research on their relations with the secular and ecclesiastical authorities.⁴

My own research on apostolic congregations in Germany has raised questions about the legal framework regulating the formation and functioning of religious societies outside the established church. These can only be answered by looking at the treatment other 'sects' received at the hands of the state, or rather states, for there were still twenty-five of them, even after Prussia annexed several in the wake of the Austro-Prussian War of 1866. Each state had at least one established church and power to legislate in matters of religion. Prussia set standards against which the laws of some of the smaller states will be discussed. An overview of legal approaches will emerge that answers some questions but raises many more. This is a report of work in progress.

LAW AND LEGAL PRACTICE REGARDING RELIGION BEFORE 1830

In the Peace of Augsburg (1555) it had been agreed that two 'religious parties' within a church still deemed universal should coexist within

² Walter Fleischmann-Bisten, Ulrich Möller and Barbara Rudolph, eds, *Heilung der Erinnerungen: Freikirchen und Landeskirchen im 19. Jahrhundert* (Leipzig, 2018).

³ Herbert Strahm, *Dissentertum im Deutschland des 19. Jahrhunderts. Freikirchen und religiöse Sondergemeinschaften im Beziehungs- und Spannungsfeld von Staat und protestantischen Landeskirchen*, Münchener kirchenhistorische Studien NF 5 (Stuttgart, 2016), 64–72, 566–73.

⁴ Karl Heinz Voigt, *Kirchliche Minderheiten im Schatten der lutherischen Reformation vor 1517 bis nach 2017* (Göttingen, 2018), 15–16.

the Holy Roman Empire: the Catholic party and the party of the Augsburg Confession (1530), that is, the Lutherans. Secular princes were given the power to determine the religion to which their subjects were expected to adhere. If they did not grant the adherents of the opposing 'religious party' permission to engage in domestic worship without a minister (*devotio domestica simplex*), they had to give them permission to emigrate. The Peace of Westphalia (1648) extended this system to include Calvinists by defining their teachings as 'essentially' in accordance with the Augsburg Confession. 'Sects' were in theory not tolerated,⁵ but a number of princes did tolerate them for sound economic reasons. Like the Jews, 'sectaries' usually lived in their own settlements, segregated from the rest of society.⁶

The Prussian kingdom had a long history of toleration.⁷ There were Mennonites in the formerly Polish territory acquired in the first partition of Poland (1772) and in the city of Krefeld, which the Hohenzollerns had inherited from the house of Orange in 1702.⁸ They were subjected to a number of civil disabilities in return for not having to bear arms.⁹ Moravians in Silesia had been granted a number of privileges in 1742, 1746 and 1763 that gave them a position akin to that of the established churches, as they were deemed to be close to them by virtue of their adherence to principles laid down in the Augsburg Confession. Their registers of births, marriages and deaths were legally valid documents, whereas Mennonites and others had to hand in transcripts of their registers to the local incumbent,

⁵ Martin Heckel, *Vom Religionskonflikt zur Ausgleichsordnung. Der Sonderweg des deutschen Staatskirchenrechts vom Augsburger Religionsfrieden 1555 bis zur Gegenwart*, Bayerische Akademie der Wissenschaften. Philosophisch-historische Klasse, Abhandlungen NF 130 (München, 2007), 10, 15–16, 18–19, 25–6; Joachim Whaley, *Germany and the Holy Roman Empire*, 2 vols (Oxford, 2012), 1: 333–4, 623–6.

⁶ Cf. *ibid.* 2: 263–9; Voigt, *Kirchliche Minderheiten*, 113–32; Erwin Freytag, 'Nichtlutherische Religionsgemeinschaften unter dem landesherrlichen Kirchenregiment', in Walter Göbell and Lorenz Hein, eds, *Schleswig-Holsteinische Kirchengeschichte*, 4: *Orthodoxie und Pietismus*, Schriften des Vereins für Schleswig-Holsteinische Kirchengeschichte 1st series 29 (Neumünster, 1984), 233–67.

⁷ Christopher Clark, *Iron Kingdom: The Rise and Downfall of Prussia 1600–1947* (London, 2007), 115–24, 236–7; H. F. Jacobson, 'Ueber die Arten der Religionsgesellschaften und die religiösen Rechtsverhältnisse der Dissidenten in Preussen', *Zeitschrift für Kirchenrecht* 1 (1861), 393–443, at 392–3.

⁸ Mark Jantzen, *Mennonite German Soldiers: Nation, Religion, and Family in the Prussian East, 1772–1880* (Notre Dame, IN, 2010), 23–6, 108–11.

⁹ *Ibid.* 27–33, 35–42, 54–70, 102–6.

who would then enter them into the registers he kept.¹⁰ To their dismay, however, even the Moravians were classed as a 'sect' in an edict on religion of 9 July 1788, as were the Mennonites and the Jews.¹¹ In contemporary parlance, a 'Christian' was usually identified as a member of one of the three 'approved' confessions, Catholic, Lutheran and Reformed.¹²

In 1794 a General Law Code was published as *Allgemeines Landrecht für die Preussischen Staaten*. Using terms coined by Enlightenment thought, the three 'churches' defined in 1788 were classed as 'publicly approved religious societies' and the 'sects' as 'tolerated religious societies'. Only the former could call their buildings 'churches' or use bells.¹³ Those terms, together with the dichotomy of 'church' and 'sect' as defined in the edict of 1788, continued to be legal terminology.¹⁴ All religious societies were obliged to 'instil into their members awe towards the Godhead, obedience to the laws, loyalty to the state and morally good intentions towards their fellow-citizens'. Failure to do so would lead to their dissolution.¹⁵

The *Allgemeines Landrecht* granted liberty of conscience but imposed tight restrictions, even on domestic worship. It provided that 'each head of a household can arrange his domestic worship as

¹⁰ Dietrich Meyer, 'Zinzendorf und Herrnhut', in Martin Brecht et al., eds, *Geschichte des Pietismus*, 2: *Der Pietismus im achtzehnten Jahrhundert* (Göttingen, 1995), 3–106, at 45–6; Jacobson, 'Ueber die Arten der Religionsgesellschaften', 395–6; R. W. Dove, 'Die rechtliche Stellung der evangelischen Brüdergemeinden in Preussen', *Zeitschrift für Kirchenrecht* 3 (1863), 460–8. The full texts of their privileges can be found in Berlin, Geheimes Staatsarchiv Preussischer Kulturbesitz (hereafter: GStA PK) I, HA Rep 76 III Sekt. 1 Abt. XIIIa, Nr. 3 Bd. 2 (unfoliated).

¹¹ K[arl] Goßner, *Preussisches evangelisches Kirchenrecht*, 1: *Führer durch das Recht der Landeskirche der neun älteren Provinzen insbesondere für Geistliche und Selbstverwaltungs-Organe, Verwaltungsbeamte und Juristen*, 2nd edn (Berlin, 1914), 25–6. For the background, see Clark, *Iron Kingdom*, 267–72.

¹² See, for example, Jantzen, *Mennonite German Soldiers*, 41.

¹³ *Allgemeines Landrecht für die Preussischen Staaten* (Berlin, 1794), part 2, title 11, §§10, 11, 13. For the intellectual background of the term *Religionsgesellschaft* ('religious society'), see Heckel, *Vom Religionskonflikt zur Ausgleichsordnung*, 79–80.

¹⁴ For examples, see Jantzen, *Mennonite German Soldiers*, 166, 254. Gerhard Anschütz, *Die Verfassungs-Urkunde für den Preussischen Staat* (Berlin, 1912), 216–17, explains the legal situation in 1912.

