

1935

## CHURCH GOVERNMENT AND SECULAR AUTHORITY ACCORDING TO LUTHERAN DOCTRINE<sup>1</sup>

This is doubtless one of the most thorough discussions of the relation of church and state, not only in Sasse's corpus, but also in any English language literature.

The title gives a hint of the context of this essay or book. Very soon after it had come to power in 1933, the National Socialist party (Nazis) made quick moves to coordinate the churches with the nationalist revolutionary state. To secure the confidence of the churches, Hitler had announced guarantees for the churches on March 23. Within a few weeks the churches had dropped their reservations about Hitler and began to give him increasing political support. At the meeting of the first Reich conference in Berlin at the beginning of April 1933, the so-called "German Christians," with support of the National Socialist party, called for a single Reich Church and unconditional political and social collaboration with the new Reich. Events moved swiftly: by the middle of July the constitution of the German Evangelical (Reich) Church had been confirmed by Reich law.

The issues involved became very open in the following year with the formation of the "Confessing Church" movement, for instance. It is to be noted that this essay itself is published as a volume in a series by that name. Sasse himself would later become one of the editors of the series.

Sasse wrote this book in late spring of 1935. It was, as he notes in his preface, "one of the most pressing questions in the church of our day." Once again it reveals his astute insight into the events around him. He himself described the setting succinctly some years later in a letter to Tom Hardt of Stockholm: "It was written in the church struggles at the time of Hitler."<sup>2</sup>

Sasse was writing to Hardt in circumstances which, while not as politically dramatic perhaps, were nevertheless compelling enough for him to make a com-

<sup>1</sup> This work originally appeared as *Kirchenregiment und weltliche Obrigkeit nach lutherischer Lehre* (Bekennende Kirche 30; ed. Christian Stoll; Munich: Chr. Kaiser, 1935). MH

<sup>2</sup> Letter of Sasse to Tom Hardt, October 30, 1958, Karin Hardt Collection, Stockholm. RF

parison: the parliament of Sweden was forcing the ordination of women to the ministry on the Church of Sweden. It seems that the day that this book may "be forgotten" (as Sasse suggests at the end of the preface) will be later rather than sooner.

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## PREFACE

This volume is an expanded lecture regarding one of the most pressing questions in the church of our day. The undersigned could not turn down the request to have it published, though he would have been quite pleased to be able to give the work a different configuration, perhaps more in line with the subject treated. Such as it is, may this little book simply cause the reader to note what stands in the confessions of our church. These confessions are so readily quoted, yet hardly understood, and taken with too little seriousness. When this service has been rendered, may this book be forgotten.

Erlangen  
Holy Trinity 1935  
H. Sasse

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## 1. THE NEW ORDERING OF THE RELATIONSHIP BETWEEN STATE AND CHURCH AS A TASK FOR THE PRESENT

The correct ordering of the relationship between state and church is one of those great problems which throughout the history of the church must always be solved anew. A people [*Volk*] to whom the Gospel has been preached for the first time and among whom the church of Christ has begun to become a reality faces this task just like any other people among whom the church has existed for a thousand years and whose history has essentially been determined by the existence of the church. The members of the church may only amount to a vanishing minority within their culture [*Völk*]. Church membership and membership in a culture [*Völksgemeinschaft*] may be essentially coterminal. The church may be poised to fulfill its mission task among a particular people. Or a people may be in a state of full, irreversible apostasy from the church of its fathers.

Still, no matter what circumstances may obtain, solving the problem of "state and church" is always one of the greatest tasks of an era. Genuine statesmen and pedantic bureaucrats, men of the church with real spiritual authority and narrow-minded church officials with clerical ambition, profound thinkers and hollow prattlers, brutal politicians of power and other-worldly enthusiasts [*Schwärmer*], utopian *literati* and men full of practical force and an understanding of reality, cool skeptics and glowing fanatics, believers and non-believers, convinced Christians and decided non-Christians have throughout all of history striven for a clear, decisive, conclusive solution to this problem. But every time someone believes he has found such a solution, joy over the discovery is quickly followed by profound disillusionment. Again and again men have been forced to acknowledge that there finally is no one answer, valid for all time, to the question of the correct relationship of state and church.

Why is there no such answer? There cannot be because it does not have to do with a task which amounts to correctly constructing a theory and then pragmatically defining two human institutions which we are free to form as we choose. That is the way the "Enlightened" modern world of the eighteenth and nineteenth centuries understood the problem. They could view the state and the church as nothing more than phenomena of human culture. The state was the political, the church the religious organization of a people or a group of men. If this were all state and church were, then it would be extremely simple to solve the problem. In fact, we would only have to ask how these two great social structures need be organized in order to correctly fulfill their functions.

The Enlightenment, and those solutions to this problem based upon its principles, tried to find a state constitution correct for all times and peoples, because it is based upon general laws of reason. Later theories tried to find that ordering of state life which fits a particular people [*Tolk*] with its particular disposition and needs and which therefore is the natural or appropriate [*artgemäss*] ordering for a certain people. In both cases it was a question of human reason and authority—or even of human unreasonableness and powerlessness—whether man could erect such a state or not, and whether or not the remaining organizations of human culture could be arranged or coordinated in conformity with it.

But how can this be accomplished if the state is something else altogether? Indeed, it may be that what makes the state is the fact that it is a divine order (*divina ordinatio*), the governing authority established by God. Since the days of the apostles this is how the Christian faith has understood the essence of the state. And it could also be that the church is not at all what theologians and non-theologians since the eighteenth century have thought it to be, namely, a religious society [*Religionsgesellschaft*].<sup>3</sup>

What if that which makes the church the church is not our religion, not even our Christian religion? What if it is rather, as the church teaches of itself, the real and personal presence of Jesus Christ the Lord in the preaching of the Gospel and in the Sacrament? Then the question of the correct ordering of the relationship between state and church is not finally a question of our thought and organizing. Nor is it a question of legislation in matters of state and church, though this all must of course take place. It is primarily much more a question of the obedience

of people over against the command of the Almighty Creator and Lord, whose divine order (*ordinatio*) stands behind the human ordering of the state. And at the same time it is a question of the faith of people in Jesus Christ.

But the demand of obedience to the commandment of God and the call to faith in the Redeemer are issued to all people, to every generation of history. And every generation must hear these for itself. No one else can believe for me. To be sure, there is a blessing of obedience and faith which stretches "to a thousand generations" [Deut 7:9; cf. Ex 20:6]. And this blessing works itself out in every generation of a people, just as the curse of the disobedience and unbelief of our fathers and forefathers has its effect in our lives. And so the condition of the state and of the church, and the relationship which exists between them, is connected to the obedience and disobedience, the faith and unbelief of our fathers. But the extent to which there exists today among our people a genuine state and a genuine church, and whether or not the correct relationship between them obtains, finally depends upon the extent to which there exists a living respect for the immutable commandments of God among our people, and to what extent there exists faith in the saving Gospel of the forgiveness of sins for the sake of Christ.

Here is why every generation of history faces the problem of "state and church" anew. This is why no generation can solve it for those which shall follow. This is why there can be no final solution to the problem. All the attempts at solutions which have arisen in the course of history and all the legal forms by which the terrible struggles over the relationship between church and state have at times been settled and been expressed via extant institutions are an eloquent testimony of how much or how little obedience to the command of God, how much or how little faith in Jesus Christ has been found among those living at the time. But to understand this we must learn to see the underlying course of church history behind the external events.

We have seen fit to place these propositions at the beginning of our discussion in order to prevent misunderstanding regarding our presentation of the Evangelical Lutheran doctrine of the relationship of state and church. It is not our view that the great problem of the correct ordering of the relationship between state and church would be solved simply by formulating correct theories about it and then giving these theories their corresponding form in civil-ecclesiastical law. It should be unnecessary to have to avert this misunderstanding, but unfortunately, we must do so.

An opposition to orthodoxy has enveloped Protestantism in the last two centuries. A general contradiction of all ecclesiastical law has forced its way into modern theology on the basis of senseless theories regarding the nature of religion. But these theories have no basis in Holy Scripture. This is why even in ecclesiastical circles and in theological scholarship, an appeal to a confession which has validity in the church and to valid ecclesiastical law is scarcely understood. Such an appeal is met with an anguished cry in the face of the specter of "dead" orthodoxy and "juridical-rational" thought. But we do not hear the voice of the church

<sup>3</sup> It is entirely misleading to say: "In the Weimar Republic the church was, on account of the state, made a 'religious society.'" This had already happened in the absolute state of the eighteenth century. It was not the Weimar Republic, but already the Prussian King Frederick who had first completed "this disposition of its essence and its dignity." Compare, for instance, the definition of the church in the general territorial law [*Allgemeine Landrecht*], Part 2, Tit. 11, paragraph 11: "Religious societies which have bound themselves to the public celebration of the Divine Service will be called church societies [*Kirchengesellschaften*]." There accordingly, "church" or "church society" is a particular case of "religious society," namely a religious society which has united to the end of exercising public worship [*Kultus*], and maintains the right of the public exercise of its worship, quite irrespective of whether or not this worship is Lutheran, Roman, or generally Christian, or whether it be Jewish or another non-Christian religion. HS

of God in this anguished cry. We hear only the voices of the Pietists, those of the Enlightenment, and the Romantics, all of the past. In what follows we will not let them confuse us as we seek to answer the following question: What does the Evangelical Lutheran Church teach regarding the correct relationship of state and church?

We know that how this relationship is ordered is finally not a doctrinal question, but a question of life, a practical question. We are not so foolish as to think that we would solve this question simply by gaining acceptance for certain theoretical norms. We are convinced that a fundamental settlement of the connection between the new state and the Evangelical Lutheran Church is the pressing task which today is so urgent for the sake of the future of the German people [Völk]. But this problem cannot really be solved if we are not clear on those basic and inviolable principles inherent in the doctrine of our church regarding the relationship of state and church. Among the possibilities which are publicly being suggested for a future settlement of this relationship are some with which the church can under no circumstances agree. By doing so it would be forced to confess basic principles which contradict its confession. If for some reason (say to avoid conflict) the church were not to reject such legal formulations, it would deny the very doctrine which it confesses before the world as the correct explanation of the Word of God, and thereby destroy itself as church.

In what follows we shall briefly present those inviolable principles regarding the relationship of state and church. To surrender these principles would mean the surrender of the church itself as church. Here we must presuppose knowledge of what the Evangelical Lutheran Church teaches regarding the state or secular authority as a divine order, and also of what our church teaches regarding the nature of the church and the office of the ministry. Here and there in the course of our presentation we also will have something to say regarding them. But the question which is posed to us is the question of the connection between state and church, between secular authority [weltlicher Obrigkeit] and the spiritual office [geistlichem Amt], and especially the question of what rights and duties secular authority has over against the church.

## 2. WHAT IS THE "LUTHERAN DOCTRINE"?

The question of which rights and duties secular authority has over against the church according to Lutheran doctrine can never be answered by simply pointing out the legal state of affairs which existed earlier or which still exist today. The legal relationship between the Evangelical Lutheran Church and the state in the various countries in which Lutheran churches exist has at times been arranged quite variously (e.g., in Germany, France, Holland, the East European and Baltic States, the Scandinavian countries, the United States of America and Brazil, and the countries of the British Empire and in East Asia). And in each individual country this relationship has undergone various changes in the course of historical development. We can never assert on the basis of a historical judgement (e.g., by

asserting that a definite form had already existed at the time of the Reformation) which legal forms which have resulted from such a process are legally correct and which not, according to the doctrine of the Lutheran Church. Much less can we do so by judging its practical usefulness (e.g., by asserting that one definite form has proven to be in the best interest of the church and state).

The criterion for every decision is much rather only the question of whether the legal forms being debated are in harmony with the Evangelical Lutheran doctrines of the church, or the office of the ministry, of civil order [Staatsordnung] and secular authority. If the ecclesiastical-legal forms are examined from this viewpoint, the circumstances will show that very old, and apparently also very sound, formations of the legal relationship between church and state are false.

The "Evangelical Lutheran doctrine," which must form the basis for that judgment is of course not the doctrine of this or that famous Lutheran theologian. Nor is it the doctrine of a particular theological school which confesses Lutheranism. It is rather that which is valid doctrine in the Evangelical Lutheran Church, that is, the doctrine of the *confessions* in which our church once expressed its understanding of the Word of God and which it confesses yet today.

To be sure, the other doctrinal documents of our Reformation, especially those of Luther himself, ever and again attract our interest as a necessary commentary. But we fundamentally maintain that that which is to be regarded as doctrine of the Lutheran Church is not simply what can be gleaned from the writings of Luther. Our doctrine must be taken first of all from the church's confessions. For the Evangelical Lutheran Church has certainly not adopted every individual thought of the Reformer as its doctrine and placed each under the "we believe, teach, and confess" of its confession. In expressing this, we are not establishing a new principle. We are only repeating what the confessions themselves teach regarding the authority of Luther in the church.<sup>4</sup>

## 3. THE BASIC PRINCIPLE OF THE SEPARATION OF POWERS

According to the doctrine of the Lutheran Church, the spiritual office and secular authority have entirely different tasks. Their realms of authority and functions dare not be mixed and interchanged.

"For the consolation of consciences" Augustana Article XXVIII [4] teaches "the difference between the spiritual and secular power, sword and government." And then it warns "that both governments and powers, for the sake of God's command, should be honored with all devotion and well maintained as two of the greatest gifts of God on earth" (AC XXVIII 4). Over against the ascetic and theocratic errors of the Papal Church and those of fanaticism [Schwärmertum], this "high necessary article" regarding secular authority shows "what a gloriously

<sup>4</sup> See what the Formula of Concord (SD VII [34 ff.]) says about Luther as the "most important teacher of the churches which confess the Augsburg Confession" [SD VII 41] and regarding the authority of his writings. HS

great office" the office of secular authority is (Ap XVI 13 [65, German]). It admonishes the spiritual office to be mindful of its limitations and to acknowledge and honor the office of secular authority with its tasks and value.

Therefore the spiritual power has its commission to preach the Gospel and to administer the Sacraments; and it is not to invade an office which is not its own, should not set up or depose kings, should not annul secular law or undermine obedience to authority, should not make or prescribe laws for secular authority regarding secular dealings (*non praescribat leges magistratibus de forma rei publicae constituendae*), as Christ himself said: "My kingdom is not of this world." (AC XXVIII 12-14 [quoting John 18:36])

These words from Article XXVIII explain the admonition: "Therefore the two governments, the spiritual and secular, should not be mingled or confused" (AC XXVIII 12).

Does this commingling of powers (*commisere potestates*) occur only by the spiritual office overreaching its sphere? Or is there also an "intrusion into the office of another" (*irrumperet in alienum officium*), an illicit reaching into the realm of a foreign office, which occurs on the side of the secular authority? The latter is also a problem. In the preface to the "Instruction for Visitors" of 1528 [LW 40:262-320] Luther indeed calls upon the elector to take upon himself to remedy the ecclesiastical abuses and to call for the visitation. But Luther directly asserts in this passage, which otherwise places upon the elector a large measure of responsibility for the church, that "[he] is not obliged to teach and to rule in spiritual affairs."<sup>5</sup> He saw clearly at that time the danger that the secular authority could arrogate to itself functions of the spiritual office.

