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Published as Rabiat Akande, Maurits Berger, and Vishal Vora, eds. *Concise Encyclopaedia of Religion and Law* (Cheltenham, UK: Edward Elgar Publishing, 2026),
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Protestant Law

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Protestant law from the start was far more diverse and diffuse than Roman Catholic or Eastern Orthodox canon laws. The sixteenth-century Protestant Reformation was born in part of violent rejection of the medieval canon law and papal authority of the Catholic Church. Martin Luther burned the canon law books at the gates of Wittenberg in 1520. Henry VIII outlawed papal jurisdiction in England in the 1530s and declared himself the "supreme head" of the church. Calvinist and other Reformed cities forcibly banished Catholic bishops and church courts in implementing their founding "reformation ordinances." Anabaptists withdrew from church, state, and society into small, ascetic communities governed primarily by the Bible.

Early Protestants taught that salvation comes through faith in the Gospel, not by works of the law. Each individual is to stand directly before God, to seek God's gracious forgiveness of sin, and to conduct life in accordance with the Bible and Christian conscience. To the reformers, the canon law administrated by the church obstructed the individual's direct relationship with God and obscured simple biblical norms for right living. Early Protestants further taught that the church is at heart a community of saints, not a corporation of law. Its cardinal signs and callings are to preach the Word, to administer the sacraments, to catechize the young, and to care for the needy. The Catholic clergy's legal rule in Christendom, they believed, obstructed the church's divine mission and usurped the state's role as God's vice-regent called to appropriate and apply divine and natural law in this earthly life. Protestants did recognize that the church needed rules of order to govern its clergy, polity, property, teaching, worship, and discipline. Church officials and councils needed to oppose legal injustice, urge Bible-based legal reforms, and combat political tyranny. But, for most early Protestants, law was the province of the state not the church.

Accordingly, "Protestant law" from the sixteenth to the nineteenth centuries was the law of the Protestant state – of Lutheran kingdoms, principalities and cities in Germany and Scandinavia; of the Anglican Crown and Parliament in England and its global commonwealth; and of the Calvinist cities and provinces in Europe, England, Scotland, and their colonies. These Protestant state laws were in part public, private, penal, and procedural laws that reflected and reified prevailing Protestant legal and moral teachings. While these forms of Protestant state law waned over the past century with growing secularization and shrinking church influence, a second form of "Protestant law" has remained strong: namely, state rules and procedures governing public and private religious life and regulating the established Protestant church's doctrine, liturgy,

polity, discipline, clergy, membership, property, charity, education, and more. These religious rules remain at the core of Protestant church law today. They govern traditional Lutheran, Anglican, and Calvinist communities, albeit with the states granting ever more autonomy to modern churches. Comparable but self-administered religious laws also govern many other Protestant denominations today -- Adventist, African Methodist Episcopal, Assemblies of God, Baptist, Brethren, Church of Christ, Church of God, Congregational, Evangelical, Methodist, Pentecostal, Presbyterian, Quaker, Reformed, Restoration, and other Protestant churches around the world.

Lutheran Church Law

In early modern Lutheran Germany and Scandinavia, state officials established the Lutheran faith and church and promulgated elaborate "church ordinances" (*Kirchenordnungen*) to govern them. These ordinances reflected and routinized new Lutheran religious teachings; regulated baptism, confirmation, the eucharist, marriage, and burial; reformed the liturgy, lectionary, and religious calendar; vernacularized the Bible, liturgy, and sermon; expanded catechesis and religious instruction in state-run churches, schools, and universities; revamped corporate worship, congregational music, religious symbolism, and church art; collected tithes and other church rates; provided for the administration, maintenance, repair, and expansion of sanctuaries, schools, libraries, charities, missions, publishers, parsonages, and other church properties. These new Lutheran church ordinances also governed the education, ordination, moral discipline, religious orthodoxy, funding, and housing for Lutheran bishops and ministers, and their families.