¹⁵ 'Jede Kirchengesellschaft ist verpflichtet, ihren Mitgliedern Ehrfurcht gegen die Gottheit, Gehorsam gegen die Gesetze, Treue gegen den Staat, und sittlich gute Gesinnungen gegen ihre Mitbürger einzufößen': *Allgemeines Landrecht*, part 2, title 11, §13.

he pleases',¹⁶ but a cabinet order (*Kabinettsordre*) of 9 March 1834 explicitly excluded ministers of religion from this provision and restricted attendance at house prayers to 'the head of the house's family and the persons living with him and integrated into his household.'¹⁷ 'Secret meetings under the pretext of domestic worship' were expressly forbidden.¹⁸ New religious societies could be formed subject to state approval and meet for worship in private homes or 'in certain buildings dedicated to that purpose'. They were not necessarily granted corporate rights, and they could not purchase the buildings they used for their meetings.¹⁹ In the eyes of the law, a religious society was a local group, never a nationwide association of believers with a common creed.²⁰

In an important draft for the Civil Code, Carl Gottlieb Svarez had classed Jews and 'merely tolerated religious parties' together because neither of them were authorized to register or certify births, marriages and deaths.²¹ Generally speaking, both groups lacked full civic rights, and the registry of the *Ministerium für geistliche, Unterrichts- und Medicinalangelegenheiten* ('Ministry of Religious, Educational and Medical Affairs'; short title *Kultusministerium*) reflected this view: 'Affairs of sects and Jews' were classed together, whereas they seem to have been kept apart in the *Ministerium des Innern und der Polizei* ('Ministry of the Interior and Police'), whose department of religion and public education was upgraded to constitute the *Kultusministerium* in 1817.²² As one author put it, individuals were

¹⁶ 'Jeder Hausvater kann seinen häuslichen Gottesdienst nach Gutfinden anordnen': *ibid.*, §7.

¹⁷ '[D]aß zu dem häuslichen Gottesdienste nur den Mitgliedern der Familie das Hausvaters und den bei ihm wohnenden, seiner Hauszucht unterworfenen Personen der Zutritt gestattet [wird]': Ernst Rudolf Huber and Wolfgang Huber, eds, *Staat und Kirche im 19. und 20. Jahrhundert. Dokumente zur Geschichte des deutschen Staatskirchenrechts*, 5 vols (Darmstadt, 2014; first published Berlin, 1973–95), 1: 607. This order was issued against Old Lutherans, as discussed below.

¹⁸ *Allgemeines Landrecht*, part 2, title 11, §9.

¹⁹ *Ibid.*, §§10, 13, 24.

²⁰ *Ibid.*, §36.

²¹ Jacobson, 'Ueber die Arten der Religionsgesellschaften', 399–400.

²² GStA PK, unpublished 'Findbuch' for I. HA Rep. 76 Kultusministerium, III Evangelisch-geistliche Angelegenheiten Bd. 1, Sektion 1 Generalia, Abt. XIIIa, typewritten entry 'Sekten- und Judensachen'; Christina Rathgeber, 'Strukturelle Vorgeschichte und Gründung des Kultusministeriums', in Wolfgang Neugebauer, ed., *Das preußische Kultusministerium als Staatsbehörde und gesellschaftliche Agentur (1817–1934)*, 1/1: *Die Behörde und ihr höheres Personal – Darstellung*, Acta Borussica, NF Series 2 (Berlin, 2009),

free to believe whatever they pleased, but once they made their conviction public by joining a religious society outside the establishment, they had to put up with the inferior legal status accorded to members of that group.²³

Napoleon Bonaparte's rise to power put an end to the Holy Roman Empire in 1806. In 1803, the German territories west of the Rhine had been annexed by France, ecclesiastical princes and lesser secular rulers deposed, their territories redistributed and a Rhenish Confederation of middling powers formed. The injunction against sects ended without anybody taking much notice. In the newly created Kingdom of Westphalia, ruled by Jérôme Bonaparte, the constitution of 1807 granted complete religious liberty and full equality in the eyes of the law.²⁴ In contrast, in Bavaria an edict of 24 March 1809, in terms directly influenced by the Prussian Civil Code, permitted 'private religious services' to new religious societies only if the monarch granted them a charter; it also defined the conditions attached to those services.²⁵

Napoleon's interference in German affairs brought about a 'geopolitical revolution' which reduced the number of German states from over three hundred to thirty-nine, and the Congress of Vienna made of Prussia 'a colossus that stretched across the north of Germany'.²⁶ The German Confederation founded in 1815 was made up of sovereign princes. In their Articles of Confederation (*Bundesakte*) they guaranteed equal rights for all 'Christian co-religionists', but the context shows that this referred only to Catholics, Lutherans and Calvinists. Even then, Catholics could not everywhere expect to enjoy equal rights with Protestants. As to the Jews, the princes declared their intention to improve and equalize their legal status

4–19, at 4–5; Bärbel Holtz, 'Zuständigkeiten, Tätigkeitsgebiete und Organisationsstruktur: Die Jahre von 1817–1866', *ibid.* 20–31, at 20–1; Jürgen Kloosterhuis, *Archivarbeit für Preußen* (Berlin, 2000), 68–9, 433. My conclusion is based on a survey of registry notes in GStA PK I, HA Rep 76 III Sekt. 1 Abt. XIIIa, Nr. 1, Bd. 1 to Bd. 4 (Jewish affairs) and *ibid.*, Nr. 3, Bd. 1 to Bd. 4 (Moravians).

²³ Anke Breitenborn, 'Die Minderheitenproblematik in den preußischen Staaten und das ALR', in Günter Birtsch and Dietmar Willoweit, eds, *Reformabsolutismus und ständische Gesellschaft* (Berlin, 1998), 321–40, at 331.

²⁴ Fürstenau, *Religionsfreiheit*, 85, 95–6.

²⁵ *Ibid.* 91–2, (text) 306–8.

²⁶ Clark, *Iron Kingdom*, 295, 389.

all over Germany without loss of those rights which they had already been granted in some. ‘Sects’ were not taken into consideration.²⁷

Under French rule, legal reforms had been introduced in parts of Germany.²⁸ In the Prussian territories formerly belonging to the Kingdom of Westphalia, the constitution of 1807 with its provisions on religious liberty and civic equality remained ‘fully valid’,²⁹ although the modern *code civil* had been replaced by the more restrictive *Allgemeines Landrecht* of 1794.³⁰ In those parts of the Prussian Rhine province that had been under direct French rule, the *code civil* remained in force, and with it the civil registration of births, marriages and deaths, which was also retained in Baden, Bremen and Lübeck, but abolished in Braunschweig and Hamburg.³¹ After some hesitation the Prussian government decided in 1818 to tolerate the differences in the legal system until the ‘revision of the complete Prussian legal and judicial system’, which had been envisaged in 1817, had been completed.³² Eventually, a civil code (*Bürgerliches Gesetzbuch*) for the whole of the newly united German empire took effect on 1 January 1900.

THE RISE OF NEW ‘SECTS’ BEFORE THE PRUSSIAN TOLERATION EDICT OF 1847

Frederick William III of Prussia inadvertently produced a new ‘sect’ by his project of a church union of Lutheran and Reformed parishes.