In his last years he spoke bitter words which display his great disillusionment over the intrusion of the secular authority into the sphere of the church:

Therefore they should either become pastors, preach, baptize, visit the sick, give the Sacrament, and do all things ecclesiastical, or they should cease confusing vocations, see to their courts, and leave the churches to those who have been called to them, who must give account to God. . . . We desire ecclesiastical office and the court to be separate, or [we shall] abandon both. Satan goes on being Satan. Under the pope he mixed up the church in politics. In our time he desires to mix up the political realm in the church. But we will resist with God's help, and strive to keep the vocations separate.<sup>6</sup>

<sup>5</sup> WA 26.200.20 [the English translation is from LW 40:273]; on this passage see below. HS

<sup>6</sup> Letter to Daniel Greiser in Dresden, October 22, 1543 (Enders-Kawerau, 15, 256, 10). Compare also the letter to Amstdorf of July 21, 1544, where Luther complains: "The [royal] court is useless; its government is pure crayfish and snails. It won't continue to stand and will likely fall altogether. Christ looked after the church well by not entrusting the administration of churches to the court. The devil would have nothing to do if he did not have Christian souls to gobble up" (Enders-Kawerau, 16, 52, 13). Behind this complaint we see not only the disposition of the old Luther, but theological principles which the Reformer had constantly advocated. This is demonstrated by his answer to Melancthon's question from

Here Luther asserted the validity of the warning of Augustana XXVIII [12], which was produced under different circumstances: "Therefore the ecclesiastical and civil powers are not to be commingled" (*non igitur commisiscendae sunt potestates ecclesiasticae et civiles*). Now it was directed against the claims of the state. Whatever may make both powers guilty of overstepping their legal bounds, in every case it remains the sin of "the intrusion into a foreign office." Therefore according to Luther and Lutheran Church doctrine, the rule "It is not to rush into an alien

the Augsburg Reichstag, whether or not ecclesiastical traditions (*traditiones*) could be imposed with binding authority by the government [*Obrigkei*] and thus also by the bishops, if they were not in opposition to the Gospel, something like the way pious kings of Israel had ordered fasts (WA Br 5.476 f.). Luther's answer of July 21, 1530, said, among other things:

First, since it is certain that these two administrations are distinct and diverse, namely, the ecclesiastical and the political, which Satan wonderfully has confounded and mixed through the papacy, we must be extremely diligent here not to confound them again ourselves, nor allow or consent to anyone else who does so. For this would make us thieves and robbers, because here the authority is divine, and it prescribes that these be kept diverse and unmingled, saying: "Not so with you." (WA Br 5.492.10; cf. Matt 20:26)

These words, as is the case with AC XXVIII, are directed in practice against the bishops, who were simultaneously holders of the spiritual office and secular authority, and demanded obedience to their orders in the name of God. The significance of this passage is that it shows how Luther appropriated AC XXVIII. Finally, we note Luther's explanation of John 2:13 ff. (WA 46:725 ff. [LW 22:225 ff.]) of 1537, where he deals with the doctrine of the separation of governments on the basis of the account of the purification of the temple:

And from now to the end of the world these two realms [*zwei Reigmen*], see further LW 13:147, note 4) are not to be confused, as was done in the Jewish nation during the period of the Old Testament. Henceforth they are to remain distinct and separate from each other, if the pure Gospel and the true faith are to be preserved. (WA 46:173-4.21 [LW 22:225; the English translation here and in the following quotes in this note is from LW 22])

And the civil governments—the princes, kings, the nobility in the country, and also the judges in the villages—take it upon themselves to wield the oral sword and to tell the pastors what and how to preach and how to administer their congregations. But you say to them: "You fool and stupid dunce, attend to your calling. Don't try to preach, but leave that to your pastor!" On the other hand, the schismatic spirits will not content themselves with the oral sword but will reach rebelliously for the secular sword and will insist on reigning in the city hall. All this is due to the devil's maneuvers, who will not desist until he has brought about confusion with respect to these two swords. (WA 46:1735.10 [LW 22:225-26])

But I exhort you who are one day to instruct consciences in the Christian Church to take heed that you abide by the distinction between the two realms. For if these are confused, neither will prosper. (WA 46:1736.4 [LW 22:226])

You will discover that the devil will again confuse the two. (WA 46:1736.13 [LW 22:226])

It is not likely that the pope will harm us or rob us of the Gospel, for he is too badly beaten. But the young noblemen will—the members of the nobility, the princes, as well as the evil jurists. They go about nowadays with an air of authority and try to dictate to the pastors what they are to preach. They want to foist their will on the people with reference to the Sacraments, arguing that as the secular government they are entitled to obedience. And thus they merge the spiritual and the secular realms. The pope did this too. (WA 46:1736.22 [LW 22:227])

But if the princes continue to jumble the two, as they are now doing, then may God in his mercy shorten our lives that we may not witness the ensuing disaster. For in such circumstances everything in the Christian religion must go to wrack and ruin. This is what happened in the papacy when the bishops became secular princes. And if the secular lords now become popes and bishops and insist on sermons that defer to their wishes, then let the wretched devil preach to them; for he preaches too. But let us pray God that neither the spiritual nor the secular realm abuses its office that way! (WA 46:1737.27 [LW 22:228]) HS

office" (*non irruptat in alienum officium* [AC XXVIII 13]) also applies to the secular authority.

It is a terrible misfortune that Lutheran theology of the past did not always and on all sides clearly teach the resultant consequences of the propositions of Augustana Article XXVIII [regarding the state's intrusion into the church]. Thus it is only reasonable that the following warning applies to the state: "It shall not abrogate the laws of the church, nor take away legitimate obedience . . . nor prescribe laws to bishops concerning the forms of constituting the church" (*non abroget leges ecclesiae, non tollat legitimam oboedientiam . . . non praescribat leges episcopis de forma ecclesiae constituendae*).<sup>7</sup>

#### 4. THE CHURCH GOVERNMENT OF THE TERRITORIAL LORD [LANDESHERRLICHE] IN THE LIGHT OF THE LUTHERAN DOCTRINE OF THE CHURCH

##### THE RISE OF CHURCH GOVERNMENT BY TERRITORIAL LORD

*A mixing or confusing of ecclesiastical and civil functions would occur were the secular authority to lay claim to the government of the church or only a portion of the same. Therefore, the Confessions of the Evangelical Lutheran Church do not acknowledge a participation of the secular authority in the governing of the church.*

This assertion will surprise many a reader who is not familiar with the Confessions of the Lutheran Church. The amalgamation of Evangelical Lutheran Churchdom of the sixteenth century with the state has been treated as something so self-evident that even today it is still inconceivable to many that this relationship could perhaps be in essential disagreement with the Reformation, and even stand in direct contradiction to the teaching of the Evangelical Lutheran Church. And yet it is in fact the case that the system of church government by territorial lord [*landesherliche Kirchenregiment*], which at that time represented the amalgamation of state and church, resulted neither from the doctrine of Luther nor had its basis in whole or in part in the Confessions of the Lutheran Church. In order to prove this thesis, which is absolutely essential to our entire presentation, it will be necessary first to take a look at the origin and the beginnings of the system of church government by territorial lord and the amalgamation of state and church which obtained within it.

##### MIDDLE AGES

Church government by territorial lord and the ordering of the established connection between state and church which went along with it triumphed for the

first time with the Reformation. And it was carried out above all in the Protestant countries. But it certainly does not follow that this form of church constitution is a child of the Reformation. It was much rather an idea which had already existed before the Reformation, and it was in many instances simply a reality of political life. Not only in the emerging nation states of Western Europe, but in Spain, France, and England the king claimed an ever-increasing right over the church. But also in Germany increasingly the territorial lords who were becoming sovereign princes were guaranteed the principle which had already been ascribed to many of them in the fifteenth century: "he would be in his land pope, Caesar, and German master all in one."<sup>8</sup>

The idea that the secular prince could also govern the church is precisely a medieval idea. It presupposes a *medieval society* which is both state and church, in which all members are so bound by the unity of faith that the heretic cannot be guaranteed any civil or even physical existence. In this society, which as a "Christian body" (*corpus Christianum*) represented a great synthesis of church and world, of state and church, the two powers which stood at the head, the spiritual and the secular, wrestled for primacy.

Thus the history of the Middle Ages is defined by the claims of both powers and by the guilt of each as it intruded into the realm of the other, whether the spiritual power usurped rule over the state or the secular authority claimed rule over the church. The serious collapse of the papacy in the fourteenth century, above all its forfeiture of moral credit since the great schism, or for that matter the complete inner apostasy of the church in the centuries of the late Middle Ages, necessarily resulted in the ascendancy of the power of secular princes in all ecclesiastical affairs.

As always, the codification of church law follows church-political developments. If one part of the *corpus Christianum* broke down, should not the other intervene? Was not the office of the Caesar and of secular authority in general also from God? Had not the glimmer of a holy and divinely established institu-

<sup>8</sup> Consider also the well-known saying: "The Duke of Cleve is pope in his land" (*Dux Clivie est papa in terris suis*). On the origin of this expression and its many parallels, see Justus Hasbagen, *Staat und Kirche vor der Reformation* (1931), 550 ff. In his comprehensive work, which continues and expands Werninghoff's studies on the rise of church government by territorial lord, Hasbagen comes to the following conclusion:

The rich development which church government by territorial lord experienced already previous to the Reformation sufficiently demonstrates that the determinative roots of this church-political manifestation of the Lutherans reach well back into the medieval past. Whoever is convinced of this will view as hopeless every attempt to explain the derivation of this form of church government of the Lutherans purely on the basis of a new and specifically Lutheran fundamental viewpoint. An inherently necessary connection between state and territorial church thought and traditions on the one hand, and the genuinely new forms of Lutheranism on the other hand, did not obtain.

Calling upon H. Boehmer, von Below, Haller, Kahl, and others, Hasbagen asserts:

Church government by territorial lord, at least in its theoretic and practical fundamental outlines, was throughout a medieval inheritance. . . . As such it had nothing to do with the innovations of the Reformation. With its unmistakable medieval idiosyncrasies, it much rather appeared to be a completely foreign phenomenon in this innovation. (pp. 558-59) HS

<sup>7</sup> Sasse uses the words of AC XXVIII 13, but reverses the "powers." Thus the original: "It shall not abrogate the laws of civil rulers, nor take away legitimate obedience . . . nor prescribe laws to civil rulers concerning the form of the Commonwealth." ME/RF

tion, without which Christianity was inconceivable, shone about the office of the Roman Caesar since ancient times? Was not the Caesar as bearer of the secular power the "protector" of the church, her mighty patron, and guardian of her legal right in the world? Did this not result in rights and duties of the secular authority over against the church, rights and duties which in the written and unwritten law of the empire and church were established, but which, because of an ever-changing historical situation, had to be defined anew?

Thus in the late Middle Ages there arose among princes and churchmen, lawyers and theologians, theories of canon law which contradicted the claims of the papacy of the high Middle Ages to unlimited world rule. Such theories defined anew the relationship of the two powers to each other. Among these theologians it was Occam, the "master" of theology,<sup>9</sup> in whose theology Luther was later trained. In the second quarter of the fourteenth century, barely two hundred years before the Reformation, Occam decidedly contested the papacy's claims to world rule, and he did so calling upon the Bible and natural law. He fought to limit the pope's legal right to the spiritual realm, and he asserted the proper legal right of secular authority.

At the same time the famous lawyer Marsilius of Padua<sup>10</sup> was also fighting for similar goals. His *Defensor of the Peace* (*Defensor Pacis*) was an insightful anticipation of state and canon law theories of the modern world.<sup>11</sup> In his presentation of the relationship between the spiritual and secular powers, he goes even beyond Occam. He teaches not only that in secular affairs (e.g., taxation) the hierarchy is subject to secular authority and its judgment, but he even ascribes to secular authority a legal right which directly entails a right of supervision over the spiritual functions of the church. The bearer of the governing power should have the right to hold bishops and other clergy to the fulfillment of their ecclesiastical duty (e.g., the administration of the Sacraments). He should also possess the right to call a council. And at such a council, alongside the clergy, the laymen are also to take part. Of course, they should be laymen who are believers. The right to determine laws for the faithful (*legislator fidelis*) can only be granted to the Christian bearer of the governmental office.<sup>12</sup>

<sup>9</sup> William of Occam (ca. 1280-ca. 1349) advocated the independence of civil rule. He was excommunicated in 1328 (*Lutheran Cyclopaedia*, 586), MH/RP.

<sup>10</sup> Marsiglio dei Mainardini (ca. 1275-1342) was rector of the University of Paris in 1313. He wrote *Defensor Pacis* in 1324 which was condemned by the pope in 1327. He fled to Nuremberg and found protection in the court of the emperor, Ludwig of Bavaria, who himself had just been excommunicated. According to Marsilius,

the State is the great unifying power of society to which the Church must be completely subordinated. . . . The Church . . . has no inherent jurisdiction whether spiritual or temporal. All her rights in this regard are given her by the State. . . . The principal authority in all ecclesiastical matters is the General Council, which should be composed of priests and laymen. These ideas, which ran counter to the whole medieval conception of society, have led to Marsiglio of Padua's being claimed as a forerunner of the Reformers, modern democracy, and even totalitarianism. (ODCC, 1043) RP

<sup>11</sup> No need here to enter into the question of sources and collaborators of Marsilius of Padua. HS

<sup>12</sup> Marsilius of Padua, *Defensor Pacis*, 2:20. HS

These concepts, which the pope proceeded to condemn as heretical, were of course not likely to prevail. They were at the time the insightful ideas of an individual thinker. But they spread gradually and exercised great influence. They formed the theoretic basis of the above-mentioned claim of greater and lesser princes each to be "his own pope" in his land. It is not surprising that from this claim and those ideas would arise new forms of church constitution when the attempt of the medieval papacy to reassert its power in the wake of political decline finally came to nothing or some other catastrophe befell the obtaining hierarchy. The new "popes" stood ready to claim the inheritance of the Roman papacy in the case of such a catastrophe. It was not to be expected that they would waive their claims when some future theologian raised objections and constructed other doctrines regarding the governance of the church, such as the *Defensor of the Peace* (*Defensor Pacis*). *The rule of the territorial lords over the church was a historical fate which was unavoidable when papal rule finally broke down, quite irrespective of what finally caused such a breakdown.*

#### THE CHURCH OF ENGLAND

The new form of church governance had little to do with the Reformation of Martin Luther and the doctrine of the Lutheran Church. It was much rather deeply rooted in medieval Catholicism, which was now ending. This is shown by the fact that the church in which church governance by territorial lord established itself as something completely self-evident, and in which it found its most complete fulfillment, was a church which Luther and his Reformation most emphatically rejected: *the Church of England*. The king who was such a decided opponent of the doctrine of Luther that he held the title "Defender of the Faith" (*Defensor fidei*), given to him by the pope, became the founder of the most powerful state-church system in Europe (here we need not take into account Russia).