All these aspects of religion and church life had been governed in detail by the medieval church's canon laws and sacramental rules. They were now subject to the Lutheran state's religious establishment laws. Particularly after the Peace of Augsburg (1555) and the Peace of Westphalia (1648) confirmed the constitutional principle that each civil ruler was free to establish the religion of his own local polity (*cuius regio eius religio*), these religious establishment laws became increasingly detailed, ornate, and routinized. They set out many of the basic religious rules and procedures that were adopted and adapted by other Protestant churches over time and across denominations.

From the start, Lutheran state officials drew on Lutheran theologians and jurists to help craft these church laws. State courts sent files of difficult or novel cases to local university faculties for formal opinions to guide their judgments. Moreover, Lutheran churches retained bishops and intermittent synods of learned divines who were essential for the implementation and reformation of church law.

In nineteenth-century Prussia, and in Germany altogether after World War II, most Lutheran and Calvinist churches were united in one denomination, yielding ample church law reform and growing church independence from the state. Contemporary Nordic Lutheran churches, too, starting with Sweden, have begun to separate from the state and disestablish the Lutheran faith, gaining greater independence for their church

laws, properties, polities, and economies. Beyond Germany and Scandinavia, Lutheran churches around the world are generally not established by the state, and have their own constitutions, bylaws, and regulations to govern religious life. These internal religious laws, however, often advert to traditional rules of established Lutheran churches, and they are integrated and reformed in part by the Lutheran World Federation.

Anglican Church Law

The Anglican church, too, was founded as a state-established church, and it remains so formally today in England and in some of the forty-four autonomous Anglican provinces throughout the world. The foundations for Anglican church laws were laid by sixteenth- and seventeenth-century Parliamentary acts that prescribed the Thirty-Nine Articles of Faith, the Book of Common Prayer, and the King James Bible as the established doctrine, liturgy, and canon of the Anglican church and commonwealth. Several further acts gave the English Crown final authority over the Anglican Church's clergy, polity, and property, and later granted toleration but with strong state legal limitations on Protestant dissenters, and no toleration at all for Catholics, Jews, or others until the mid-nineteenth century.

Parliament, however, did not pass the thrice-proposed "Reformation of Ecclesiastical Law," which would have instituted more sweeping reforms of Protestant legal teachings and practices akin to those in Lutheran and Calvinist lands. Early modern England thus retained a good deal of the medieval canon law, but now with Parliament and the Convocation of English bishops making piecemeal legal changes atop the existing legal reforms of canon law introduced by Henry VIII and Edward VI. England also retained traditional church courts with jurisdiction over probate, marriage, annulment, tithes, defamation, and moral and religious discipline, but now with appeals taken to a new Court of Delegates in England, staffed by civilians and canonists. And England retained a good deal of its traditional clerical hierarchy, but now subject to royal legal supervision and material support. In turn, Anglican bishops served in the House of Lords, Anglican clergy administered a good deal of state law governing charity, education, and public morality, and Anglican ecclesiastical lawyers developed a robust jurisprudence of ecclesiastical law that remains formative still today.

In the mid-nineteenth century, this Anglican system of church law and government was transformed. Church courts lost much of their jurisdiction to state courts, and Anglican "ecclesiastical law" was reduced to the internal affairs and practices of the Anglican Communion – liturgy and worship, faith and doctrine, church property and polity, clerical education and ordination, pastoral ministry and missionary work, religious morality and piety, and the relationships of the Anglican church and its clergy with the state and with other religious communities. Although more limited in scope and power, this remains a sophisticated body of ecclesiastical law, with a cadre of specialized ecclesiastical lawyers involved in its implementation, enforcement, and reformation.