²⁷ Bundesakte, Article 16 (drafts and final text in Huber and Huber, eds, *Dokumente*, 1: 113–15); Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*, 8 vols (Stuttgart, 1957–91), 1: 414–15; Joseph Freisen, *Verfassungsgeschichte der katholischen Kirche Deutschlands in der Neuzeit auf Grund des katholischen Kirchen- und Staatskirchenrechts* (Leipzig and Berlin, 1916), 79; Fürstenau, *Religionsfreiheit*, 99–126.

²⁸ The classic study is Elisabeth Fehrenbach, *Traditionale Gesellschaft und revolutionäres Recht* (Göttingen, 1974; 3rd edn 1983).

²⁹ [Kultusministerium], *Mittheilungen aus der Verwaltung der geistlichen, Unterrichts- und Medicinal-Angelegenheiten in Preußen* (Berlin, 1847), 217.

³⁰ Gerhard Deter, ‘Das preußische Allgemeine Landrecht in der Provinz Westfalen – Rezeption und Wirkung’, in Karl Teppe and Michael Epkenhans, eds, *Westfalen und Preußen. Integration und Regionalismus* (Paderborn, 1991), 82–97.

³¹ Karl Stiefel, *Baden 1648–1952*, 2 vols (Karlsruhe, 1977), 2: 1219–24; Antjekathrin Graßmann, ed., *Lübeckische Geschichte*, 2nd edn (Lübeck, 1989), 556–7; Kurt G. A. Jeserich, Hans Pohl and Christoph von Unruh, *Deutsche Verwaltungsgeschichte*, 6 vols (Stuttgart, 1983–8), 2: 744, 795, 805.

³² Ilja Mieck, ‘Preußen von 1807 bis 1850. Reformen, Restauration und Revolution’, in Otto Büsch, ed., *Handbuch der preußischen Geschichte*, 2: *Das 19. Jahrhundert und große Themen der Geschichte Preußens* (Berlin and New York, 1992), 3–292, at 99.

He initiated this on the three hundredth anniversary of the Lutheran Reformation in 1817, and produced a new liturgy in 1821 to bring about unity of worship. When the king ordered the adoption of that liturgy in Silesia in 1830, a vigorous opposition movement came into existence. For about four years the Prussian government tried to contain the 'Old Lutherans' by depriving the popular movement of its leaders.³³ The conflict escalated when a village preacher in Hönigern, in the Wrocław (Breslau) district, was removed from his incumbency in September 1834. When the villagers refused to hand the church over to his successor, a detachment of four hundred infantry and a hundred cavalry dispersed the crowd guarding the church and installed the new incumbent in time for the Christmas service.³⁴ The movement spread throughout Prussia. In 1837 and 1838, about two thousand Old Lutherans emigrated to Australia and North America after the government had illegally obstructed that move for several months.³⁵

From the outset, the Old Lutherans aimed at being recognized as a tolerated religious society outside the established church.³⁶ In December 1835, the minister of religious affairs argued that they could not be recognized as a 'sect' because their doctrine did not significantly differ from that of the 'church', echoing a sentiment earlier expressed by Frederick William III. Thus, they were 'separatists' who ought to be forced back into the church to which they properly belonged.³⁷ Unimpressed, the Old Lutherans continued to have the sacraments administered by their own ministers in separate assemblies. On 9 March 1834 Frederick William III issued a cabinet order

³³ Christina Rathgeber, *Herausforderung für den Staat. Die Altlutheraner und die preußische Religionspolitik (1830 bis 1847)*, Acta Borussica NF 2 (Berlin and Boston, MA, 2017), 4–15 (the work is a collection of sources printed from the manuscripts in GStA PK, preceded by a summary of events); cf. Christopher Clark, 'The Politics of Revival: Pietists, Aristocrats, and the State Church in Early Nineteenth-Century Prussia', in Larry Eugene Jones and James Retellack, eds, *Between Reform, Reaction, and Resistance* (Providence, RI, and Oxford, 1992), 31–61; idem, *The Politics of Conversion* (Oxford, 1995), 213–19, 225–36; idem, 'Confessional Policy and the Limits of State Action: Frederick William III and the Prussian Church Union, 1817–1840', *HistJ* 39 (1996), 985–1004.

³⁴ Rathgeber, *Altlutheraner*, 17, 95–114.

³⁵ Ibid. 17–19; documents ibid. 134–48, 160–1, 166–7, 176–8; Clark, 'Confessional Policy', 998.

³⁶ Rathgeber, *Altlutheraner*, 7.

³⁷ Ibid. 7, 124–7.

forbidding all separatist assemblies except in family worship without a minister³⁸ and a declaration against the carrying out of ministerial acts by non-ministers, punishable by a fine of fifty talers or six weeks in prison.³⁹ The Old Lutherans also ignored those orders. Both the minister of justice and the Provincial Supreme Court (*Oberlandesgericht*) in Frankfurt an der Oder questioned the legality of the king's orders. Moreover, whereas the king assumed that only ordinations performed in the established church had the force of law, the lawyers declared that there was no law against the validity of Old Lutheran ordinations. Various courts refused to act against offenders; nevertheless, the king continued on a course that seemed increasingly unlikely to succeed.⁴⁰

Frederick William III was succeeded by his son Frederick William IV in 1840. Like his father, the new king became deeply involved in church affairs, but unlike his father he was at pains to resolve the conflict with the Old Lutherans, and also a further conflict with the Catholics in the Rhine Province.⁴¹ Whereas the old king had insisted that the Old Lutheran leaders had 'with criminal intent used the intellectual limitations of their parishioners, falsely claiming they were denied liberty of conscience ... to confirm them in their disobedience',⁴² his son, who was deeply committed to the Evangelical Awakening, sympathized with the Old Lutherans' piety.⁴³ Frederick William IV ordered the release of imprisoned ministers and permitted assemblies, even a general synod, hoping to persuade Old Lutherans to remain within the established church and suggesting they might assemble as private religious associations within the church.⁴⁴ When this failed, he issued a 'General Concession' (*Generalkonzession*) in July 1845. By its terms, the Old Lutherans were not allowed to call

³⁸ Compare n. 17 above.

³⁹ Rathgeber, *Altlutheraner*, 14–15; both texts in Huber and Huber, eds, *Dokumente*, 607–8. In their introduction, the compilers state as objective fact that sacraments were performed by laymen, as the government argued, whereas the law courts upheld the validity of Old Lutheran ordinations, as shown below: *ibid.* 605–6.

⁴⁰ Rathgeber, *Altlutheraner*, 21–4, 27–8, 120–2, 139–55, 157–74, 185–7.

⁴¹ *Ibid.* 36–7.

⁴² '[W]elche in verbrecherischer Absicht sich der Beschränktheit der Gemeindeglieder bedienen, um sie mit Vorspiegelung beschränkter Gewissensfreiheit ... in ihrem Ungehorsam zu bestärken': *ibid.* 155–7, quotation at 156, cf. 20, 29.

⁴³ *Ibid.* 30–3. On the king's religion, see David E. Barclay, *Frederick William IV and the Prussian Monarchy 1840–1861* (Oxford, 1995), 75–92.