Just when in Germany the emerging Evangelical Lutheran Church had confessed its doctrine before the world at Augsburg, the Convocations of Canterbury and York confessed their adherence to the new dogma of the Church of England, namely the thesis that His Majesty the King is the lord protector, the lord and supreme head of the Church of England, so far as the law of Christ allows. This thesis has been repeated ever and again in the history of the English Church. It is an integral component of its confession. This confession gave dogmatic foundation for the king's rule of the church when in Article 37 it asserts that in the English Empire His Majesty the King "has the highest power. And he has the supreme governance of all the estates of this kingdom in all cases, whether these are ecclesiastical or not" ("summam habet potestatem, ad quam omnium statuum huius Regni, sive illi ecclesiastici sive non, in omnibus causis suprema gubernatio pertinet").<sup>13</sup>

<sup>13</sup> E. F. K. Meiller, *Die Bekenntnisschriften der reformierten Kirche* (Leipzig, 1903), 519-20. HS

This is from Article 37 of the Thirty-nine Articles, "Of the Civil Magistrates." RP

The king is, accordingly, the "supreme governor of the church."<sup>14</sup> He is not entitled to exercise the functions of the spiritual office, the proclamation of the Word and the administration of the Sacraments, but he indeed possesses the highest jurisdiction over ecclesiastical business.<sup>15</sup> For instance, no one may consecrate a bishop, nor may anyone be legally elected or consecrated a bishop in the Church of England who has not been nominated by the king for the office concerned. The correlate of this royal supremacy was the end of papal jurisdiction in England, and thus the cited Article 37 contains the assertion that the bishop of Rome possesses no jurisdiction in the English Empire.

#### THEOLOGICAL FOUNDATION

The question of just how this position of the territorial lords over against the church was *theologically* grounded is extremely important. There can be no doubt that the late-medieval theories regarding the rights of secular rulers in the church were determined by ancient philosophy regarding the state. This is completely evident in the philosophy regarding the state of the Renaissance. But already Marsilius shows the influence of ancient thought regarding the state. His view that the church should be subordinate to the state in all matters, that it should be a matter of state governance to stipulate the number of clergy, to appoint pastors and bishops, to have control of church property, to set laws for the church and to exercise jurisdiction over the clergy, to call councils and supervise ecclesiastical life, has nothing to do with any sort of religious or theological convictions. It is the view of a man who had very definite philosophical convictions regarding the state as "the entity encompassing all the life functions of humanity in which a perfected society is not obtainable without human happiness."<sup>16</sup>

It is of the essence of this state that it be concerned not only for the temporal or mundane (*temporale sive mundanum*), but also for the eternal or heavenly (*aeternum sive caeleste*) in the lives of its citizens. The exercise of the public *cultus* is just as much a civil matter in this state as it was in the ancient state. Just as Constantine<sup>17</sup> once transferred the religious functions of the Roman Caesar as the *Pontifex Maximus* ["supreme pontiff" or "priest"] into the Christian and ecclesiastical realm, so the same mistake was repeated again here by importing the humanistic doctrine of the state into the realm of legal theory regarding state and church. It is clear that there is no interest here in a theological foundation for the right of the ruler over the church. Marsilius of Padua did not need such a foundation. It was otherwise in the case of the Church of England however. To be

sure, the political and civil law theories of Humanism played a great role in the founding of this church which was born completely of the spirit of the Renaissance. But royal supremacy had to be theologically justified over against the papacy and its religiously grounded claims.

How this happened is shown by the Second Canon of the Constitutions and Canons of the Church which threatens with excommunication anyone who "asserts that His Majesty the King does not have that same authority in ecclesiastical affairs which the blessed kings had possessed among the Jews and the Christian Caesar in the ancient church." Consequently here it is claimed that the Christian or believing ruler possessed explicit legal authority over the church of his land, that the "pious magistrate" (*pius magistratus*) possessed rights over against the church which did not belong to the office of magistrate in and of itself, just as Marsilius in the *Defender of the Peace* had ascribed legal authority over the church to the "faithful legislator or his ruling authority" (*legislator fidelis aut eius auctoritate*).

Since there was no support for this in the NT, the example of the pious kings of Israel and the Christian Caesar of the ancient world were put forth. Thus *David* and *Constantine* were constantly held up in the Middle Ages as types for the Christian rulers and their relationship to the church. The particular rights of the secular ruler in ecclesiastical matters consequently depended upon their relationship to the church. According to this view, the pious King Hezekiah possessed rights in Israel which no longer belonged to his son Manasseh, the idol worshiper. Constantine possessed rights which in no way were possessed by his predecessors.

According to this theory, Constantine the Great obtained these rights over the church the moment he took the church under his protection. That assuming the duty of protection did not yet mean conversion to the church, that the brutal politicians of power among the Caesars of the fourth and fifth centuries, for whom the church was only an object and means of political maneuvering, cannot be called "Christian Caesars" without great qualification, are historical judgments which lay outside the purview of men of the passing Middle Ages and the time of the Reformation. But the concept of the pious, God-fearing or Christian government which possessed particular rights over the church is just as unclear as the concept of the ancient "Christian Caesar."

The bearers of secular power possess these rights not merely as persons who govern. Nor do they possess them as Christians or pious men. They possess them only because they are *simultaneously persons having secular authority and Christians*. Thus the concept of the "Christian" or "pious" government is a typically medieval concept. In it lurks the medieval ideal of the Christian government or the Christian Caesar, who not only possesses a secular but at the same time an ecclesiastical office. Thus this concept is a testimony to the medieval synthesis of church and state. And the same is true of the right of church governance which that "Christian" government possessed. Can there be a more obvious testimony to the medieval synthesis of church and state than the idea of a right which the Christian government possessed, not because it was government, nor because it

<sup>14</sup> This title in 1559 replaced the older "supreme head" (*supremum caput in terra, post Christum, Ecclesiae Anglicanae* ["supreme head of the Anglican Church on earth, after Christ"]), which was used by the first draft of the confessions, the Forty-two Articles of 1552. HS

<sup>15</sup> Jurisdiction over the state ecclesiastical" (*status ecclesiasticus*) according to the Constitutions and Canons Ecclesiastical of 1603 (text and translation from C. Fabricius, *Corpus Confessionum*, 2:4-465 f.). HS

<sup>16</sup> A. Hauck, *Kirchengeschichte Deutschlands*, 5:503. HS

<sup>17</sup> Constantine I "the Great" (ca. 280-337) was Roman emperor from 306 until 337. MH



was Christian, but insofar as it was both at the same time? But this and nothing else is the legal right of the so-called church government by territorial lord.

#### LUTHER'S POSITION OVER AGAINST MEDIEVAL THOUGHT

From what we have said, it is clear that it is completely impossible to deduce the arrangement of the connection between state and church which we have designated "church government by territorial lord" from the Lutheran Reformation. Luther is as little the founder of this form of church constitution as he is the founder of Anglicanism. Luther and the other Reformers much rather entered a situation in which the claims of the secular authority to church governance or an essential portion of the same already obtained. They lived in a world in which the ideas behind these claims were already an intellectual force.

The question they faced was only *one of how they would position themselves in respect to these ideas. Would they, or to what extent would they compromise with the development of a state and church legal arrangement defined by these ideas? Would they oppose it, and if so, how would they bring to bear their opposition?* If Luther's views in the early years of the Reformation are considered from this vantage, then in many respects they do not appear as new and revolutionary as has often been thought. There is much which is new and revolutionary in the powerful appeal "To the Christian Nobility of the German Nation" [WA 6,404-69; LW 44:115-217]. Note, for instance, the unrelenting consequence of thinking through to its end the concept of the general priesthood of believers,<sup>18</sup> or the inexorable seriousness with which the often-expressed vexations of the German nation were expressed here and given form as a convulsing complaint of an entire people against the papacy.

But the ideas of calling upon the secular authorities for assistance, of impressing upon them that it was their duty to lend their assistance or forsake the spiritual office, of ascribing to them the right to call a council were not new concepts. They are certainly not concepts which resulted from a new understanding of the Gospel. They are concepts which had been generally advanced in the now-fading

<sup>18</sup> Compare the self-evident assurance with which Luther (WA 6,407,34) answers in the affirmative the question of whether or not a small group of Christians who have no ordained priest can choose one out of its midst and ordain him to the office of the ministry, with the vagueness of the *Utopia* of Thomas More of 1516 on this question. We read here ("On Utopian Religions"):

Not a few joined our religion and were cleansed by the holy water of Baptism: But among us . . . there was, I am sorry to say, not a single priest; they were initiated in all other matters, but so far they lack those Sacraments which with us only priests administer. They understand, however, what they are, and desire them with the greatest eagerness. Moreover, they are even debating earnestly among themselves whether, without the dispatch of a Christian bishop, one chosen out of their own number might receive the sacerdotal character. It seemed that they would choose a candidate, but by the time of my departure they had not yet done so. [St. Thomas More: *Utopia* (edited with introduction and notes by Edward Surz, S.J.; London: Yale University Press, 1964), 132]

Here we see very clearly Luther's advance over Humanism and at the same time the difference between the concept of church of Lutheranism and that of Anglicanism and humanistic Catholicism. HS

Middle Ages and which Luther in this document appropriated because they were as self-evident to him as to all of his contemporaries who earnestly labored to remedy ecclesiastical abuses. The breakdown of the spiritual estate was so appalling at the time how could the most pressing problems possibly be remedied unless the secular authority stepped in to help? Who else had the power to oppose the persistent legal aberrations of which the high ecclesiastical authorities had become guilty?

#### THE SURRENDER OF THE MEDIEVAL SYNTHESIS

If Luther in his appeal to the government still operated completely within the patterns of thought of his time, how then is his view of the relationship between spiritual and secular power different from that of any of his contemporaries? What new ideas did the Lutheran Reformation produce in this matter? This is not an easy question to answer. And indeed, the difficulty lies in the fact that Luther on the one hand sharply and fundamentally distinguished spiritual and secular authority and decisively opposed every attempt to mix them. But on the other hand, he was not prepared to free himself fully from the effects of the medieval synthesis of church and state, spiritual and secular, and to actually carry to its conclusion this correctly acknowledged principle.

We noted above that the concept of the "*Christian governing authority*" with its particular rights and duties over against the church, which were derived neither from its governmental nor its Christian character, is a typical example of the medieval synthesis of church and world. If had its sole basis in the fact that its bearers were both governing persons and Christians. Consequently, to be a Christian Caesar, for example, meant more than being a Caesar and a Christian. The rights and duties of the Christian Caesar could not simply be divided into those which had to do with the Christian and those which had to do with the Caesar. There were rights and duties which belonged neither to the Caesar as such nor to the Christian as such, which were possessed only by the Christian Caesar.

How did Luther and the Lutheran Reformation view such offices (be it that of the Caesar, a territorial lord, or a collegial municipal government) in which civil and ecclesiastical tasks were bound together in a manner characteristic of the medieval synthesis of church and world? Karl Holl<sup>19</sup> once said it was Luther's great deed that he "finally gave up that confused concept of a spiritual-secular Reich." That is correct. Luther of course knew that he lived among a people [*Volk*] who became members of the church and the society through Baptism. He knew the difference between a pious and a godless prince. He knew therefore that

<sup>19</sup> *Luther und das landesherrliche Kirchenregiment*, *Gas. Aufsätze*, I, Luther 6, p. 344. HS

Sasse had been a student of Karl Holl (1866-1926) at the University of Berlin (1913-1917). Holl's famous lecture on Reformation Day 1917 is said to have begun the rebirth of Luther studies in the twentieth century: "What Did Luther Understand by Religion?" (*Gas. Aufsätze*, I, 1 ff.), RF

church and state can never be so separated from each other as though they stood next to each other as two neighboring states.

But from the beginning of his work as Reformer, Luther maintained what the Augustana later stated the following way: "Therefore the two governments, the spiritual and secular, should not be mingled or confused" (AC XXVIII [12]).<sup>20</sup> When he spoke of the rights and duties of Christian government, as a rule he more or less clearly differentiated between that which the government as *secular government* and that which persons in government as *Christians* were responsible for or entitled to do.<sup>21</sup> Thus already in the address "To the Christian Nobility," a distinction is made between reforms which the secular government as government can direct to eliminate abuses in the church (such as the abolition of benefices paid to the pope, payment for the pallium,<sup>22</sup> etc.; furthermore, the elimination of the alleged rights which the pope claimed over the German bishops and thus over Germany) and other measures which would have to be directed by a council, for instance the purely ecclesiastical reforms in the realms of liturgy [*Kultus*] and church discipline.

In this document as elsewhere Luther ascribes to secular government in the then-current situation of the church the right and duty to call a council. It is interesting to note how this right or duty was at times justified. In "To the Christian Nobility" the third of the three walls of the Romanists against which Luther mounts an attack is the assertion that no one but the pope could convene a legitimate general council. He overturns this assertion on the basis of Scripture and shows that

when necessity demands it and the pope is an offense to Christendom, the first man who is able should, as a true member of the whole body, do what he can to bring about a truly free council. No one can do this so well as the temporal authorities, especially since they are also fellow-Christians, fellow-priests, fellow-members of the spiritual estate, fellow-lords over all things. Whenever it is necessary or profitable they ought to exercise the office and work which they have received from God over everyone. (WA 6.413.27 [LN 44:137])<sup>23</sup>

<sup>20</sup> See part 3 above. HS

<sup>21</sup> Further details may be found in the above-cited essay by Karl Holl and in the chapter "Die Staatsauffassung Luthers" in Werner Eiert, *Morphologie des Luthertums* (1932), 2:313 ff., especially pp. 329 f. HS

<sup>22</sup> "The pallium is a woolen shoulder cape. It is the emblem of the archbishop's office and must be secured from Rome. The bestowal of the pallium is a very ancient custom and was so referred to by Gregory I (590-604). Canon law prescribes that the archbishop-elect must secure the pallium from Rome within three months of his election; otherwise he is forbidden to discharge the duties of his office. Luther's contention that it was originally a free gift of good will is correct, as is his contention that the pallium (i.e., an archbishopric) was bought in his day at a fantastic price" (LN 44:148, note 71). MH

<sup>23</sup> The English translation of this and the following quotes from "To the Christian Nobility" is from LN 44. MH

If a fire were to break out in a city every citizen would be duty bound to lend assistance, even without the authority of the mayor: "How much more should this be done in the spiritual city of Christ if a fire of offense breaks out, whether in the papal government or anywhere else!" (WA 6.413.37 [LN 44:137]). The right—or, more properly, the duty—of secular government to call a council in the case of necessity is derived from the fact that the bearers of the governmental office are members of the church and as such may exercise the rights and duties which every believer has authority to exercise as a member of the general priesthood.

When Luther said, "The temporal power has become a member of the Christian body" (WA 6.410.3 [LN 44:131]), it is completely clear from the context that he intends to say nothing other than that persons in government are members of the church.<sup>24</sup> There is nothing said here of government as such necessarily having a office in the church. In addition to the apostolic council, which was not convened by Peter, but by all the apostles and the elders of the congregation, Luther uses the example of the Council of Nicaea and the other "general Christian councils" convened by the Caesars in order to make his point regarding the right to call a council. It is absolutely clear from the context that Luther is of the opinion that the Caesars had convened those councils insofar as they were Christians and in doing so exercised a right which was theirs as members of the church.<sup>25</sup>

In light of these facts we may maintain with Karl Holl that the "confused medieval concept of a spiritual-secular Reich" had been given up by Luther. The presupposition for all Luther's principles regarding the rights and duties of Christian governing authorities over against the church was that there are rights and duties which the secular government as such possesses, quite irrespective of the faith of the person governing. And there are rights and duties which believers possess, whether or not they have an office of government.