The global Anglican communion has no universal body of binding law. Each local Anglican church province is autonomous and has power to make its own church laws, procedures, and institutional bodies, some of them fiercely independent from the local state and from the mother church in England. Even so, “four instruments of unity” serve to hold worldwide Anglicanism and its ecclesiastical law together -- the Archbishop of Canterbury, the Lambeth Conference, the Anglican Consultative Council, and the Primates' Meeting. In addition, the Anglican church has developed a new covenant of global principles of Anglican canon law and community, covering topics like church government, local and foreign mission and ministry, doctrines, rites, and liturgy, property, polity, and clergy, as well as inter-church relations and ecumenical relationships.

Calvinist Church Law

The Calvinist tradition – with Reformed, Huguenot, Puritan, Presbyterian, Congregational and other internal branches -- insisted from the start on a basic separation of the offices and operations of church and state, leaving the church to devise laws and govern its own doctrine and liturgy, polity and property and to cooperate with the state in other rules governing public and private religious and moral life. Genevan reformer John Calvin set the foundation for this church-state division and cooperation in the Ecclesiastical Ordinances (1541/1561) of Geneva. These ordinances were echoed in many later Calvinist cities and provinces in Europe, England, Scotland, and their North American colonies. These ordinances governed not only church life and religious worship, but also Sabbath observance, public morality and sumptuousness, marriage and family, crime and tort, contract and business, charity and education.

Both Calvinist church and state officials, and university theologians and jurists, worked together to craft these ordinances, but they were promulgated by state authorities. Both church and state authorities also jointly enforced these ordinances. In Geneva and other early modern Calvinist cities, the court of first instance was the consistory, an elected body of civil and religious officials, with original jurisdiction over religious and moral issues and over non-violent offenses. The consistory had power to resolve cases using the tools and threats of spiritual discipline, including the ban from communion and excommunication for egregious offenders. Cases featuring more unusual or violent offenses or recalcitrant parties were removed to the city council and secular courts that had power to impose civil remedies and criminal sanctions, for religious and non-religious offenses alike.

Among most later Calvinist churches, the Genevan-style consistory was transformed into the body of pastors, elders, deacons, and teachers that governed each local church congregation, but often played a less structured political and legal role in the broader Christian commonwealth. Yet local clergy still had a strong role in advising magistrates on the positive law of the local community, and local churches and their consistories also generally enjoyed autonomy in administering their own doctrine, liturgy, charity, polity, and property and in administering ecclesiastical discipline over their members without interference from the state courts. Particularly in colonial New

England, New York, the Caribbean, Indonesia, India, southern Africa, and beyond, these Calvinist congregational churches and their laws were critical sites of authority and liberty, discipline and charity, commerce and constitutional order.

Later Calvinist Presbyterian churches developed hierarchical layers of democratically elected church government above the congregational level – local presbyteries or classes drawn from congregations; regional synods, conferences or councils that drew from and governed the presbyteries; and intermittent general assemblies or councils with representatives from throughout the broader Reformed church. Each of these levels of church government had power to promulgate new rules and procedures for the religious lives of clergy and laity, and to hear and dispose of cases and disputes, with parties free to appeal their cases up the hierarchy to the general assembly if needed. In Scotland, the Kirk cooperated with the state more closely than the church did in other Presbyterian strongholds, and differences over church-state relations were divisive in Presbyterian circles historically and today. In recent decades, the World Alliance of Reformed Churches, has sought to routinize the basic rules of Calvinist church law into general books of ecclesiastical discipline, even while accommodating a variety of forms of Reformed ecclesiology and government.

The foregoing Lutheran, Anglican, and Calvinist forms of Protestant law are subject to endless variations and applications in the literally thousands of different Protestant denominations around the world today. Both the World Council of Churches and various National Councils of Churches have sought to harmonize this wide discordance of Protestant church laws, and to identify common legal principles and procedures across the Protestant denominations. But Protestants have so far resisted such harmonization, let alone codification, of a universal Protestant church law. And with growing theological, political, and ethical divisions between European and North American Protestants and their coreligionists in the Global South and on the Pacific Rim, Protestant church law will likely remain as diverse and diffuse as ever.

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