⁴⁴ Rathgeber, *Altlutheraner*, 30, 189–235.

themselves a 'church', but they could assemble as separate congregations and were further allowed to form 'an association of these congregations under a common executive not answerable to the evangelical church of the land'. They did not have to contribute financially to the parish system (as the Mennonites did) and they received corporate rights and permission to own property.⁴⁵ Unlike the Mennonites and others,⁴⁶ they did not have to hand in notices of their baptisms, marriages and funerals to the incumbents for registration, but reported them directly to the civil courts as the parish ministers did; like the parish ministers, Old Lutheran ministers could issue legally valid certificates of baptisms, marriages and deaths.⁴⁷

The Baptists came to the notice of the central Prussian authorities only after the accession of Frederick William IV. In 1840 there were Baptist congregations in three Prussian cities: Memel (Klaipeda), Bitterfeld and Berlin. The new minister of religious affairs attempted a policy of suppression in the provinces while at the same time trying to accommodate the Baptists in the capital.⁴⁸ In Memel, the consistory applied to the local law court (*Land- und Stadtgericht*) to have recourse to a royal order to the consistories of 23 February 1802. This was directed against parents who neglected their duty to have their children baptized within six weeks after birth, particularly those who wanted 'to excel before others as enlightened persons'. In such cases, the parish ministers were to admonish the parents. If the parents failed to comply, the children were to have temporary guardians appointed who would have them baptized.⁴⁹ However, the judges refused to grant the order because the parents declared that they had severed all connection with the established church, and the local prefect (*Landrat*) agreed with the lawyers and refused to give his support to further measures.⁵⁰

Outside Prussia, Baptists in the Kingdom of Hannover and the Duchy of Brunswick were not so fortunate. In Hannover, the constitution of 26 September 1833 decreed that the king had the right to 'approve other Christian confessions and sects' besides the Protestant

⁴⁵ *Ibid.* 30–2.

⁴⁶ *Allgemeines Landrecht*, part 2, title 11, §498; cf. Jantzen, *Mennonite German Soldiers*, 65.

⁴⁷ *Allgemeines Landrecht*, part 2, title 11, §503; Fürstenau, *Religionsfreiheit*, 140–1.

⁴⁸ GSStA PK I, HA Rep. 77, Sekt. 1, Abt. XIIIa, Nr. 17 Bd. 1.

⁴⁹ *Ibid.*, HA Rep. 84 a 1040, unfoliated, documents 7c.

⁵⁰ *Ibid.*, HA Rep. 77, Sekt. 1, Abt. XIIIa, Nr. 17 Bd. 1, fols 68–9.

and Catholic churches,⁵¹ but when Baptists arrived in his dominions, the ecclesiastical authorities insisted that their children must be baptized, and parents were told there were no legal provisions to release them from church membership. The authorities referred to what they called the ‘Prussian law’ and had ten children baptized between 1843 and 1847 after appointing temporary guardians for them.⁵² In Brunswick, there were five such cases between 1852 and 1856, even though a judge had ruled against the practice.⁵³

A second attempt at suppressing Baptists in Prussia was made in Bitterfeld in the province of Saxony. In July 1842, the minister of religious affairs ordered the regional government to indict the local Baptist minister, Werner, for violating the declaration of 9 March 1834 against the performing of ministerial acts by non-ministers.⁵⁴ However, in a judgment dated 20 June 1843, the local court (*Land- und Stadtgericht*) of Delitzsch dismissed the case against Werner, arguing that ‘the actions are not performed according to the rite of the established Catholic or Reformed churches, consequently they cannot be regarded as interference with the rights of the preachers of those confessions’. In addition, they accepted Werner’s plea that he was an ordained minister of a sect whose assemblies and rites were tolerated in Berlin.⁵⁵ On 28 February 1844, the provincial court (*Oberlandesgericht*) in Naumburg reversed that judgment, arguing that it did not matter what kind of rite was used. Werner was to go to prison for eight days because in performing baptisms he had ignored the magistrates’ prohibition. In addition, his ordination was declared invalid on the basis that it lacked state approval.⁵⁶ This judgment was subsequently quashed by the supreme court of appeal in Naumburg in September 1844, which restored the original judgment.⁵⁷

⁵¹ *Grundgesetz des Königreiches Hannover nebst dem Königlichen Patente, die Publication desselben betreffend* (Hannover, 1833), 27 (§30).

⁵² Peter Muttersbach and Gotthard Wefel, *Die Anfänge des Baptismus zwischen Harz und Heide* (Norderstedt, 2015), 81–4, 91–5.

⁵³ Peter Muttersbach, ‘Rechtslage und Rechtspraxis zum Kirchenaustritt und Taufzwang im Herzogtum Braunschweig’, in Fleischmann-Bisten, Möller and Rudolph, eds, *Heilung der Erinnerungen*, 92–109.

⁵⁴ GStA PK I, HA Rep. 77, Sekt. 1, Abt. XIIIa, Nr. 17 Bd. 1, fol. 268.

⁵⁵ *Ibid.*, Bd. 2, fols 113–15.

⁵⁶ *Ibid.*, fols 290–3.

⁵⁷ *Ibid.*, Bd. 3, fols 64–8; cf. Reinhard Assmann, ‘Kirchlicher Widerstand gegen die Duldung der ersten Baptistengemeinden in der preußischen Provinz Sachsen 1840 bis

In the meantime, the minister of religious affairs had decided on a course of action for the Baptists in Berlin which was to become regular practice under the toleration edict of 1847. Originally, the minister of the interior and police, von Rochow, had argued that Baptists should be accepted as a tolerated sect under the terms of the Civil Code. Von Rochow recognized that like the Mennonites they rejected infant baptism and baptized believers. However, unlike the Mennonites, Baptists did not refuse oaths, public office or military service; moreover, they were well established in Britain and America.⁵⁸ He incurred the displeasure of the king, who alleged that the police should have taken stricter measures against Baptists. Von Rochow argued that the law did not allow him to order such measures and reiterated his view that Baptists should be recognized as a tolerated religious society in the terms of the Civil Code. Any other course of action might cause gaps in the registration of births, marriages and deaths, which might make military recruitment more difficult.⁵⁹

In June 1842 von Eichhorn, the minister of religious affairs, delegated negotiations with the Baptists of Berlin, represented by their minister Gottfried Wilhelm Lehmann (1799–1882), to a commission.⁶⁰ Together they found a solution the king was willing to accept. The Baptists were not to be hindered in their activities, provided these remained inconspicuous. They were to be tolerated 'in fact', but not officially acknowledged as a sect. A cabinet order of 30 March 1842 against baptisms in rivers or lakes⁶¹ was to be upheld: This would deprive the Baptists of a means of propagating their views. However, Eichhorn (the minister of religious affairs) suggested that 'if the Baptists manage to perform their baptisms in secret, such an act remains per se unnoticed and unpunished by the authorities'.⁶²

1847', in Fleischmann-Bisten, Möller and Rudolph, eds, *Heilung der Erinnerungen*, 74–91, at 82, 84–5.

⁵⁸ GStA PK I, HA Rep. 77, Sekt. 1, Abt. XIIIa, Nr. 17 Bd. 1, fols 38–9.

⁵⁹ *Ibid.*, fols 196–8.

⁶⁰ *Ibid.*, fols 230–45, 256–8, 270–3.

⁶¹ *Ibid.*, fol. 199.

⁶² 'Gelingt es den Baptisten, ihre Taufen im Verborgenen zu vollziehen, so entzieht sich ein solcher Akt von selbst der öffentlichen Kenntnißnahme und Ahndung': *ibid.*, Bd. 2, fols 22–5, quotation at 24.