Here the views of the Reformer are completely clear. He no longer had the unclear and confused concept of offices in which spiritual and secular, churchly and civil functions were combined. From the very beginning he limited the spiritual office, particularly that of the bishops and in the early years of the Reformation also that of the pope, to its spiritual functions.

So also he limited the tasks of the secular government to those functions which secular government as such possesses according to God's ordering. He contested the idea that the Caesar as Caesar had an office in the church, as the Middle

<sup>24</sup> "Since those who exercise secular authority have been baptized with the same baptism, and have the same faith . . . For whoever comes out of the water of baptism can boast that he is already a consecrated priest, bishop, and pope" (WA 6.408.8 [LN 44:129]). HS

<sup>25</sup> Luther expressly says this in "On the Councils and the Church" (1539). See the description of the Council of Nicaea which begins with the words: "The praiseworthy Emperor Constantine had become a Christian and had given the Christians peace" (WA 50.548.25 [LN 41:54; the English translation is from LN]). HS

Agēs had taught when it treated the Caesar as *defensor* or *advocatus ecclesiae*, as the guardian and protector of the church, bound to vindicate the church with the power of the sword against her enemies and destroyers and claiming special rights in the church to do so.

Thus in the document "On the War against the Turk" of 1529 [WA 30<sup>u</sup>.107-48; LW 46:155-205], Luther turns against the Roman view of the wars against the Islamic invaders as a struggle which "the Caesar as the protector of the church and defender of the faith" should mount against the "enemy of the Christian faith" (WA 30<sup>u</sup>.132.30 [cf. LW 46:188]). "Consequently, the Caesar is not the head of Christianity nor the protector of the Gospel or the faith. The church and the faith must have a lord protector other than Caesars and kings. They are commonly the worst enemies of Christianity and the faith" (WA 30<sup>u</sup>.130.27 [cf. LW 46:185]). The protector and advocate of the church is Christ alone, her Lord. When the Caesar makes war against the Turks he fights not for the church, but for Germany, and acts solely as secular governing authority: "Caesar's sword has nothing to do with the faith. It belongs in corporal, secular matters so that God may not get angry with us for overturning and mixing up his order of things" (WA 30<sup>u</sup>.131.8 [cf. LW 46:186]).

The Augustana understands the war against the Turks, which is a task of Caesar's office, in the same sense when in the article on "The Cult of Saints" we are told to note the example of the good works of the saints "each of us in his own calling. So His Imperial Majesty may in salutary and godly fashion imitate the example of David in making war on the Turk, for both are incumbents of a royal office which demands the defense and protection of their subjects" (AC XXI 1).<sup>26</sup> When we remember what role the examples of David, "who is the example for all princes" (WA 11.275.13 [cf. LW 45:122]), and the other "godly kings" of the OT have played in attempts to understand the office of ruler as a simultaneously secular and ecclesiastical office, when we consider, for instance, that canon of the Church of England noted above, then it is clear that Luther's separation and delineation of the functions of the secular government and the spiritual office were something quite revolutionary.

It was really a turning point in the history of the church when Luther's remark "For this reason one must carefully distinguish between these two governments. Both must be permitted to remain"<sup>27</sup> was elevated to a doctrine of the Evangelical Lutheran Church by Augustana XXVIII when it stated, "Therefore, the two governments, the spiritual and the temporal, are not to be mingled or confused" (*Non igitur commiscendae sunt potestates ecclesiastica et civilis*, AC XXVIII 12).

### THE RESIDUAL EFFECT OF THE MEDIEVAL RELATIONSHIP

This completely clear and fundamental contradiction of the medieval synthesis of church and world, spiritual and secular, was what was new in Luther's teaching on the connections between state and church. But even so we ought not underestimate just how strong the effect of this synthesis was on the thought and dealings of the Reformer. And this is completely understandable. How could Luther and his contemporaries have conceived of a world which was not ruled by that synthesis! Educated within the intellectual world and the cultural forms of the late Middle Ages, this was the only world they knew. And they could not conceive of just what formations and state-church law would finally result from the principle "The two authorities, the spiritual and the temporal, are not to be mingled" (*Non commiscendae sunt potestates ecclesiastica et civilis*).

If Luther had attempted to formulate such a conception then he would have given play to his imagination and written a *Utopia* like those which philosophical civil theories have always produced. But he was no dreamer [*Phantast*] or utopian idealist. He was a Reformer. And Luther, like the Confession of the Lutheran Church, constantly guarded himself from the misunderstanding that the church, as he understood it on the basis of the Gospel, was a sort of "Platonic republic" (*ciuitas Platonia*) and that the Reformation was the attempt to realize some church ideal which was purely a mental construct (Ap VII/VIII 20).

For Luther and those who worked with him, what was at stake was much rather that Christianity of the sixteenth century, which before their very eyes was experiencing a time of the dissolution of the old and the institution of new forms of culture and society, hear anew the Gospel so that the true church of Christ would increase within these forms. Thus for Luther society as it obtained at the time was a given. In this society church and state, *Christendom* and culture, spiritual and secular were tied together by countless connections. This was the field upon which the seed of the Gospel would sprout and bear fruit. It was a society which, in spite of everything new which was afoot within it, continued to bear the essential outline of the Middle Ages. It was a society in which the differentiation of citizenship from church membership was something purely theoretical and in which it was simply inconceivable that both could actually diverge. And thus it was a society in which the secular government was accustomed to meddle in ecclesiastical matters, and by no means only because it was eager for power (though this indeed happened). In many cases it did so out of a deep sense of duty to God.

### THE APPEAL TO THE TERRITORIAL LORDS

It is not surprising that Luther presupposed the existence of this society. On the contrary, it would be quite astonishing if it were otherwise. But then the problem arises of whether or not in light of the factual ecclesiastical, social, and political connections of the sixteenth century Luther's differentiation and separation of the powers (*potestates*) had to remain something purely theoretical. The signifi-

<sup>26</sup> The English translation is from Tappert, *BC*, 46. MH

<sup>27</sup> "Temporal Authority: To What Extent It Should Be Obeyed" (1523), WA 11.252.12 [LW 45:92; the English translation is from LW], HS

cance of this question becomes clear when we consider the church visitation in electoral Saxony, which in 1527 began the establishment of the Lutheran territorial church system.

The letter to Elector John of November 22, 1526, in which Luther proposed a church and school visitation, clearly shows why the Reformer believed he had to appeal to the secular government. It is the duty of government in a time of the disillusion of the old order, when young people are in danger of being completely neglected, to lead the youth back to discipline and order. The need of people compels a concern for "schools, preachers, and pastors." But then the administration of church property must also be ordered anew. This was the task of the secular authority after the administration by the bishops had ceased: "But now that popish and spiritual coercion in Your Electoral Grace's kingdom is out, and all cloisters and convents have fallen into your hands and you are in charge of them, you also have the duty and burden to organize such things."<sup>28</sup>

Consequently for Luther there are governmental and administrative measures which no one else but the prince of the country can carry out. In the preface to the "Instruction to Visitors" Luther distinguishes with the same clarity found in his address "To the German Nobility" between the tasks which the ruler is required to fulfill as secular authority and others which are incumbent upon him as a Christian. Luther bids the elector not to somehow assume a form of the episcopal office—the Reformer could not have conceived of allowing this possibility—rather to appoint visitors to temporarily exercise the episcopal office of visitation of the pastors and congregations within the elector's territory since the sitting bishops had forsaken this duty.

But when Luther does this, he turns to the elector as to "the prince of the country and our certain secular authority ordained of God." But he unmistakably expresses that what he bids the elector to do is a service of Christian love and not an act of secular governmental authority. His Electoral Grace should appoint visitors and organize the visitation "out of Christian love (for you are not obliged in these matters according to secular authority)" (WA 26.197.25 [cf. LW 40:271]). The service which is here requested of the Christian ruler is a service which he is to render as a *Christian*. But it is precisely requested of him because as ruler he has the power to render it.

If in the case of necessity, every Christian is called upon to render the service of love, and the authority of his participation in the general priesthood of believers renders him capable of exercising spiritual functions, there still obtains between Christians the greatest difference of respective power to help and of the ability to make use of their spiritual rights. Indeed, there have to be differences of

<sup>28</sup> WA Br 4.133.21. Luther here calls the elector literally "highest head" [*Oberstes Haupt*], not as "supreme head of the church" (*supremum caput ecclesiae*; see the section "The Church of England" above), but as the bearer of the highest governmental authority. HS

obligation. For the measure of ecclesiastical obligation naturally rises with the measure of ability to assist the church.

This is how the Reformers understand and justify their appeal to the bearers of governmental authority. They do not confer to them particular rights, they rather expect of them certain duties. The ruler has as a Christian no other rights than does any other member of the church. However, as "chief member of the church" (*praecipuum membrum ecclesiae*) because of his secular position of power which makes him a member of the church preeminent to other Christians, a maximum of duty is laid upon him.

It was quite foreseeable that out of this maximum of duty would be derived very quickly a corresponding claim to rights. For in the sphere of law, also state-church law, rights and duties always stand in a precise relationship to each other. But Luther did not realize the legal consequences which his appeal for help to the bearer of the governmental authority would finally have. When, in the dire situation the church faced, Luther appealed to the love of a Christian brother in the person of the ruler of the land, he did not realize that this very appeal itself, if correctly understood by pious princes, could only serve to strengthen the longstanding tendency to subordinate the church to the state.

#### CHRISTIAN GOVERNMENT

Now no matter how much the attempt was made to distinguish the functions which the ruler exercised as secular governing authority from those in which he acted as "chief member of the church" (*praecipuum membrum ecclesiae*), in practice the office of Christian governing authority, as an office combining both civil and ecclesiastical functions, was restored in a different form. Luther had corrected the confused and convoluted idea of an office which was as much ecclesiastical as civil by the clear principle of the separation of both governments. But under the mask of the general priesthood of believers, it sneaked back into the church in a new form. The power of the general sociological, political, and legal development of the time was so great that Luther was able to uphold his principles only in theory, and even this became increasingly difficult.

In the preface to the "Instruction to Visitors" Luther discusses the question of what was to happen if individual "undisciplined heads" should wantonly and maliciously oppose the legitimate orders of the visitors. Here Luther is at pains to distinguish between the powers (*potestates*) even as the visitations are carried out. Such people should be excommunicated. Further measures are left to the territorial Lord:

While His Electoral Grace is not obliged to teach and to rule in spiritual affairs, he is obliged as temporal sovereign to so order things that strife, rioting, and rebellion do not arise among his subjects; even as the Emperor Constantine summoned the bishops to Nicea since he did not want to tolerate the dissension which Arius had stirred up among the Christians in the

empire, and constrained them to preserve unity in teaching and faith. (WA 26.200.28 [LMV 40:273])<sup>29</sup>

Here the distinction between spiritual and temporal government is completely clear. The task of the spiritual government is "teaching" and the governance of the church, as for instance through organizing visitation teams or by calling a synod. If the elector should allow the visitations to occur, he does so, as is clearly stated in the passage cited above, not as secular governing authority, but as "chief member of the church" (*praecipuum membrum ecclesiae*). In Luther's view this is precisely the respect, and not as Roman Caesar, in which Constantine called the first ecumenical council [A.D. 325]. But the task of secular authority is to safeguard the public peace from "strife, rioting, and rebellion."

As much as the functions of the two governments are here clearly and dogmatically separated, so much so are they inseparably bound together in the actual situation of life in the instance under consideration. We encounter here once again the phenomenon of Christian governing authority, whose functions simply do not allow themselves in practice to be parceled out as those belonging to secular authority as such and those belonging to Christian bearers of this office. We encounter once again the Christian governing authority whose essence consists in it being *simultaneously* both Christian and governing authority. Constantine could, in Luther's view, convene the ecumenical council because he was both Christian and Caesar alike. He could not have done this simply as a Christian nor as Caesar. And it is the same in the case of the electoral Saxon church visitation. The elector could carry it out because he was both elector and a member of the church.

But in Luther's view the connection between governing authority and ecclesiastical tasks goes even further in both cases. If it is in general the task of secular authority to prevent strife and rebellion, then it is also the task of Christian governing authority to put down the strife and rebellion caused by heresy within Christendom of its territory. For were not the most fateful and, for the state, most dangerous "sects" those which had religious roots and were the result of a heresy (there were several instances of this in electoral Saxony and elsewhere at the time)? Thus Luther understood the battle of Constantine against Arianism as both a civil and ecclesiastical necessity. The same applied to the measures which the elector took in order to maintain Christians in "unified doctrine and faith" in his land.

#### CONTRADICTIONS IN LUTHER

We have now reached the point at which Luther was not prepared to carry through his separation and differentiation of the functions of the spiritual and secular powers. Here the Reformer contradicts himself. The one who emphatically

maintained that the territorial lord "is not obliged according to secular governing authority" to carry out the visitation demands of him that he "as secular authority" see to it that the visitation not come to nothing because of the obstinacy of individuals. He who reminded the elector that it is not commanded of him "to teach and rule in spiritual matters" held before him the example of a Caesar who maintained Christians in "unified doctrine and faith." The same Reformer whose "great deed" it was to "give up the confused medieval concept of a spiritual-secular Reich" finally at one point did not overcome the medieval synthesis of church and state. He ascribed to the *Christian territorial lord* the duty to demand the *pure doctrine* of the Gospel in his land, to defend it against heresy, and to work for the *unity of the church*.

Luther was never of the opinion that the secular authority as such could know what the Gospel is or that it could even teach it. But he was always of the opinion that the Christian in governing office could and ought to know what the pure doctrine of the Gospel is and that it be his duty to protect and advance this doctrine and to oppose heresy. It is in this sense that his pleas for the Christian governing authorities of his day to take it upon themselves to reform the church are to be understood.

Thus for instance on July 20, 1525, he bids Elector John to expect the heads of the cloister at Altenburg to reform the liturgy [*Gottesdienst*] in use up to the present or, as Luther proposes, dispense with "their hitherto traditional, un-Christian conduct," which has resulted in "divine non-service" [*Gottes Undienst*]. The elector is to point them "to the Word of God and to the example of other Christian communities" (WA Br 3.545, no. 904).

Consequently, Luther expected of his territorial lord that he instruct the Altenburg canons on correct Divine Service and that he forbid them certain forms of liturgy. If this instruction cannot finally be understood as something which every Christian brother is justified in doing and, in the case of necessity, even bound to do—namely, when those called to do such things are silent—this prohibition comes from the territorial lord as secular governing authority.

