CONTENTS

Foreword v
Acknowledgments xi
Table of Constitutional Provisions xix
Table of Legislation xxi
Table of Cases xxvii

INTRODUCTION: THE ELUSIVE JURISPRUDENCE OF CHURCH AND STATE 1
The Constitutional Informality of the Church–State Alliance 4
From Domination to Separation: The Flexibility of the Constitutional Framework 6
The Secular Evolution of the Constitutional Order 11
Themes and Principles 15

CHAPTER 1: THE EVOLVING STATUS OF RELIGION IN THE CONSTITUTIONAL ORDER 19
Introduction 19
I. Religion and Constitutional Identity in Independent Ireland 20
II. The Influence of Religion in the Drafting of the Constitution 28
III. Religion as an Interpretive Resource in Constitutional Adjudication 33
IV. The Secularisation of Constitutional Adjudication and Constitutional Discourse 41
Constitutional Interpretation and Public Philosophy after Natural Law 47
## CHAPTER 2: RELIGIOUS FREEDOM IN IRISH LAW: BETWEEN NEUTRALITY AND ACCOMMODATION

### Introduction

I. The Theoretical Bases of Religious Freedom
II. Defining Religious Freedom in Law: Analytical and Conceptual Dilemmas
   - Objections to the "Neutrality" Approach
III. Statutory Exemptions for Religious Practices: Theoretical and Practical Obstacles
   - Exemptions, Fairness and Institutional Competence
IV. The Embryonic Irish Jurisprudence on Religious Freedom
   - The Constitutional Provisions and Case Law: An Inchoate Imperative of Exemption
   - Ambiguities and Lacunae in the Quinn's Supermarket Doctrine
V. Exploring Potential Uses of Religious Freedom in Irish Law
   - Current Controversies
   - Before Exemptions, Neutrality?
VI. Defining the Spheres of Protected Activity and Belief
   - A Minimal Benchmark of "Equal Liberty"?
   - Defining Statutory "Neutrality"
   - Religious Freedom and Secular Purpose in Legislation
   - Religious Freedom Beyond "Neutrality"
   - Deciding what "Religion" Means
   - The Limited Scope of Freedom of Conscience
   - Religious Freedom and Positive State Obligations

### CHAPTER 3: EQUALITY, DISCRIMINATION AND RELIGIOUS FREEDOM

### Introduction

II. The Conceptual Dichotomy of Religious Freedom and Non-discrimination in the School Enrolment Context
   - Religious Discrimination as Interference in Religious Freedom

### CHAPTER 4: RELIGIOUS EDUCATION MODEL IN IRISH LAW

### Introduction: The "Inclusion" Approach to Religious Education

I. The Patronage Framework
   - Religious Education in the "Inclusion" Approach
II. The Conceptual Dichotomy of Religious Education
   - A Conflict of Concepts
III. Exploring the "Inclusion" Approach in the School Education Context
   - Communities of Faith and Educational Utility, Equity and Effectiveness
   - Locating the "Inclusion" Approach in the Irish Constitution

## Conclusion
I. The Limited Scope of "Pluralism" under the Patronage Model 260
II. Formal Neutrality and School Recognition: The Uneven Distribution of School "Choice" 266
   School Choice, Patronage and Power Relations: Protestant Secondary Schools as a Case Study 274
   Inequality and Religious Freedom under the Patronage Model: A Synopsis 281
III. Pluralising the Patronage Model: The Limited Horizons of Reform 284
   Religious Education in Community National Schools: A New Departure? 291
   Religious Instruction in Publicly Administered Schools: Perspectives from United States Constitutional Law 296
   Religious Exercises in Publicly Administered Schools in the Jurisprudence of the European Court of Human Rights 301

CHAPTER 6: THE CONSTITUTIONAL SEPARATION OF CHURCH AND STATE: PROHIBITIONS ON THE ESTABLISHMENT AND ENDOWMENT OF RELIGION 313

Introduction 313
I. Endowment of Religion in the Context of Education: The Significance of the Campaign Decision 320
II. Criticisms of the Campaign Ruling 324
   Dubious Invocations of "Private Choice" 324
   Historical Intentions in Constitutional Interpretation 328
   The Broad Literal Scope of "Endowment" 330
   Non-endowment and the Constitutional Value of Religion 332
III. Religious Freedom, Equality and Church–State Separation: A Purposive Interpretation of the Endowment Clause 335
   A Purposive Jurisprudence of Church–State Separation 335
   Religious Freedom and Separationism in American Jurisprudence 337
   Arguments for a Purposive Jurisprudence of the Endowment Clause 342
   Sectarian Strife, Divisiveness and Non-endowment 346
IV. In Search of an Endowment Clause Doctrine: Comparative Jurisprudence 351

CHAPTER 7: FUNCTION: DENOMINATIONAL

Introduction 313
I. Denominational Concepts 320
II. A Legislative Interpretation of the Meaning of "Religious Freedom" 324
III. Comparative Religious and Political Foundations 328
IV. The Decision of the European Court of Human Rights: Religious Functionality 332
   Religious Freedom in the Jurisprudence of the European Court of Human Rights 335
   Legislative and Constitutional Interpretations 337
V. Between Religious Functionality and Separation 342
   Conclusion 346

CHAPTER 8: ENDOWMENT: THE BROAD LITERAL SCOPE OF RELIGIOUS EDUCATION IN PUBLICLY ADMINISTERED SCHOOLS

Introduction 313
I. Endowment of Religion in the Context of Education: The Significance of the Campaign Decision 320
II. Criticisms of the Campaign Ruling 324
   Dubious Invocations of "Private Choice" 324
   Historical Intentions in Constitutional Interpretation 328
   The Broad Literal Scope of "Endowment" 330
   Non-endowment and the Constitutional Value of Religion 332
III. Religious Freedom, Equality and Church–State Separation: A Purposive Interpretation of the Endowment Clause 335
   A Purposive Jurisprudence of Church–State Separation 335
   Religious Freedom and Separationism in American Jurisprudence 337
   Arguments for a Purposive Jurisprudence of the Endowment Clause 342
   Sectarian Strife, Divisiveness and Non-endowment 346
IV. In Search of an Endowment Clause Doctrine: Comparative Jurisprudence 351
CHAPTER 7: LEGISLATIVE INTERVENTION IN RELIGIOUS FUNCTION: EXPLORING THE CONSTITUTIONAL VALUE OF DENOMINATIONAL AUTONOMY

Introduction

I. Denominational Autonomy as a Constitutional Value: Some Conceptual Ambiguities

II. A Legislative “Buttress” for Religious Function: The Incongruity of the Mass Cards Law

III. Comparative Jurisprudence on Legislative “Neutrality” and Religious Function

IV. The Dubious Constitutionality of the “Mass Cards” Law

Religious Freedom and Legislative Intervention in Religious Function

Religious Discrimination and Legislative Intervention in Religious Function

Legislative Intervention in Religious Function and the Constitutional Principle of Denominational Autonomy

V. Between Neutrality and Recognition: Legislative Intervention in Religion and the Concept of Religious Freedom in Irish Law

Conclusion

CHAPTER 8: BLASPHEMY AND IRISH LAW

Introduction

I. The Liberal Interpretation of Constitutional Blasphemy Law in the Corway Judgment