Paradoxically, anybody who wanted to join the legally non-existent sect was to declare this at a police station and get a certificate that he had done so.⁶³ It seemed important to uphold the fiction that the sect would disappear if one did not acknowledge it.⁶⁴ In a cabinet order of 17 March 1843, the king agreed that Baptists were not to be acknowledged as ‘a tolerated religious party’, but that they were to be permitted to proceed with their activities.⁶⁵

Baptist theology reflected that of the Evangelical Awakening. However, the kind of state church promoted by the king and his awakened entourage was also challenged from the rationalist side. Theologians at the University of Halle had for generations taught in the tradition of the Enlightenment. Against the opposition of the faculty, the Prussian government had in 1825 appointed Friedrich August Tholuck (1799–1877), a proponent of the Evangelical Awakening, to a chair of theology there. From 1841 assemblies of rationalist Protestant ministers and laymen openly confronted the conservatives favoured by the government. Several rationalist ministers were deposed and from 1846 ‘free Protestant’ congregations, popularly dubbed ‘friends of the light’, formed around deposed ministers such as Gustav Adolf Wislicenus of Halle and Leberecht Uhlig of Magdeburg. They soon found themselves in league with rationalist Catholics who, from 1844 formed so-called ‘German Catholic’ or ‘Christ Catholic’ congregations. Their best-known leader was Johannes Ronge of Silesia. Quite a high percentage of the leaders of these congregations were not only religious but also political radicals and held prominent positions in the abortive revolution of 1848–9. Robert Blum, a ‘German Catholic’, became a martyr of the radical revolutionaries.⁶⁶

⁶³ Ibid., fols 24^v–25^v.

⁶⁴ Cf. *ibid.*, fol. 22.

⁶⁵ Ibid., fol. 105.

⁶⁶ Helmut Obst, ‘Lichtfreunde, Deutschkatholiken und Katholisch-apostolische Gemeinden’, in J. F. Gerhard Goeters and Rudolf Mau, eds, *Die Geschichte der Evangelischen Kirche der Union, 1: Die Anfänge der Union unter landesherrlichem Kirchenregiment (1817–1850)* (Berlin, 1992), 317–32, at 319–27; Mathias Tullner, *Geschichte des Landes Sachsen-Anhalt*, 3rd edn (Magdeburg, 2001), 100–8; Jörn Brederlow, ‘Lichtfreunde’ und ‘Freie Gemeinden’. *Religiöser Protest und Freiheitsbewegung im Vormärz und in der Revolution von 1848/49*, Studien zur modernen Geschichte 20 (Munich and Vienna, 1976), 82–96; Martin Friedrich, *Die preußische Landeskirche im Vormärz* (Waltrop, 1994), 110–36, 208–33, 295–7.

1847 TO 1850: TOLERATION, REVOLUTION, CONSTITUTIONS AND TWO
NEW 'FOREIGN SECTS'

On 30 March 1847, Frederick William IV issued a *Patent, die Bildung neuer Religionsgesellschaften betreffend* ('Patent concerning the Formation of new Religious societies').⁶⁷ It was his answer to the rationalists who, in his view, disturbed the peace of the church. He had initiated the proceedings that led up to the patent in 1844, before the rationalists had actually formed any congregations of their own, wanting to ease their way out of the established church. Recognizing that in order to pass a new law he would have needed the consent of the council of state, which he was unlikely to achieve, he and his advisers had agreed at an early stage that there would be no new law, but rather an affirmation of the General Law Code.⁶⁸ Its regulations were referred to in a way that amounted to a reinterpretation, if not a negation, of its intent.⁶⁹

To ward off rationalist claims to equal rights with Moravians and Old Lutherans, the king insisted on a novel interpretation of the Civil Code, according to which there were two kinds of tolerated religious societies. Those that were 'in basic agreement with the Augsburg Confession' (1530) might expect to be granted a better status than those that were not.⁷⁰ A novel interpretation of the privileges granted to the religious societies mentioned in the legislation of 1788 and 1794 declared, against the actual wording of those laws, that whereas the established churches were 'privileged publicly received religious societies', Moravians and Old Lutherans were also 'publicly received religious societies', albeit 'unprivileged'. Only the Mennonites and some minor groups such as the Quakers were

⁶⁷ *Gesetz-Sammlung für die Königlichen Preussischen Staaten 1847* (Berlin, 1847), 121–8. The *Gesetzessammlungen* of nearly all German states have been digitized and can be accessed online at: <<https://de.wikisource.org/wiki/Gesetzblätter>>.

⁶⁸ Friedrich, *Die preussische Landeskirche*, 389–400.

⁶⁹ Fürstenau, *Religionsfreiheit*, 143.

⁷⁰ 'Materialien, betreffend die rechtliche Entwicklung der Religions-Verfassung in Preußen', in [Kultusministerium], *Mittheilungen*, 12–35, especially 33–5; Friedrich, *Die preussische Landeskirche*, 399. Hattenhauer, 'Das preussische Religionspatent', 121, 131–2, relying on the official statement, wrongly attributes the threefold classification of religious societies to the General Law Code. Goßner, *Preussisches evangelisches Kirchenrecht*, 25–6 n. 4, presents evidence that a threefold division is a later construct alien to the *Allgemeines Landesrecht*.

classed as ‘tolerated religious societies’.⁷¹ As to the rationalists, Ludwig von Gerlach, one of a group of brothers close to the king, argued on 14 December 1846 that the ‘free congregations’ of Protestants and Catholics, together with liberal Jewish groups, ought to be prohibited since their doctrine was contrary to the General Law Code because it undermined awe towards the Godhead and obedience towards the higher powers.⁷² He particularly objected to the original plan to tolerate them formally and then grant them civil registration.⁷³

In practice, whereas formal toleration had originally been envisaged and was still possible, the new religious societies, with very few exceptions, came to occupy a different position from all the older ones in being only tolerated ‘in fact’. The king asserted that anybody could leave the church and join another religious association without loss of civic rights. However, there would be a period of time in which new associations were in the process of formation, and during that period they would be ‘tolerated in fact’, but not yet recognized as a new religious society or corporation.⁷⁴ They first had to prove that they would not cease to exist within a short time. The authorities simply permitted subjects to join together for ‘religious exercises’, provided these did not pose a threat to public order. In this capacity, such associations were subject to the regulations laid down for any kind of private assembly. Initially, those regulations were fixed in the General Law Code, and from 11 March 1850 in a law relating to public assemblies, which decreed that an association must have a chairperson (*Vorsteher*), keep and submit lists of members and statutes, and report when and where it intended to meet. The police had the right to attend a meeting, provided they came in uniform.⁷⁵ An important stipulation was hidden in paragraph 2 of the collection of references to the Civil Code. Until the new associations were recognized as new religious societies, their members were still held to belong legally to their former churches. They had to pay parish dues but could not claim the privileges of

⁷¹ Jacobson, ‘Ueber die Arten der Religionsgesellschaften’, 394–7; GStA PK I, HA Rep. 89.E.VII.19, fols 68, 118–19.

⁷² *Ibid.*, fol. 81.

⁷³ *Ibid.*, fol. 80^v; cf. Barclay, *Frederick William IV*, 40–2, on the Gerlach brothers. Their influence on the king’s decisions is discussed throughout the book.

⁷⁴ Jacobson, ‘Ueber die Arten der Religionsgesellschaften’, 418–20.

⁷⁵ *Gesetz-Sammlung für die Königlich-Preussischen Staaten 1850* (Berlin, 1850), 277–83.