But then what meaning does Luther's delineation of spiritual and secular power (*potestas*) have when he states that the elector "is not commanded to teach and rule in spiritual matters"? There is a real contradiction in the thought of the Reformer at this point. It cannot be allayed by asserting that for Luther the *confessional unanimity of the civil realm* was the self-understood presupposition for the stability of the state and thus for Luther the restoration of this unanimity was a duty of the territorial lord as secular governing authority. This is correct insofar as Luther in fact could not conceive of a state which would be governable if it tolerated numerous, contradictory forms of the public exercise of the Christian religion.

Luther was committed to the view that dissenters should not be persecuted if they were not revolutionists and did not threaten the existence of the state. The

<sup>29</sup> The English translation of this quote is from LMV 40, MH

private exercise of their religion was to be guaranteed, or they at least had to be granted the possibility of emigration. And here Luther's views on compulsion and freedom of faith are different from those of the Middle Ages. But Luther could conceive of one state which encompassed several equally legitimate confessions as little as could most of his contemporaries. And this is one of the clearest effects of the medieval synthesis of church and world, state and church, in Luther's thought regarding this question. Under the effect of this idea, he treated certain measures of the territorial lord, in which we perceive an intrusion into church governance, as purely civil, administrative measures.

But even if we acknowledge his conscious intention to remain true to his principles, there remains an objective contradiction between the delineation of the powers (*potestas*) in principle and their amalgamation in practice. This contradiction is nowhere more clearly expressed than in the fact that Luther not only compromises with the actual double position of the governing authority in the state and in the church and, in spite of often loud and plaintive protests, accepts the concurrent and constantly arising amalgamation of the powers (*potestas*): even he himself constantly falls back into medieval conceptions and terminology when he ascribes tasks to the princes and gives them a position in the church quite to the contrary of what he had otherwise thought and expressed on the matter.

Thus Luther writes to Duke Henry<sup>30</sup> of Saxony at the beginning of July 1539: "But because His Princely Grace nevertheless is the territorial prince and protector established by God, he is therefore responsible to God to put down such gross, some, terrible, blasphemous idolatry,<sup>31</sup> and in the same way Duke George<sup>32</sup> delightfully protected the devil and condemned Christ, Duke Henry should on the contrary protect poor Christians and condemn the devil."<sup>33</sup> The duke should forbid the masses in the cathedral churches at Meissen, Stolpen, and Wurzen for the following reason: "For the princes, wherever they can, should quickly undo Baal and all idolatry, the same way the kings of Judah and Israel did previously, and afterwards Constantius, Theodosius, and Gratianus.<sup>34</sup> For princes and lords are just as bound to serve God and the Lord Christ in the way they can as anyone else."<sup>35</sup>

<sup>30</sup> Henry "the Pious" (1473-1541) was Duke of Albertine Saxony from 1539 until 1541. He was the brother and successor of George the Bearded; he introduced the Reformation into Albertine Saxony in 1539. RF

<sup>31</sup> Namely, the Mass, which was still celebrated in the cloister at Meissen. HS

<sup>32</sup> The brother and predecessor of Henry, who decisively opposed the Reformation from the beginning. HS  
George the Bearded (1471-1539), duke of Albertine Saxony, persecuted Lutherans, sponsored the Leipzig Debate in 1519, and banned Luther's publications (*Lutheran Cyclopaedia*, 329). MH

<sup>33</sup> Enders, 12, 188, 22. HS

<sup>34</sup> Luther is probably referring to Constantius II, who ruled from 337 until 361. Theodosius I ruled from 379 until 395, and Gratianus ruled from 375 until 383. RF

<sup>35</sup> Enders, 12, 189, 30. HS

When we remember with what clarity Luther, in the passage noted above, rejected the claim of the Caesar to be lord protector of the church because, among other things, "the church and the faith must have a different lord protector than those who are Caesars and kings," then the appeal to the Saxon prince to be cognizant of his office as lord protector and to "protect" poor Christians is as troubling as the comparison of George and Henry to the pious kings of Israel and the ancient Christian Caesars who fought against idolatry. Here we have exactly the concept of the office of the Christian ruler which we found in the canons of the Church of England.

Is it any wonder that the Evangelical Lutheran princes of Germany now demanded the same authority in the church which the rulers in other confessions justified by holding up the example of "the pious kings of the Jews and the Christian Caesars in the ancient church"? Is it any wonder that the very spirit of the times, which everywhere pressed for church governance by the state, proved more powerful than Luther's principle of the separation of the governments? After all, the Reformer himself under the influence of the time was finally not able to overcome ideas stemming from the medieval synthesis of church and state.<sup>36</sup>

Luther's position on the question of the connection between state and church is such that on the one hand the Reformer emphatically advocated the principle that the powers (*potestas*) were to be strictly separated and not to be confused. But on the other hand the authority of the state in this relationship is given ever-increasing influence in the ecclesiastical sphere, and the state cannot be denied this authority. Consequently the position of the confessions on this problem is particularly important. Remember what we said above regarding the relationship of the doctrine of Luther to the doctrine of the Evangelical Lutheran Church.<sup>37</sup> Our church did not appropriate every thought of the Reformer and elevate it to

<sup>36</sup> J. Hasbagen, *Staat und Kirche vor der Reformation* (1931), 563, comments on the inherent contradiction in Luther's position on the emerging system of church governance by territorial lords:

Along with Karl Müller we will certainly evaluate this ground-gaining retreat movement in Luther, which so faithfully influenced the entire future of German Lutheranism to the present, in light of the powerful "advance of the Evangelical movement." But we must remember that signs of the late Middle Ages accompanied this retreat and even facilitated it. Why did Luther so completely muzzle the voice of his conscience which was otherwise so dear to him? It must have warned him time and again against granting so much intrusion of the secular authority into the ecclesiastical-religious sphere. Indeed, he had often enough publicly and widely expressed the idea that secular authority in this area should be sharply reduced. So how could he have allowed secular authority so much room in this sphere? How could he tolerate the establishment and rise of the system of church governance by territorial lords?

Hasbagen explains this especially when he states that "for Luther the background of the late Middle Ages still always projected into his own time and environment but did not overthrow it." "It always necessarily continued to exercise a certain effect on Luther, even if he himself was perhaps no longer aware of it. The terrible inner struggle which the toleration of the governance of the church by the territorial lords certainly brought him could have been lessened for him [if he had realized] the fact that it was actually nothing new, rather tied to a long and firm tradition." HS

<sup>37</sup> See part 2 above. HS

church doctrine. Thus every time we come upon an important statement by Luther on any dogmatically significant question, we must ask how the doctrine contained therein relates to the doctrine of the church's confessions.

### THE DOCTRINE OF THE CONFESSIONS

If we take this point of view in inquiring of the confessional writings of the Evangelical Lutheran Church what their doctrine on the connection between church and state is, the results may be expressed in the following four theses:

1. The Lutheran Confessions teach the strict separation of the divinely established orders of secular authority and the spiritual office and forbid any mixing of their respective functions.

2. The Lutheran Confessions place upon Christian bearers of governmental office, in addition to all duties incumbent upon such an office, the special duties involved in the protection of the church and the insistence on the pure doctrine of the Gospel.

3. The Lutheran Confessions place particular duties upon the spiritual office [*geistliche Amt*] and the members of the church over against the government, which may also be expressed in the form of rights of the government over against the church.

4. Still, these rights of the government, even the Christian government, according to the Lutheran Confessions, do not include the right to church government or a part of the same.

Of these four theses we have already dealt with the first because it has to be the point of departure for our presentation. It is the principle thesis of the Lutheran doctrine of the relationship between church and state. The third, which treats of the duties of the church over against the state, will have to be the object of a special section dealing solely with it. Thus the immediate task is to explain the second and fourth theses.

### DUTIES OF THE SECULAR AUTHORITY IN GENERAL

There are *duties incumbent upon all secular government on earth*, no matter of which faith or confession it may be. These include the duties of the upholding of the law and thus to be guardian and protector of the subjects of such government. This of course includes the duty of maintaining legal tolerance for the church. This duty too is independent of the faith of the bearer of the office of secular authority (thus for instance, Christians in Turkey). If the governing officials are Christians, as secular authority they have absolutely no tasks beyond those of any other government.

But these tasks are for them infinitely more serious and consequential than for such as do not know the living God. How much more seriously will an earthly king take his office if he knows that he has received that office from the one who is the King of kings and the Lord of all lords! How much more will an earth-

ly king be cognizant of his responsibility if he knows that he carries out his office in view of the one who "will come again to judge the living and the dead" [Apostles' Creed]! And yet the content of the office is not altered. The relationship of the ruler to the church is quite different still. In Luther's view, Emperor Charles V had different duties than Sultan Sulaiman II [ruled 1520-1566], in whose kingdom a church also existed.

### DUTIES OF CHRISTIAN GOVERNMENT

The Apology spoke of these particular duties incumbent upon the ruler who is at the same time a member of the church when it asserted that the command of God demands "of all kings and princes that they should as much as possible have a hand in, salvage, and protect divine matters, that is, the Gospel of Christ and the pure divine doctrine on earth, and in the place of God protect and guard proper Christian teachers and preachers against an incorrect use of power" (Ap XXI 44).<sup>38</sup>

The Treatise on the Power and Primacy of the Pope says the same thing of kings and princes, whom it describes as the "chief members of the church": "Especially does it behoove the chief members of the church, the kings and the princes, to have regard for the interests of the church and to see to it that errors are removed and consciences are healed. God expressly exhorts kings, 'Now therefore, O kings, be wise; be warned, O rulers of the earth' (Ps. 2:10). For the first care of kings should be to advance the glory of God."<sup>39</sup> ("Imprimis autem oportet praecipua membra ecclesiae, reges et principes, consulere ecclesiae et curare, ut errores tollantur et principes, consulere ecclesiae, sicut Deus nominatim reges hortatur: 'et nunc, reges, intelligite, erudimini, qui iudicatis terram.' Prima enim cura regum esse debet, ut ornent gloriam Dei," Treatise, 54.)

The view of the duties of the Christian governing authority which Melancthon expressed in this passage is essentially the same as that which we found in Luther's call to the Christian territorial lords to organize the visitation and to carry out the Reformation.<sup>40</sup> The territorial lord is to be concerned that in his land no idolatry is advocated, no heresy spread, rather that the pure Gospel is

<sup>38</sup> The [German] text is the very free translation of J. Jonas. The original Latin states: "ut res divinas, hoc est, evangelium Christi, in terris conservari et propagari current, et tanquam vicarii Dei vitam et salutem innocentiū defendant!" ["that they be concerned that divine matters, that is, the Gospel of Christ, be conserved and propagated on earth, and as vicars of God, defend the life and well-being of the innocent"]. HS

<sup>39</sup> The English translation is from Tappert, *BC*, 328, MH

<sup>40</sup> See our discussion of Luther above. Thus we find Luther's subscription next to those of Jonas, Bugenhagen, Amsdorf, and Melancthon under "Three Concerns of the Theologians at Wittenberg regarding Self-Defense," which among other things says:

In this case we conclude that every prince is in duty bound, consequently and especially, to protect and maintain Christian and correct Divine Service against all illegitimate power. . . . Yes, this protection is demanded of the princes in a much greater and higher manner, as the Scriptures often advise and command secular regents, that they should protect correct preachers and teachers. (EA 64, 271) HS

preached. And this is what Luther demands in the preface to the Small Catechism when he advises that the prince expel from the land "such rude people" who will not learn the catechism.<sup>41</sup>

Thus the confessions place upon Christian governing authority a *maximum of duties over against the church*. These go above and beyond those which every governing authority as such is to fulfill. It is self-understood that these duties are incumbent only on the *Christian governing authority*. Melancthon bases them as much on the divine command directed to the kings and princes of the OT as upon the reference to princes as the "chief members of the church" (*praecepta membra ecclesiae* [Treatise, 54]).

Properly speaking, these are two different bases. And indeed, the more the divine command to the kings or the duty to love arising out of the fact that the prince belongs to the church is applicable, the more those duties can be understood as duties of the Christian governing authority, or as duties of the Christian invested with an office of government. In the first case, the Christian character of the governing authority appears to be the norm. The governing authority as such then is to be what God demanded of it in the commands of the OT to the kings and princes: guardian of the law, and indeed, the whole law; "guardian of both tables of the Law" (*custos utriusque tabulae legis*), as Melancthon put it. This is how the author of the Apology and the Treatise later provided a basis for the duties of the governing authority: "The magistrate is the guardian of both tables of the Law . . . but it is clear that idolatry and blasphemy are forbidden by the First and Second Commandments. Therefore, it is necessary that the magistrate remove and be concerned about external idolatry and blasphemy so that pious doctrine and pious *cultus* be advanced." ("Magistratus est custos primae et secundae tabulae legis . . . manifestum est autem in primo et secundo praeecepto prohiberi idolatriam et blasphemias: ergo necesse est, magistratum externam idolatriam et blasphemias tollere et curare, ut pia doctrina et pii cultus proponantur.")<sup>42</sup>

The duties of the governing authority over against the church resulted from its character as governing authority because it was the norm that the governing authority was Christian. In the case that this were not true, it could only be "guardian of the Second Table" (*custos secundae tabulae*). This theory, which Melancthon later ever more emphatically advocated, led to the idea of a Christian state. It laid the groundwork for the modern state-church system which

<sup>41</sup> BS, 503, line 43 [Triglotta, 534; Tappert, BC, 339, § 12]. HS

<sup>42</sup> *Conpus Reformatorum*, 16:87. Note similar statements on pp. 95 ff., and in III, 467. Compare John Frederick II's [1529-1595] (Weimarer) *Ordnung und summarischer process des Justitien consistorii* of 1561: "When we then, as the territorial prince, because of the princely office placed upon us by the demand of God Almighty, and because of commanded concern and protection [*tusculi*] which has to do with both tables of the Law, the first as much as the second, are willing and prepared . . . to protect . . . all those matters encountered in the divine Word" (E. Schling, *Die evangelischen Kirchenordnungen des 16. Jahrhunderts*, I, 1 [1902], 230). HS

began in the age of absolutism insofar as it finally derived the ecclesiastical functions of the Christian governing authority out of the nature of governing authority.

But if we proceed from the idea of the prince as the "chief member of the church" (*membrum praecipuum ecclesiae*), that governing authority is the norm which is simply secular authority and therefore is only the guardian of the Second Table. As such, governing authority has the task of upholding civil righteousness (*iustitia civilis*) and the public peace of the country. It is the governing authority of which Articles XVI and XXVIII of the Augustana speak, the governing authority which Luther had in view when he ever and again so very emphatically taught the necessity of the separation of the governments [Regimental].

Only if the bearer of this governmental office is at the same time a member of the church does he as "chief member" (*praecipuum membrum ecclesiae*) possess new tasks. Only then may he also be guardian of the First Table and be concerned to do away with idolatry and heresy and advance the pure preaching of the Gospel. In the first instance, the duties of the governing authority are demands which the church poses to the state. In the second instance, they are demands which the church makes of one of its members.

#### NO CHURCH GOVERNMENT BY THE SECULAR AUTHORITY

Both of these possible ways of understanding the nature and particular tasks of the Christian governing authority are found side by side, undeveloped in our confessions. These expressions can be understood more in the sense of Luther's call for help to the Christian territorial lords or more as a stop on the way to Melancthon's later doctrine of the Christian state.<sup>43</sup> We can find in the confessions the idea that the spiritual and the secular powers are to be separated and the idea that both are divine orders and therefore overlap each other.

But however the statements of the confessions were later understood, whatever has been read out of them, there is still one thing no one has ever found in them. They contain neither directly nor indirectly, neither as express doctrine nor as a veiled suggestion, the view that the secular authority, even if it should be

<sup>43</sup> In order to avoid any possible misunderstanding, let it be firmly stated here that neither Luther nor the Lutheran Confessions know anything of a "Christian state." Such would be a state which as state confesses Christianity and sees in Christendom one of its fundamental elements, so that it necessarily is of the *essence* of its governing authority that it be Christian. In distinction from the theocratic view of Zwingli, who bound the authority of the governing authority to its Christian faith and consented to the overthrow of the governing authority in the event that it was no longer obedient to the commands of Christ, the Lutheran Confessions expressly teach that the confession of faith does not change the character of governing authority as such. "The Gospel does not introduce any new laws about the civil estate, but commands us to obey the existing laws, whether they are formulated by heathen or by others" ("Nec ferit evangelium novas leges de statu civili, sed praecipit, ut praesentibus legibus obtemperemus, sive ab ethnicis sive ab aliis conditae sint," Ap XVI 3 [55]; the English translation is from Tappert, BC, 222-23). "In support of his statement about Zwingli, Sasse cited this: 'But if it is untrue or exceed the bounds of Christ, it may be overthrown with [the help of] God' (*Schlusreden*, 42, in Müller, *Bekenntnisbüchlein*, 5, 4). HS



Christian and take its duties ever so seriously, possesses a right to exercise governance in the church or even only a part of the same. Whatever rights the secular government and, in particular, a governmental authority whose bearers are Christian may have—we will have to address these rights shortly—it does not have the right to govern the church. And this includes even the privilege to administer the external affairs of the church. This assertion was our fourth in the series of theses in which we summarized the doctrine of the confessions on the relationship between church and secular authority. Since we have raised this point at the conclusion of this section, we return to our starting point.

*It is generally to be granted that the Lutheran Confessions never directly speak of church governance by the territorial lord or of Christian governing authority in general. But what does this silence mean? Was not the governance of the church by the territorial lord so self-evident when Melancthon wrote the Augstana, the Apology, and the Treatise that there was no need to justify it more fully? Did it not already obtain when the Evangelical estates of the empire—and thus secular governing authorities—presented the Augstana to the emperor? Was it not the necessary consequence of the duties which in the confessions were expected of the territorial lord as the “chief member of the church” (*praecipuum membrum ecclesiae*)? And thus had not many a territorial lord already begun to fulfill this duty?*

To be sure, the beginnings of the governance of the church by territorial lord had existed since the recess of the Imperial Diet at Speyer of 1526 and since the first visitation in the realm of the emerging Evangelical Lutheran Church. But the full authority which the imperial law of 1526 gave to the imperial estates in respect to the church was only considered something temporary, until the council should render final judgment. And Luther treated the involvement of the territorial lord as a temporary measure in an emergency and even later had always designated the elector only “emergency bishop,”<sup>44</sup> whose office should expire after the ecclesiastical emergency had passed.

Thus it lies completely outside the purview of our confessions that with the Reformation a new form of church constitution had taken the place of that which had hitherto obtained, the mark of which was the participation of the secular authority in the governance of the church. Just as our fathers did not found a new church but only desired to reform the existing one, neither did they devise a new constitution for the church. They rather acknowledged as good human order the constitution as it had historically existed, and this included the Catholic episcopal system [*Bischofsverfassung*]. They only demanded that the degenerate and completely secularized spiritual government be transformed back into a genuine church government, in accord with Evangelical doctrine. To this end—and this the confessions do state—the Christian princes were to assist.

The confessions also state that certain secular functions of governance which up to that time had been exercised by the bishops, but which properly belong in the realm of the secular authorities (e.g., laws regarding marriage), should return to the territorial lords (Treatise, 77–78). But the confessions never in the slightest way indicate that the territorial lords become bishops or, as the followers of the bishops, should take in hand the governance of the church.

If this were the view of our symbolical books, it would have to be expressed somewhere in them. We would at least expect that the estates of the empire which presented the Augstana to the emperor would have somehow expressed their contingent claims to governance of the church. But this was not the case. They presented “a confession of our pastors’ and preachers’ teaching and of our own faith, setting forth how and in what manner, on the basis of the Holy Scriptures, these things are preached, taught, communicated, and embraced in our lands, principalities, dominions, cites, and territories.”<sup>45</sup>

To be sure, these princes speak as spokesmen of their churches, but not as bishops. They do not say: “Thus we teach!” They say: “Our churches teach with great unanimity” (*ecclesiae magna consensu apud nos docent*, AC I 1). But even the confessions themselves could not silence it if according to Evangelical Lutheran doctrine the secular government as such, or because it is of the Christian faith, had a right to governance of the church or a part of the same. Anyone who has seriously considered the well-thought-out and well-balanced statements of Augstana XVI and XXVIII regarding the governing authority, together with the argumentation of the Apology, and considered the effects which this first confessional presentation of the doctrine of governing authority proceeded to have on all of sixteenth-century Christianity cannot be satisfied with the response that at that time it was not believed necessary to state something regarding the right of the governing authority in the area of church governance.

Why do the other confessions speak of this? The Anglican Confession established the right of the English king as the highest ruler of the church of his land.<sup>46</sup> In the same way, where the Reformed confessions treat the matter, they strongly assert the participation of the secular authority in the governance of the church.<sup>47</sup> It is a methodological error to believe that the authors of the Lutheran Confessions, either because of thoughtlessness or because it was something self-

<sup>45</sup> Preface to the AC, 8 [the English translation is from Tappert, *BC*, 25]. HS

<sup>46</sup> See the section “The Church of England” above. HS

<sup>47</sup> For example, Thesis 36 of the Zwinglian *Epilogue* (1523): “Alles so der geistlich (genemt) stat, im zugehören rednes und rechtens schirm halb fürghet, gehört dem weltlichen zu, ob sye christen sein wöllend” (Müller, *Bekenntnisschriften*, 4, 36). Thus the church governance by the Zurich [City] Council is explained. HS

An English translation reads as follows: “Everything that the so-called spiritual estate claims by right or for the protection of its rights belongs properly to the secular authorities, if they have a mind to be Christians” (“The Sixty-Seven Articles of Ulrich Zwingli [1523],” *Confessions and Catechisms of the Reformation* [ed. Mark A. Noll; Grand Rapids: Baker, 1991], 43). RF

<sup>44</sup> For example: “Our only emergency bishop [*Nobischoff*], because no bishop will otherwise assist us” (March 25, 1539, to the visitors of Saxony, EA 55.223) [St. Louis ed. XXI b, 2318, no. 2520]. HS

evident for them, did not say something about the right of the governing authority to govern the church. The only possible explanation for this is the admission that they knew nothing of such a right. However great the concessions were which Luther and the Confessions of the Evangelical Lutheran Church made to the idea of the synthesis of state and church inherited from the Middle Ages, as much as they may have on occasion endangered the principle of the separation of the governments in the question of whether governance of the church can belong to the secular authority, they remained inviolably true to the basic principle: "The ecclesiastical and civil powers are not to be commingled" ("Non igitur commiscendae sunt potestates ecclesiastica et civilis," AC XXVIII 12).

## 5. THE LUTHERAN DOCTRINE OF CHURCH GOVERNMENT AND THE RELATIONSHIP OF CHURCH GOVERNANCE AND SECULAR AUTHORITY

If, according to the doctrine of the Lutheran Church, the governance of the church is not granted to the secular authority, and if our confessions do not give any indication of the theories advanced later by Melancthon and others that at least a participation in governance of the church is a right of the Christian governing authority, then the following questions arise: To whom then does the governance of the church belong according to the doctrine of our church? Which are the rights of the secular authority over against the church, and what is the positive relationship between these two "governments" which are not to be mingled?

### THE FREEDOM OF THE LUTHERAN CHURCH ON THE QUESTION OF CHURCH CONSTITUTION

The answer which our confessions give to these questions, as we might have expected, is not one that involves a developed theory of *church organization* or constitution [*Kirchenverfassung*]. Nor are there legally binding directions regarding how the church shall be ordered in individual circumstances. Unlike the other confessional churches of Christianity, Catholic as much as Protestant, the Evangelical Lutheran Church knows nothing of a definite form of church constitution ordered by Jesus Christ himself. For the other confessions, a definite constitution is of the essence of the church, be it the episcopal constitution of the ancient church or the constitution of the Roman Papal Church, the Presbyterian or the Congregationalist-independent constitutions, or that of the Irvingites<sup>48</sup>

<sup>48</sup> Edward Irving (1792-1834), a Church of Scotland pastor, was charged with heresy in the doctrine of the Trinity. He accepted Pentecostal phenomena, especially speaking in tongues. He was charged with heresy regarding the sinlessness of Christ and was deposed from the ranks of the clergy in 1833 by the presbytery of Annan, Scotland. His followers, known as Irvingites, formed the Catholic Apostolic Church (*Lutheran Cyclopaedia*, 419-20). MH

with the renewal of the office of the apostle. Indeed, from a confessional standpoint it is maintained that this or that particular ordering of the church must be present if the church is to be the true church of Christ, if it is to be identical with the church of the NT. And they all maintain, consequently, that the church would be disobedient to the Word of God and necessarily apostatize or even cease completely to be church if it were not to preserve the constitution legally imposed upon it by divine mandate.

Lutheranism could never confess such a view. On the contrary, Lutheran theology clearly acknowledged that none of the forms of constituting the church, each allegedly sanctioned by divine institution—neither the ancient office of bishop with apostolic succession nor the honorable institutions of the presbytery and synod, neither the Congregationalist ideas of the church of God gathered about the Holy Scriptures, awaiting the working of the Spirit, nor any other visible form of the church—could accomplish what it was thought to insure, namely, that it be a bulwark against the church sliding into heresy. The witness of church history shows again and again that precisely those churches—and certainly not only the Catholic Church—have fallen into the most pernicious heresies which had specifically asserted that the church must have a particular form of constitution in order to be identical with the church of the NT and to preserve the doctrine of the apostles.

The Lutheran Church, furthermore, could never grant that the NT contains legal prescriptions for the form the church's constitution must take. Lutheranism viewed it as a false understanding of the NT when attempts were made to systematize the more or less explicit beginnings and fragments of primitive Christian church organization contained in it, and to treat this system according to the model of OT Law as a holy codex of canon law with divine commands for the *cultus* and ordering of the church as the New Israel.

There never was such a system. At the beginning of the history of the church there was no unified way of constituting the church, rather a multiplicity of forms of constitution. Thus sentences such as that which we find in Calvin's *Confessio Gallicana* would be inconceivable in the Lutheran Confessions: "Concerning the true church, we thus believe that it must be governed according to the legally mandated ordinance of our Lord Jesus Christ, that namely there be pastors, elders, and deacons, that the purity of doctrine be guarded, the wicked be suppressed and removed and the poor and troubled be assisted in their need, and the assemblies be held."<sup>49</sup> "We believe that all true pastors . . . have the same status and authority under one single head, one single Lord and only highest Bishop, Jesus Christ."<sup>50</sup> "We believe that none has the right to arbitrarily assume the gov-

<sup>49</sup> Article 29. German cited according to the official text of Ernst Mengin, *Das Recht der französisch-reformierten Kirche in Preussen, Urkundliche Denkschrift* (Berlin, 1929), 56. HS

<sup>50</sup> Article 30. HS

ernance of the church, rather than this must happen by election, so far as it is possible and God allows it."<sup>51</sup>

We have cited these theses which have at least partial validity<sup>52</sup> also in the Reformed Church of Germany and are in some quarters very highly regarded<sup>53</sup> because we see in this opposing view the uniqueness of the Lutheran doctrine of the constitution of the church. Our church maintains that it is a false understanding of the NT when there is found in the account of the appointment of the seven (Acts 6:1 f.) or in the other passages of the NT which speak of the office of deacon (e.g., 1 Tim 3:8 ff.) a "legally mandated ordinance of our Lord Jesus Christ," according to which there must be deacons in the church.

Neither may a law regarding the equality of rights of pastors nor regarding election as the normal procedure for the calling of a person into an office of the church be read out of the NT. Nor can such a law be proclaimed as an article of faith. Were it to confess such views, our church would have to surrender its entire understanding of the Holy Scriptures and their concept of the faith and what constitutes an article of faith.

For the Reformed Church the doctrine of the correct constitution of the church is an article of faith. And as E. Mengin said, a discussion regarding the correctness or applicability of this doctrine is as impossible "as a discussion regarding the dogma of the Trinity or the doctrine of the Lord's Supper or the Sacraments might be for any other Christian."<sup>54</sup> For Lutheranism, however, the question of the constitution of the church is always an open question. Because the Lutheran doctrine of the church knows nothing of a definite ordering of the church which Christ has mandated and therefore must be "holy and inviolable,"<sup>55</sup> because the constitution is not a mark of the church (*notae ecclesiae*), because the forms of constituting the church are much more of the *bene esse* ["(mere) well-being"] and not the *esse* ["very essence"] of the church and therefore must be considered fundamentally changeable, our church possesses a freedom over against the question of constitution which is foreign to the other confessions.

#### MISUNDERSTANDING OF THIS FREEDOM

This freedom of the Lutheran Church in the question of constitution has always been subject to the greatest misunderstanding. To explain this freedom as a deficiency (perhaps inherent in the character of the German people) of the German Reformer regarding organizational adroitness and a sense for institutions is to view it falsely. However the deficient capacity of the German people for the

<sup>51</sup> Article 31. HS

<sup>52</sup> See Mengin, *Das Recht der französisch-reformierten Kirche*, 4ff. HS

<sup>53</sup> See Bourdriot, *Ref. Kirchenzeitung* (1935), no. 21, p. 122. HS

<sup>54</sup> Mengin, *Das Recht der französisch-reformierten Kirche*, 33. HS

<sup>55</sup> [Calvin,] *Confessio Gallicana*, 25. HS

establishment of fixed forms of societal life may have worked itself out in the history of German Lutheranism, this freedom cannot be explained on this basis. And a glance at the Lutheran churches outside of Germany demonstrates this.

The principle that the constitution of the church is not of its essence is understood in a completely false manner also when it is asserted that our confession knows only an invisible church. The church of which it speaks, the church "in which the Gospel is purely taught and the Sacraments rightly administered" (*in qua evangelium pure docetur et recte administrantur sacramenta* [AC VII 1]) is a reality in this world. The proclamation of the Gospel in the sermon and in the absolution, its consummation in Baptism and the celebration of the Holy Supper are dealings which take place within the empirical congregation [*Gemeinde*].

The great error which underlies that false view and which is finally the most disastrous misunderstanding encountered by the Lutheran doctrine of church and which it continues to encounter time and again today is the opinion that Lutheranism has in general no interest in the question of the ordering of the church and leaves the formation of church constitution to the contingencies of historical development. Indeed, according to this misunderstanding, according to Lutheran doctrine the constitution of the church is in general a "secular thing," a question of law. And thus it is a matter of secular government as the guardian of the law, as are all legal questions.