'real' parishioners.⁷⁶ Initially, they did not even enjoy equal civic rights, because their legal status was as yet undefined.⁷⁷ It is little wonder that nobody considered this an attractive option. Soon there were complaints that there were persons who 'took up a position inimical to the church' by joining rationalist 'free congregations' without giving up their church membership.⁷⁸

In 1848 the revolution parliament assembled in the *Paulskirche* in Frankfurt am Main passed the *Grundrechte des deutschen Volkes* ('Fundamental Rights of the German People'), which, in article 5, decreed full liberty of religious belief and practice. The articles were incorporated into the Prussian constitution of the same year and the revised constitution of 1850. Article 12 of the revised constitution guaranteed equal civic rights regardless of religious creed, but this also involved equal duties. It stipulated that 'the performance of civic duties must not be impeded by the exercise of liberty of conscience'. In other words, the nation state propagated by liberal thought claimed precedence over religious conviction.⁷⁹ Mennonites who insisted on their traditional objection to warfare had a hard time. In the past they had had to accept civil disabilities in return for being exempted from military service. Now they pleaded in vain to be allowed to remain second-class citizens, but exempted from conscription. The Mennonite community was rent by a conflict between traditionalists, who often chose to emigrate rather than profit from the king's offer to do ambulance service in times of war, and 'progressives', who sought better integration into German society, shared its nationalist variety of liberalism and were proud to perform military service.⁸⁰

During the middle of the century two new religious societies – the Catholic Apostolic Church (or Irvingites) and the Methodists – began to propagate their teachings in Germany. Their opponents liked to

⁷⁶ *Gesetz-Sammlung 1847*, 123, Fürstenau, *Religionsfreiheit*, 144.

⁷⁷ GStA PK I, HA Rep. 89.E.VII.19, fol. 94.

⁷⁸ Berlin, Evangelisches Zentralarchiv, EZA 7/6976, fols 8–9, circular issued by the Evangelischer Oberkirchenrat, 25 February 1852.

⁷⁹ Anschütz, *Die Verfassungs-Urkunde*, 183, 233. The full text of *Die Grundrechte des deutschen Volkes* is available online at: <<http://www.verfassungen.de/de06-66/grundrechte48.htm>>. This document was incorporated as 'Abschnitt VI' into the constitution passed by the revolutionary Parliament on 28 March 1849.

⁸⁰ Mark Jantzen, 'Equal and Conscripted: Liberal Rights confront Mennonite Conceptions of Freedom in Nineteenth-Century Germany', *Journal of Mennonite Studies* 32 (2014), 65–80; idem, *Mennonite German Soldiers*, 137–59.

characterize them as foreign influences. The leaders of the Catholic Apostolic Church were British, while Methodism was propagated by Germans who had emigrated to the USA and later decided to return to Germany to spread the new faith they had adopted while abroad. The Catholic Apostolic Church first took root in Prussia; the Methodists had their first successes in Württemberg, Saxony and parts of Thuringia. They were relative latecomers in Prussia.⁸¹

In the midst of the revolution of 1848, the first Catholic Apostolic congregation was established in Berlin by Thomas Carlyle (1803–55), a Scottish advocate and the church's apostle for northern Germany.⁸² Their religious and social teachings were conservative and they claimed that they did not want to separate from existing churches but rather to testify to what was lacking in them, inviting the leaders in church and state to acknowledge the spiritual authority of a re-established apostle ministry. They refused to declare their dissent from the established church, but profited from the patent of March 1847 because they could be considered a new religious society in process of formation. The king, evidently sympathizing with their views, made it known in June 1852 that he did not deem it proper to exclude Catholic Apostolic believers from the communion of the national church, especially since they wanted to remain within it. As he saw it, '[T]he Irvingites agree with the creeds of the evangelical church in essentials and only deviate in matters of church organization and liturgy.'⁸³

Catholic Apostolics had their banns published and their marriages performed in the local parish church. They therefore did not have to register as dissenters or 'dissidents' from the established churches. Occasionally, ministers refused to perform such marriages, thus forcing an unwilling Catholic Apostolic to register as a dissident in order to qualify for a civil marriage.⁸⁴ Catholic Apostolic ministers did,

⁸¹ Karl Heinz Voigt, 'Die Methodistenkirche in Deutschland', in Karl Steckel and C. Ernst Sommer, eds, *Geschichte der Evangelisch-methodistischen Kirche* (Stuttgart, 1982), 85–107, at 85–93.

⁸² Tim Grass, *The Lord's Work: A History of the Catholic Apostolic Church* (Eugene, OR, 2017), 98–103.

⁸³ '[D]ie Irvingianer der Hauptsache nach im Bekenntnisse mit der Evangelischen Kirche einig seien und nur in Verfassungssachen und in der Liturgie von ihm abweichen': Evangelisches Zentralarchiv, EZA 7/3458 Irvingianer 1, fol. 276.

⁸⁴ *Ibid.*, fols 190–212; GStA PK I, HA Rep 76 III Sekt. 1 Abt. XIIIa Nr. 25 Bd. 1, fols 230–8; cf. Grass, *Lord's Work*, 101.

however, perform baptisms and were sometimes proceeded against. In 1853, Carlyle reported that several priests under his jurisdiction had been punished for baptizing, 'although recently a priest accused of baptizing has been acquitted by the Supreme Court'.⁸⁵ He added: 'By a recent edict of the Government, the public prosecutors have been forbidden to take up any more accusations against the ministers or members of dissenting bodies for celebrating religious rites.'⁸⁶ When some Protestant clergy tried to refuse to enter Catholic Apostolic baptisms into their registers they were told that apart from their spiritual functions they were also state functionaries entrusted with the registration of births, marriages and deaths.⁸⁷

THE STRUGGLE FOR CIVIL REGISTRATION AND CORPORATE RIGHTS

In article 19, the Prussian Constitution of 1850 envisaged the introduction of civil registration, and in particular of compulsory civil marriage, which was required to precede any church wedding. For years, a decision on how to enact this reform in law was delayed by conservative Protestants and Catholics,⁸⁸ while the 'free congregations', whether Protestant or Catholic, petitioned frequently in favour of civil registration.⁸⁹ Compulsory civil registration was eventually introduced in Prussia in 1874, and in the whole German Reich in 1875. By that time Frederick William IV had died and Germany had been united under Prussian leadership. In addition, in May 1873, as part of a palette of laws directed primarily against Roman Catholics, it became possible for a person to leave their former church without having to continue paying church dues.⁹⁰

⁸⁵ *Apostles' Reports: July 1853* (n.pl., 1853), 18.

⁸⁶ *Ibid.* 21.

⁸⁷ GStA PK I, HA Rep 76 III Sekt. 1 Abt. XIIIa Nr. 25 Bd. 1, fols 278–382.

⁸⁸ Freisen, *Verfassungsgeschichte*, 106; Stephan Buchholz, *Eherecht zwischen Staat und Kirche. Preussische Reformversuche in den Jahren 1854 bis 1861* (Frankfurt am Main, 1981), 106–7; [Kultusministerium], *Aktenstücke aus der Verwaltung der Abtheilung des Ministeriums der geistlichen Angelegenheiten für die inneren evangelischen Kirchensachen vom 26. Januar 1849 bis 11. Juni 1850: Amtlicher Abdruck* (Berlin, 1850), 66–75.

⁸⁹ See, for example, GStA PK I, HA Rep. 76 III Sekt. 1 Abt. XIV Nr. 162 Bd. 2, fols 157–9; Bd. 3, fols 23–43, 81–4, 151, 159, 167^v–169^f, 181–9, 343; Bd. 4 (unfoliated), petitions and reports 1860–1; Bd. 5, petitions and reports 1862; Bd. 6, petitions and reports 1862–5; Bd. 7, identical printed petitions sent in by 44 free religious congregations in 1865 and a summary of proceedings.