In this sense, a political writer of our day can declare:

*The ordering and law of the church* come under the domain of the state. The church must be able to gather its members in the name of Jesus Christ undisturbed, so that the Gospel is rightly preached and the Sacraments correctly presented to them. How this happens, in which ordering and under which law, is already an earthly concern. If the state allows the church to manage its own affairs, it does so for practical reasons. The church can demand nothing in these matters.<sup>56</sup>

This view is so popular in our day because it claims to be a correct interpretation of the statements of the Lutheran Church regarding its own essence.

#### FALSE INTERPRETATION OF THE SEPARATION OF POWERS

The great canon law teacher Rudolf Sohm once proposed the thesis that church law is always in contradiction with the essence of the church.<sup>57</sup> For it is incon-

<sup>56</sup> W. Stapel, *Die Kirche Christi und der Staat Hitlers* (1933), 65; emphases in original. HS

<sup>57</sup> Wilhelm Stapel was a journalist of great influence in drawing the ties between God and Folk. "The German Volk," he wrote in 1922 . . . 'is not an idea of humanity but an idea of God's.' This, in a sentence, was the new recognition and the content of the starting point of political theology" (Klaus Scholder, *The Churches and the Third Reich* [London: SCM Press, 1987], 1:104; cf. also 1:420). Stapel's book *Die Kirche Christi und der Staat Hitlers* went through four impressions with a total print number of twelve thousand copies. RF

<sup>58</sup> Rudolf Sohm, *Kirchenrecht* (1892), 1:1. HS

ceivable that the kingdom of God should bear human forms of constitution, that the body of Christ be subject to human (legal) rule.<sup>58</sup> Sohm maintained that one of Luther's greatest discoveries was that he renewed the "conviction of earliest Christianity" that "the church of Christ did not intend to be a church of law [Kirchenrecht]."<sup>59</sup> Thus Sohm understood the Lutheran separation of the "governments" in such a way that finally the *essential* functions of the spiritual office consist only of the preaching of the Gospel and the administration of the Sacraments. Everything in the sphere of the legal functions of the church, consequently everything which we commonly call governance and administration of the church as a legal corporation is secular business foreign to the essence of the church. As such, Sohm believed, these functions do not belong to the spiritual office.

The great and profoundly pious law professor was personally much too churchly a man to draw the consequences of his theory that the state should govern the church.<sup>60</sup> But a theology which dreams of a "Christian world" and which learned from an earlier generation that it is the task of the church to merge into the state does come to this conclusion. Thus we read in the writings of a theological student of Sohm the following interpretation of the Lutheran doctrine of the separation of the spiritual and the secular powers:

The distinction lies in the means: the preaching office works through Word and Sacrament, the governing authority through compulsion and law. And they have separate spheres: one works on souls, the other on bodies. But all external dealings [*actiones externae*] of religion also fall into the corporal realm, indeed its entire manner of appearance, its societal life, its form. *This all is the subject of secular governing authority.*<sup>61</sup>

Rudolph Sohm (1841-1917), jurist and church historian, was professor of German and canon law at Leipzig from 1887. "He developed the view that, while the Church was wholly spiritual, law was wholly secular; hence the development of canon law . . . was an abandonment of the primitive ideal of the Church" (ODCC, 1514-15; see also *Lutheran Cyclopedia*, 726; *Neu Schaff-Herzog*, 10:496). MH

<sup>58</sup> Sohm, *Kirchenrecht*, 1:2. HS

<sup>59</sup> Sohm, *Kirchenrecht*, 1:460 ff. HS

<sup>60</sup> Sohm was of the opinion that the Evangelical Lutheran Church—like the early church, according to his theory—must have the power of faith to exist without legal form. But the "reformational men of the second rank" were not able to do this and thus repeated the fall into sin of the post-apostolic age:

The church as such has only the Word. According to the Lutheran Confession, all coercive power and with it all legal power belongs only to the governing authority. If the church intends to be legal and compulsory, then it must be governed by the secular governing authority. . . . If in the church of Christ there is to be legal ordering and legal government, then according to Lutheran principles, the church governance of the territorial lords must be established. (Sohm, *Kirchenrecht*, 1:634)

For his view Sohm calls upon Otto Meier, who in his document *Die Grundlagen des lutherischen Kirchenregiments* (Rostock, 1864) likewise based church governance by the territorial lord on the idea that compulsion and law are according to Lutheran doctrine foreign to the essence of the church. HS

<sup>61</sup> Erich Foerster, *Die Entstehung der Preussischen Landeskirche* (1905) 1:11 (emphasis added). HS

## CHURCH AND THE LEGAL ORDER

Here we cannot enter into a detailed critique of Sohm's theory of canon law. It has recently often been the subject of a penetrating examination.<sup>62</sup> Many of Sohm's dogmatic views—his idea of Christendom, church, and law, as much as the theories which encompass and intertwine these concepts—as well as his historical assertions regarding early Christianity and the Reformation have been shown to be either untenable or in need of correction. Here it will suffice to point out the following: If the thesis is valid that ecclesiastical law stands in contradiction to the essence of the church, then it must be granted that the church has always lived in contradiction with its own essence. For the church has never existed without legal order [Rechtsordnung].

Sohm has failed in his attempt to demonstrate that the church of primitive Christendom was a church in which there was not yet a legal order and [in which there was] only a communal life ruled by the free rein of the Spirit and brotherly love. His picture of the primitive church (viewed in the perspective of intellectual history) is just one in a long line of idealistic views of the church which have been read into the NT.

The church did not order itself legally as the result of a fall into sin. Nor did such a fall separate the NT age from early Catholicism. This legal ordering did not arise out of the "weak faith of a bygone Christian age." It is rather as old as the church itself. Insofar as the church, whatever it may otherwise be, is also a fellowship of people, it can certainly not exist without law valid within it and for it. As a fellowship of people living among the other human fellowships and tied together with these by countless connections, it possesses a law which is established with its existence, that is, with its very institution. This law is delimited by the law of other communal aspects of life, for instance, by the law of the state.

But it is not bestowed upon the church by the state. For it is indeed a great error to believe that all law proceeds from the state. During the great persecutions, the Roman Empire [*Imperium Romanum*] spoke its "You are not allowed to exist" (*Non licet esse vos*) to the church. And this was done by means of imperial law, formally and correctly issued. But by so doing, the state encroached on the law of the church. And this law it had not legislated and was not capable of eliminating.

It is also a great error to think that law must essentially be accompanied by compulsion and that there can only be law where there is also the power to carry out the claims of the law. When the church exists as a fellowship of people in legal connection to other human associations, it too is a legal fellowship. For in its midst is valid law so that its members, however else they may be bound together, are also bound together by legal connections with each other.

<sup>62</sup> See Günther Holstein, *Die Grundlagen des evangelischen Kirchenrechts* (1928), and the discussion which resulted from this book. HS

This cannot be otherwise insofar as the church is a fellowship of people—and, indeed, of sinful people—and not a fellowship of angels or saints. For all earthly fellowships, even for instance those of marriage and family, whatever else they may be, are also legal fellowships as long as we humans are sinners and stand under the Law of God. A fellowship which would be only a fellowship of love does not exist in this world.

Thus, since the days of the primitive congregations of Jerusalem, a legal order has existed in the church. The outpouring of the Holy Spirit on the day of Pentecost resulted in three thousand coming into the church. And this had legal consequences, just as every Baptism had, among other consequences those which were legal. Therefore ecclesiastical law belongs—we direct this assertion against the theories of Sohm and his students—to the essence of the church of God as a fellowship of sinful people in this world.

#### REFORMATION AND CANON LAW

We believe there is sufficient reason for making this assertion. Indeed, we must make it with particular emphasis in view of the great revolution which the *Lutheran Reformation* meant for the history of the church and canon law. Even if Sohm's understanding of the primitive church as a church in which there were indeed certain external ecclesiastical forms, but not yet legal forms, is not justified, if in fact the NT itself bears witness that already in the time of the apostles legal forms and legal claims existed, Sohm's interpretation of the Reformation could still be correct. In view of the nullifying judgment which Luther—especially in the early years of the Reformation, but later too—had rendered not only on existing canonical law, but also on spiritual law in general, it is quite understandable that Sohm believes that on December 10, 1520, Luther burned not only the currently applicable canon law but also ecclesiastical law in general.

"Did Luther perhaps desire a different, improved spiritual law book, a different, better canon law? Absolutely not! He desired the complete nullification of applicable canon law from the first letter to the last. And he wanted nothing else put in its place. . . . Only when no 'Roman law' and consequently no canon law existed any longer would Christianity 'be well.'"<sup>63</sup> If we are to see in these thoughts expressed by Luther himself an essential component of his Reformation understanding of faith, then we cannot spare him the accusation that he himself, at a crucial point, surrendered the Reformation. And Luther is the guilty party if all is not "well" in Christianity according to his own measure.

We may be able to harmonize his readiness to maintain the existing canonical constitution—indeed, not as a binding legal order, but as a good human order freely to be accepted—with his fundamental rejection of the canonical law. We may find no contradiction in the fact that he burned the canonical law in 1520 and

yet in 1542 borrowed directions from it for the installation of a bishop. Still, the fact remains that Luther not only tolerated the establishment of a new ecclesiastical legal order, he himself instigated it with the visitation of 1527.

As the result of a new understanding of the Gospel, the Lutheran Reformation issued a powerful, vehement, and conclusive protest against the false canon law of the Papal Church. But this in no way meant the abandonment of ecclesiastical law altogether. The dissolution of ecclesiastical law would have meant the dissolution of the church as an earthly fellowship of people! *The Lutheran Reformation no more set aside ecclesiastical law than it did dogma.*<sup>64</sup> It only redefined and returned it to its scriptural sense.

#### POSITIVE DOCTRINE OF THE CONSTITUTION OF THE CHURCH

What our confessions teach on the question of the *constitution of the church* can only be understood with the presupposition that the Lutheran Reformation did not do away with ecclesiastical law or the church as a legal institution. The freedom of outer form in the area of church constitution, of which we have spoken above, can certainly not be explained by a devaluation of order in the church. The Lutheran Church too knows what role questions of church order play in the NT. It knows that the oldest church orders, as we possess them in the letters of Paul, originated before the gospels obtained their final form.

Just how seriously our Reformers took what the NT said regarding the ordering of the church is demonstrated by the vast number of old Lutheran church orders. And these orders are the best defense against the assertion that Lutheranism in its zeal for dogmatic questions forgot the tasks of church formation. It is clear that in view of the false canon law of the Papal Church, which had nearly destroyed the church of Christ, the theologians of the emerging Lutheran Church had one intention. They had to keep from again crowning human thoughts, desires, and claims with the halo of divine Law. They had to clearly distinguish in the church between that which is the unchangeable expression of divine will and that which is established by men and therefore a changeable ordinance.

This fundamental distinction is carried out in our confessions with complete clarity. They acknowledge on the basis of Holy Scripture the "ministry of teaching the Gospel and administering the Sacraments" (*ministerium docendi evangelii et porrigendi sacramenta*) as *divine institutions*, completely independent of the will and establishment of men, and which are of the essence of the church [AC V]. This *ministerium* is not to be confused with the persons who occupy it. It is an office, a service (*diakonia*), which is to be carried out in the world because it is the will of God. This office exists "not from men nor through men" (Gal 1:1), but only "by

<sup>63</sup> Sohm, *Kirchenrecht*, 1:462-63. HS

<sup>64</sup> Sohm's thesis is reminiscent of the thesis which von Harnack posed a few years earlier regarding the dissolution of dogma by the Reformation. Sohm's thesis is an intellectual-historical parallel to Harnack's theory of dogma. HS

the will of God" (1 Cor 1:1). Men could never have thought it up. It is a divine order, a divine institution in the strict sense just as are the offices of the father and secular governing authority.

But unlike these offices rooted in the will of God the Creator and Preserver, it is rooted in the will of God the Redeemer. It entered earthly history through the institution of Jesus Christ: "As the Father has sent me, so I send you" [John 20:21]. The sending of the Son, as it were, finds its continuation in the *ministerium ecclesiasticum* ["ecclesiastical ministry, spiritual office"]. For he himself, the crucified and risen Lord, is really and personally present in the proclamation of the Gospel which occurs through this office and in the Sacraments administered by this office.

Thus this office is a gracious gift of God. It is a gift of one who in this office wills that his Gospel be preached to the ends of the earth and until the end of time. Article V of the Augustana which treats *De ministerio ecclesiastico* and immediately follows the article of justification is to be understood accordingly: "To obtain such faith—that is, saving faith in Jesus Christ—God has established the preaching office . . . .<sup>65</sup> Yet let it be noted that this did not mean the establishment of an office separated from the congregation, a clergy standing over the laity. Certainly "properly called" pastors are the bearers of this office. But it is equally certain that this office—even as a duty to proclaim the Gospel—is also there where the ordinary pastoral office, for whatever reason, is not yet or no longer present.

Thus the presence of this office is of the essence of the church. For church can only be present where the proclamation of the pure Gospel and the administration of the Sacraments in accordance with their institution is carried out [AC VII 1]. Therefore it is God's will that the spiritual office be present. On the other hand, the *forms* in which it is organized are not prescribed by divine command, according to Lutheran church doctrine. It can be organized as the pastoral office alone, or it can appear in a number of forms—perhaps as the office of parish pastor, as the office of bishop or archbishop.

And likewise, the congregation—be it the local congregation [*Gemeinde*] or the congregation of an entire country—which as the "assembly of all believers"<sup>66</sup> that has arisen from the proclamation of the Word and the administration of the Sacraments and that consequently as a whole bears the ecclesiastical office may be organized in entirely various ways. The church must have legal forms. But there is no law regarding such forms in the Holy Scriptures. All legal forms of the church are rather among the "human traditions" or the "rites and ceremonies established by men" of which Article VII of the Augustana teaches. Thus agree-

ment therein is not *necessary* for the true unity of the church. And Article XV states that these forms should be maintained "if they can be maintained without sin and serve peace and good order in the church."

#### DIVINE AND HUMAN LAW IN THE CHURCH

Thus our confession strictly distinguishes between that in the church which is of divine law (*de iure divino*) and that which is of human law (*de iure humano*). But practically all external legal forms of the church, of the congregation and the office belong in the sphere of human law. Does not then this differentiation necessarily lead to the consequence that all external organization of the church is left to arbitrary human action? Must it be surrendered to anyone who usurps power in the church, and must not every existing form of church constitution be acknowledged or tolerated?

The great freedom which Lutheranism possesses in all questions of the external formation of the church has been misused. It has often meant that the question of correct human law has not been taken seriously enough. It has even been declared that it is quite immaterial how the church is constituted. But our confessions do not intend to make the external orders of the church indifferent. Friedrich Brunstäd<sup>67</sup> correctly takes exception to this point: "If legislation [*Rechtssetzung*] is no creedal truth, nor creedal truth a matter of legislation, it still does not mean that they should have nothing to do with each other."<sup>68</sup>

Whether or not candles burn on the altars of Lutheran churches is indifferent. But because of this, the command of the Reformed King Frederick William I to do away with altar candles is not yet binding ecclesiastical law. It is indifferent whether or not there are bishops in Pomerania or East Prussia. But because this is so, the court preachers decorated with the titles of bishop and archbishop by Frederick William III are not yet legal Christian bishops.