⁹⁰ *Gesetz-Sammlung für die Königlichen Preussischen Staaten 1873* (Berlin, 1873), 207–8.

In their petitions the 'Free Congregations' also regularly demanded that they be granted corporate rights.⁹¹ Whereas the old 'tolerated religious societies' were legal entities or 'corporations' who could, for instance, own property, the 'merely tolerated' religious societies were not. They were simply groups of people whose meetings were permitted under certain conditions monitored by the police, with their religious purpose ignored. As a contemporary jurist observed, after 1850 the really important difference between the different 'sects' was whether or not they enjoyed corporate rights.⁹² Such categorizations could change. The 'free congregation' in Magdeburg had been granted corporate rights on 13 January 1848 as a tolerated religious society, but the government repealed that concession on 27 August 1853, arguing that religion was serving as a pretence for dangerous political activities.⁹³ In a similar manner, the German Catholics in the Grand Duchy of Baden had been granted corporate rights on 20 April and 15 May 1848, but these were repealed on 26 February 1852.⁹⁴ Like their Protestant counterparts in Magdeburg, they had agitated for democracy in the revolution of 1848–9. After the revolution governments exerted pressure on leaders and members of 'free congregations', several leaders emigrated to America and from 1852 the congregations dwindled and dissolved.⁹⁵ Part of their programme was taken up by the National Liberal Party during its ascendancy in Prussian politics from 1867 to 1871.⁹⁶

Of the 'new sects' active in Prussia, only the Baptists gained corporate rights. A law of 7 July 1875 decreed that individual congregations of Baptists could be granted corporate rights by a joint declaration of the three ministers of justice, the interior and religion.⁹⁷ They seem to have profited from an intervention by their American co-religionists and their membership in the Evangelical Alliance, but the decisive factor seems to have been the support of the Liberals during their brief period of power. Their parliamentary

⁹¹ Compare n. 89 above.

⁹² Jacobson, 'Ueber die Arten der Religionsgesellschaften', 424–5.

⁹³ Ibid. 418, 421–2.

⁹⁴ Freisen, *Verfassungsgeschichte*, 193.

⁹⁵ Brederlow, '*Lichtfreunde*' und '*Freie Gemeinden*', 112–16.

⁹⁶ Evangelisches Zentralarchiv, EZA 7/3543, printed report of parliamentary session, 2 June 1875.

⁹⁷ GStA PK I, HA Rep. 76 III, Sekt. 1, Abt. XIIIa, Nr. 17, Bd. 8, fols 69–80, 97, 106, 112–26; *Gesetzessammlung* 1875, 374.

spokesman pointed out that he regarded the question of corporate rights for Baptists as a test case that might open up the way for corporate rights for the free congregations and hopefully for all sects.⁹⁸ Officially, it was argued that, except for their views on baptism, Baptists were in conformity with Reformed doctrine, and that they believed in absolute obedience to the higher powers, had declared their readiness to do military service and helped to maintain the social order.⁹⁹ The same might have been said of Methodists and Catholic Apostolics, but their attempts at gaining corporate rights in Prussia failed.¹⁰⁰

On 1 January 1900, a Civil Code (*Bürgerliches Gesetzbuch*) came into force for the whole of Germany. Through it the institution of the 'registered association' (*eingetragener Verein*) was created, which would automatically enjoy corporate rights. Any association could ask a lawyer to draft statutes that fulfilled the required criteria, submit a list of founding members and apply for registration at the regional law court. However, section 61 of the code stated: 'The administrative authority may object to the registration if the association ... pursues a political, socio-political or religious purpose'. When the New Apostolic Church, which had come into existence as a result of a schism within the Catholic Apostolic Church in 1863, attempted to achieve the status of a registered association, the Prussian authorities registered an objection.¹⁰¹

⁹⁸ Rudolf Donat, *Das wachsende Werk. Ausbreitung der deutschen Baptistengemeinden durch sechzig Jahre (1849 bis 1909)* (Kassel, 1960), 238–53. Gottfried Wilhelm Lehmann, the Baptist spokesman in negotiations with the Prussian government, had been one of the most ardent proponents of a German branch of the Evangelical Alliance: Nicholas M. Railton, *No North Sea: The Anglo-German Evangelical Network in the Middle of the Nineteenth Century*, Studies in Christian Mission 24 (Leiden, 2000), 53–6, Karl Heinz Voigt, *Die Evangelische Allianz als ökumenische Bewegung* (Stuttgart, 1990), 15. For the arguments advanced by the Liberal spokesperson in the lower house, see *Stenographische Berichte 1875, Abgeordnetenhaus*, vol. 3 (Berlin, 1875), 1980–1. A 'Friend of Light' praised the Baptists in 1847 for democratic elements in their church government (quoted in Railton, *No North Sea*, 173), whereas the established churches were strongly prejudiced against Baptists: Voigt, *Die Evangelische Allianz*, 13–15.

⁹⁹ *Stenographische Berichte 1875, Herrenhaus* (Berlin, 1875), Drucksache Nr. 26, 6–7; also in Evangelisches Zentralarchiv, EZA 7/3543.

¹⁰⁰ GStA PK I, HA Rep. 76 III, Sekt. 1, Abt. XIIIa, Nr. 31 adh., fols 44, 73; Nr. 25, vol. 2, fols 39–44, 49–61.

¹⁰¹ *Ibid.*, Nr. 25 adh. II, fols 21, 22; *ibid.*, vol. 2, fols 306–9; cf. Grass, *Lord's Work*, 76–8, 93.

In Hamburg, the New Apostolic Church had operated under the constitution of 1860 that decreed the separation of church and state. The police had not even collected any information on its activities.¹⁰² Between 1911 and 1913, negotiations took place there to have the New Apostolic Church entered as a registered association. The political police registered an objection based on section 61 because ‘the Prussian government’ had asked them to do so in order to prevent religious associations from acquiring a secure legal status in a neighbouring German state, from where they could operate in Prussia.¹⁰³ Although the constitution of 1860 provided for granting corporate rights, the Baptists were the last society to obtain them, in 1858; subsequent applications by religious communities were rejected.¹⁰⁴ Similarly, one of the first New Apostolic congregations in Thuringia was founded in the small industrial city of Greiz, capital of the tiny *Fürstentum Reuß älterer Linie* (‘Principality of the Reuss Elder Line’). Although the prince had permitted Methodist assemblies in 1886 and New Apostolic assemblies in 1891, he refused to grant corporate rights to either of them.¹⁰⁵

There were just two states where ‘sects’ became registered associations, the Kingdom of Saxony and the Grand Duchy of Baden. By a law of 6 July 1870, dissenters in Saxony could register their births, marriages and deaths with the local law court. However, religious services could only be held if the ministry of religion granted an organization permission to hold ‘a special religious cult’ outside the established church.¹⁰⁶ If this was not the case, such religious assemblies were supervised by the police, in accordance with the Law on

¹⁰² Hans Georg Bergemann, *Staat und Kirche in Hamburg während des 19. Jahrhunderts* (Hamburg, 1958), 68; Hamburg, Staatsarchiv, Cl. VII Lit. Hf No. 4, vol. 33, fol. 18.

¹⁰³ *Ibid.*, fols 7–17, 35, 41.

¹⁰⁴ *Ibid.*, fols 33–4, 101–3.

¹⁰⁵ Christian Espig, ‘Die “Soziale Morphologie” als methodischer Zugang einer lokalen Religionswissenschaft am Beispiel des Fürstentums Reuß ä.L.’ (doctoral thesis, Universität Leipzig, 2016), 211–17; Greiz, Staatsarchiv, LRA Greiz Nr. 2097, fols 1–2; Nr. 2792, fols 1–9; *ibid.*, n. Rep. A Kap. XII, Nr. 410, Bl. 2–22; *ibid.*, n. Rep. A Kap. XII, Nr. 576; *ibid.*, n. Rep. C Kap. IVb, Nr. 110.

¹⁰⁶ ‘Gesetz, die Einführung der Civilstrandsregister für Personen, welche keiner im Königreiche Sachsen anerkannten Religionsgesellschaft angehören, und einige damit zusammenhängende Bestimmungen betreffend’: *Gesetz- und Verordnungsblatt für das Königreich Sachsen 1870* (Dresden, 1870), 215–21, at 220 (§21).

Associations and Assemblies of 22 November 1850.¹⁰⁷ Thus the legal situation was similar to Prussia, except that in Saxony the exercise of religious rites was not 'tolerated in fact'. Catholic Apostolic congregations and congregations of the *Bischöfliche Methodistenkirche* (Methodist Episcopal Church) were granted permission for their 'special religious cult' in 1871,¹⁰⁸ but the application of the New Apostolic Church for permission to engage in a separate religious *Kultus* ('form of worship') was at first refused.¹⁰⁹ In one town, the use of prayers and hymns was deemed to render a gathering a religious assembly,¹¹⁰ whilst in the capital the police only intervened if the sacraments were celebrated.¹¹¹

In Dresden, the local 'apostolic congregation' of the 'new order' was entered in the register of associations on 27 August 1900, but this entry was subsequently deleted *ex officio*, as it was deemed to have been made in error of law.¹¹² Apparently there were two objections: Firstly, the congregation had been entered before permission for a 'separate religious cult' had been granted; secondly, there existed another 'apostolic congregation' (of the Catholic Apostolic Church) that had already received official recognition. Two associations with the same name could not be permitted in one place. In June 1901 the applicants were advised by the registrar that they first had to have their 'separate religious cult' approved and then gain registration, but that also failed.¹¹³ Rather surprisingly, a new application made for all New Apostolic congregations in the kingdom in March 1902 was granted without delay.¹¹⁴

¹⁰⁷ *Gesetz- und Verordnungsblatt für das Königreich Sachsen 1850* (Dresden, 1850), 264–70.

¹⁰⁸ Leipzig, Stadtarchiv, Cap. 42 G No. 1; Dresden, Staatsarchiv, Amtsgericht Königstein Nr. 1032; Rüdiger Minor, *Die Bischöfliche Methodistenkirche in Sachsen. Ihre Geschichte und Gestalt im 19. Jahrhundert in den Beziehungen zur Umwelt* (doctoral thesis, Karl-Marx-Universität Leipzig, privately printed [Leipzig, 1986]), 152–66.

¹⁰⁹ Chemnitz, Staatsarchiv, Kreishauptmannschaft Zwickau Nr. 2091, fols 1–20; *ibid.*, Polizeipräsidium Zwickau Nr. 917, fols 1–4; Leipzig, Stadtarchiv, Cap. 42 H. No. 1, fols 1–23, Dresden, Stadtarchiv, Sect. III Cap. XVII, Nr. 17, fol. 10.

¹¹⁰ Chemnitz, Staatsarchiv, Kreishauptmannschaft Zwickau Nr. 2093, fols 1–25.

¹¹¹ Dresden, Stadtarchiv, Sect. III Cap. XVII, Nr. 17, fol. 61^v.

¹¹² Dresden, Hauptstaatsarchiv, 11045 Amtsgericht Dresden Nr. 1392, Vereinsregister Nr. 10, 'Apostolische Kirche Dresden, Neupostolische Gemeinde zu Dresden'.

¹¹³ Leipzig, Stadtarchiv, Cap. 42 H. No. 1, fols 36–49; cf. a similar attempt for Lengenfeld in Chemnitz, Staatsarchiv, Kreishauptmannschaft Zwickau Nr. 2097, fols 1–5.

¹¹⁴ See, for example, *ibid.*, Polizeipräsidium Zwickau Nr. 917, fols 39–end (erratic pagination, combined from files for several congregations); Leipzig, Stadtarchiv, Cap. 42 H. No. 1, fols 64–74; Dresden, Stadtarchiv, Sect. III Cap. XVII, Nr. 17, fols 73b–74.

Apart from Saxony, it was only in the Grand Duchy of Baden that the New Apostolic Church proved able to register its congregations under the provisions of the Civil Code of January 1900. The congregation at Karlsruhe became a registered association on 25 April 1903; Mannheim and Pforzheim followed suit in 1907. Property that the New Apostolic Church had acquired in Hesse and Württemberg was registered as belonging to the congregation in Mannheim.¹¹⁵

CONCLUSION

At the end of the eighteenth century, the 'sects', if permitted at all, were subjected to strict control by the authorities of the German territories. This also meant that their legal status was clearly defined in the 'concessions' they had been granted. As a rule, they were restricted to certain regions where they could build up their organizations and maintain meeting places. The more modern 'sects' or 'religious societies' outside the established churches, however, spread wherever people were prepared to accept their teachings. Modern ideas of liberty of conscience prevailed over attempts at restraining people from joining those societies. The monopoly over registration of births, marriages and deaths originally enjoyed by the established churches had been lost where civil registration had been introduced under the influence of enlightened principles spread by the French in their revolutionary wars. That monopoly was eventually removed throughout Germany in 1875.

In order to secure property rights and achieve a permanent legal and economic foundation, the new 'sects' sought to obtain corporate rights. The provisions on 'registered associations' laid down in the *Bürgerliches Gesetzbuch* for the newly united German empire might have given the 'sects' a secure legal status. However, the states could object to that registration through their police, and with very few exceptions they did so. Instead of trying to prevent their subjects from joining 'sects', the civil authorities did what they could to weaken the 'sects' by refusing them legal recognition. In addition, such 'sects' could come under observation by the political police.

¹¹⁵ Zurich, New Apostolic Church International Archive, AL0106; Karlsruhe, Generallandesarchiv, Bestand 276, Zugang 1994–34, Vereinsregister Amtsgericht Mannheim, vol. 3, 271–2; Bestand 284, Zugang 2014–26, Best. Nr. 2, Amtsgericht Pforzheim, Vereinsregister, vol. 2, 11–12.

They tended to run into difficulties if, as 'free congregations', they propagated democratic ideas. In contrast, loyalty to the existing social and political order, as proclaimed by the German Baptists, might be rewarded.

The monarchical system and the established churches were interconnected. When the monarchs gave way to the Weimar Republic, the established churches, deprived of their monarchical heads, managed to maintain many of their privileges. However, Article 124 of the Constitution of Weimar (1919) removed the possibility of governments objecting to the registration of religious societies, and Article 137 laid out further provisions which aimed at giving religious societies a status similar to that already enjoyed by the 'churches' or 'publicly approved religious societies' of the old kinds. To use Fürstenau's terms quoted at the beginning, a greater degree of religious liberty was achieved by giving the 'sects' the status of 'churches' rather than by denying the 'churches' all state support and turning them into 'sects'.