It is not true that the only concern is that the Gospel be preached and the Sacraments be dispensed but that it is indifferent how this happens. According to Article XIV of the Augustana, it matters greatly who exercises the preaching office, namely, whether the person in question is legitimately called (*rite vocatus*) according to correct ecclesiastical order. Luther also knew that the call (*vocatio*) causes the devil a great deal of woe.<sup>69</sup> Accordingly, he was convinced that bearers of the office who did not possess their office through an orderly call were quite pleasing to the devil. Therefore, the defenders of the view that the external legal orders of the church do not matter if only the Gospel is preached cannot call upon

<sup>65</sup> The text of Schwabach Article VII says expressly "the preaching office or oral word" (BS, 59, line 4). HS

<sup>66</sup> *Congregatio sanctorum*, the congregation of sinners justified by faith, as the expression of AC VII is to be understood. HS

<sup>67</sup> Friedrich Brunstäd (1883-1944) was a professor of philosophy at Erlangen and a systematic theologian at Rostock. He wrote *Theologie der lutherischen Bekenntnisschriften* (Lutheran Cyclopedia, 114f), MH

<sup>68</sup> Friedrich Brunstäd, *Die Kirche und ihr Recht* (1935), 22. Regarding what follows we refer the reader to this recently published document. HS

<sup>69</sup> WA TR 1, no. 90. HS

the confessions for support. Our confessions, in order to oppose the wanton actions of the Papal Church and its false canon law, do sharply distinguish between divine and human law in the church.

But this does not mean that there need be no distinction made between legitimate human law and illicit human law. Nor does it mean that our church despises that *law which serves for peace and good order in the church*. The Lutheran Church once declared in its confessions its readiness to "help maintain old church ordering and the episcopal government, which is called canonical polity" (*canoniam politiam*) under the condition that the bishops would tolerate the pure doctrine of the Gospel [Ap XIV 1 (24), German]. This declaration presupposes that there are ways of constituting the church which the Lutheran Church can under no circumstances acknowledge, for example, the constitution of the Papal Church as it existed at the time of the Reformation. And there are other forms which it can acknowledge, for example, the episcopal constitution of the *old* canonical law.

Our confessions never expressed (at least in the period before the Religious Peace of Augsburg [1555]) which conditions a particular way of constituting the church must fulfill in order to be tolerable for the Lutheran Church. Nor did they indicate which ways of constituting the church in addition to that of the old canonical law can be discussed in our church. Nor could they have done so. The desire was not to found a new church, but only to reform the existing church. Thus the problem of constituting the church was not a question of which new way of doing so could be introduced. The question was rather about what had to happen to break the tyranny of the false hierarchy over souls and congregations which had obtained, in order that the corrupt ecclesiastical office with all its duties and all its members could again become a true spiritual office in the sense of the Gospel so that the entire church could be renewed.

But today when the church in a completely different situation is asked which conditions a church constitution must fulfill if it is to be acknowledged by the Lutheran Church as legitimate or possible, then the answer must be this: According to Lutheran doctrine the church is correctly ordered when its constitution provides a maximum of possibilities for the spiritual office to carry out its service of the proclamation of the pure Gospel and the correct administration of the Sacraments in the name and by the mandate of the Lord of the church and when it provides a maximum of possibilities for the congregation called by Jesus Christ himself through the Word and Sacraments, which in faith in him is a "congregation of saints,"<sup>70</sup> to lead its life in the world and to accomplish its service to people as is mandated the church of God.

This answer continues to assure evangelical freedom in matters of the external formation of the church. Lutheranism could give up this freedom only by giving up its understanding of the NT. A multiplicity of ecclesiastical forms of life

are possible as long as they do not preclude unity in the faith and thus the unity of the church. The external forms of the church may be adapted to the necessities of times and peoples. The constitution of a church may indeed undergo development. With this answer we avoid the legalistic misunderstanding that there is one definite and only correct ordering of the church prescribed in the NT. But we also avoid the libertine misunderstanding that according to Lutheran doctrine there is no such thing as a false way of organizing the church. We know that no external ordering of the church can assure purity of doctrine. But we also know just as well that the doctrine of the church is never independent of the external ordering of the church and that there are constitutions which make it impossible for the church to preserve its pure doctrine. WELL SAID!

Those in the Church of the Reformation should never have forgotten this. And if what false canon law once meant was forgotten, then the experiences of the Lutheran Church in Germany, perhaps the experiences in Brandenburg-Prussia since the seventeenth century, certainly had to open the eyes of even the most blind to the connection which obtains and must obtain between church constitution and church doctrine because the church is a spiritual-corporal reality in the world.

#### THE CONCEPT OF CHURCH GOVERNMENT

Still more inconceivable than the view that according to Lutheran doctrine the external form of the church is completely indifferent is the assertion that *Lutheranism surrenders the external governance of the church, which we today call "Kirchenregiment," to the secular governing authority*. The "church governance" of which Augustana XIV and XXVIII spoke is something completely different from what we understand when we think of the governance of the church. We mean by this the legal oversight of pastors and congregations, calling and dismissing bearers of ecclesiastical office, the decreeing of ecclesiastical laws, the administration of church property, and whatever else church leadership entails.

The Augustana however understands by church governance the proclamation of the Word, the administration of the Sacraments, the hearing of confession and the imparting of absolution, excommunication and absolution in the exercise of the Office of the Keys. The spiritual care which the superintendent or bishop exercises toward pastors and congregations may be counted among this church governance. But the means at the disposal of the spiritual office are Word and Sacrament alone.

Consequently, only those functions appertain to it which the pastor or bishop accomplishes by means of the Word and the Sacrament. All legal and administrative dealings may be withdrawn from the spiritual office for it does not have at its disposal the power of compulsion without which there can be no governing functions. Thus according to this view compliance to church law could not be left merely to free obedience and under certain circumstances must be by compulsion.

<sup>70</sup> In the sense of AC VII: *congregatio sanctorum*. HS

When a church government does this, it is a governing authority [*Obrigkeiti*] and exercises governmental functions. But it could only derive this authority from the office which God has entrusted with maintenance of the legal order and to which he has entrusted the power of compulsion. But according to the clear doctrine of the Augustana that is secular governing authority. Consequently, [we are told] secular authority possesses the exercise of the legal functions of church governance.

We must begin our answer to this view by noting what we said above regarding the theory of Rudolf Sohm. For we have to do here merely with a repetition of Sohm's thought<sup>71</sup> and with the consequences which have been drawn from it. Above we answered Sohm's thesis that church law contradicts the essence of the church with our proposition that the church has never existed without ecclesiastical law and that it cannot exist without it because it is a fellowship of people. Thus we offer the following opposing thesis to this theory of church government: The church has always existed with a church government which is not derived from the secular governing authority. This church government was exercised by the members of the church or by the ecclesiastical office and the church could not exist as an empirical church without such a church government.

If the Sohmian theory is valid in general for the church, as it ostensibly claims to be, then it must also be applicable to the ancient church, the church in Turkey in the sixteenth century, the church in modern China, on so forth. From whom did the martyred bishops of the ancient church receive the authority to govern their churches? What right did the provincial synods of the third century have to legislate ecclesiastical law? If the church as church can establish no law nor legislate any binding law for its members nor form any church governance, then all of this was of course illegitimate. Then valid law has only existed in the church since the time of Constantine, who procured legal recognition under valid law in the Roman Empire for a church which up to that time had been illegitimate.

We cannot say that the time when the church was persecuted represents a period when a sort of emergency law obtained. For the church can either always establish laws, or it cannot. We cannot further discuss here the necessary consequences this question would have had for church government of the churches under Suleiman II and for the governance of modern mission churches in China and Japan.

### THE AUTHORITY OF BISHOPS

But were we to accept the idea that the Reformers so understood the separation of the powers (*potestas*) that the functions of the proclamation of the Word

and the administration of the Sacraments were not only the essential tasks of the spiritual office, but under all circumstances its only tasks, and that any activity of governance within the church by the spiritual office would be a usurpation of secular governmental functions, then one thing would be completely unthinkable. Then our church in its confessions would never have expressed its willingness in the situation which then obtained to acknowledge under certain conditions the *canonical constitution of the church*. For this constitution presupposed that the bishop not only exercised functions of spiritual care, but also governmental functions in the church in the narrower sense.

Nor can this be otherwise, as a glance already at the Pastoral Letters demonstrates, which from that very time have served as direction for carrying out offices of spiritual supervision. The admission of a woman to the ecclesiastical status of widow, of which I Tim 5:9 ff. speaks, is indeed not only a spiritual matter having to do with the care of souls, it is as an ecclesiastical-legal dealing with financial consequences for the church treasury.

Have the theoreticians who would limit the bishop and the pastor to the proclamation of the Word and the administration of the Sacraments ever considered that both cost money and that from the time the Lord first sent out his disciples (Matt 10:8-10; Luke 10:7) to the last "church order" of the NT (1 Tim 5:18; cf. 1 Cor 9:7 ff.) the question of the "pastor's salary" and the "church tax" has played a role?

And in which area of the dealings of church government does the following direction belong: "Do not receive an accusation against a presbyter except from two or three witnesses" (1 Tim 5:19)? The man who here—in the church of the NT!—has charge of disciplinary proceedings is the same one who ordains presbyters and deacons to preach the Gospel and oppose false teachers. And so it remained in the church. If the Reformation had come to the conclusion that this were a false understanding of the spiritual office, that the spiritual office must only deal with Word and Sacrament and that the administration of the externals of the church must be left to the experienced entities of the secular governing authority, how loudly they would have proclaimed this renewal! But they did not view it this way at all.

The demand our confession places upon the bishops is that they once again become real bishops. They should "not get involved in an office which is not theirs" [AC XVIII 13], they should not appropriate rule over areas which according to God's ordering belong to the secular authority. They are reminded that their incidental secular rule as imperial princes [*Reichsfürsten*] is granted them from the emperor and has nothing to do with the office of bishop:

According to divine right, therefore, it is the office of the bishop to preach the Gospel, forgive sins, judge doctrine and condemn doctrine that is contrary to the Gospel, and exclude from the Christian community the ungodly whose wicked conduct is manifest. All this is to be done not by human power but by God's Word alone. On this account parish ministers and churches are

<sup>71</sup> See the notes above regarding Sohm in the section "False Interpretation of the Separation of Powers."

Already the old dogmatists of our church had to confront the error that to the *ministerium ecclesiasticum* there could not and must not be ascribed any power (*potestas*) in the sense of a legal authority, for example, Johann Gerhard (Loc. XIII, 13 f.), HS



bound to be obedient to the bishops according to the saying of Christ in Luke 10:16, "He who hears you hears me." On the other hand, if they teach, introduce, or institute anything contrary to the Gospel, we have God's command not be obedient in such cases. (AC XXVIII 21-23)<sup>72</sup>

Here it is completely clear how the spiritual or episcopal office is understood. To preach, absolve, teach, condemn heresy, excommunicate the godless—the administration of the Sacraments could be added, as otherwise occurs—these are the functions which constitute the *essence of this office*. There are functions which the bishop has by divine right (*de iure divino*). But while this is so, it is not said that according to applicable human law in the church he must not and may not exercise other functions. Already in the passage cited "pastors and churches" are in duty bound to be obedient to the bishops so far as they do not "teach, establish, or institute something contrary to the Gospel" ("contra evangelium docent aut constituentur"). The rules they may make in view of circumstance—and they are never to introduce these as though they were the doctrine of the Word of the Lord, "He who hears you hears me" (Ap XXVIII 18-19 [quoting Luke 10:16])—are taught by Augustana XXVIII with unmistakable clarity.

Precisely against the background of the sharp protest against the anti-scriptural laws with which the Roman hierarchy had burdened the souls of Christianity and troubled their consciences, against the background of the struggle for Christian freedom which must be preserved in the church,<sup>73</sup> in a quiet matter-of-fact manner the right of the bishops to give instructions in the area of church governance for the sake of peace and order is maintained:

What are we to say, then, about Sunday and other similar church ordinances and ceremonies? To this our teachers reply that bishops or pastors may make regulations so that everything in the churches is done in good order, but not as a means of obtaining God's grace or making satisfaction for sins, nor in order to bind men's consciences by considering these things necessary services of God and counting it sin to omit their observance even when this is done without offense. . . .

It is proper for the Christian assembly to keep such ordinances for the sake of love and peace, to be obedient to the bishops and parish ministers in such matters, and to observe the regulations in such a way that one does not give offense to another and so that there may be no disorder or unbecoming conduct in the church. However, consciences should not be burdened. (AC XXVIII 53-55)<sup>74</sup>

<sup>72</sup> The English translation is from Tappert, *BC*, 84. MH

<sup>73</sup> "It is necessary to preserve the teaching of Christian liberty in Christendom, namely, that bondage to the law is not necessary for justification, as St. Paul writes in Gal. 5:1, 'For freedom Christ has set us free; stand fast, therefore, and do not submit again to a yoke of slavery.'" (AC XXVIII 51-52). [The English translation is from Tappert, *BC*, 89.] HS

<sup>74</sup> The English translation is from Tappert, *BC*, 89-90. MH

To be sure, here only instructions in the area of the Divine Service are dealt with expressly. But the authority which is prescribed to the bishops and pastors in this area fully suffices to show that our confessions understand the spiritual office in its essence, consequently in the sense of a divine institution, as a "ministry of teaching the Gospel and administering the Sacraments" (*ministerium docendi evangelii et porrigendi sacramenta* [AC V 1]). However, they grant to it authority which must be defined in terms of church-governmental functions in the modern sense of the term.

A statement of the Formula of Concord regarding the spiritual office shows that the Augustana has more in mind here than temporally conditioned concessions to the bishops who found themselves in office at that particular phase of the process of unification. The Augustana rather intends to make a fundamental assertion regarding the spiritual office, valid for all times (quite aside from the question of wherein consists the authority of the "spiritual fathers who rule and preside over us by God's Word," which Luther asserts in the Large Catechism, Fourth Commandment, 158). Article X of the Solid Declaration speaks of duties which "the servants of the Word have as leaders of the community of God."<sup>75</sup> The Latin text, which comprises the first commentary on the Formula of Concord, spoke of a "ministry of the Word of God (as those whom the Lord appointed to rule his church)," "ministri verbi Dei (tanquam ii, quos Dominus ecclesiae suae regendae praefecit)" [SD X 10]. It designates the "ruling of the church" (*regere ecclesiam*) expressly as a task given by the Lord and consequently reckons this "ruling" among the functions which are given to the spiritual office by divine right (*de iure divino*). The "ruling of the church" (*regere ecclesiam*) is then identical with that which Augustana XIV calls "church government" and which is exercised through the proclamation of the Word and the administration of the Sacraments.

But certainly no one will assert that according to the intent of the Formula of Concord the occupants of the spiritual office do not possess those—as we commonly call them—"church governmental" [*kirchensregimentlichen*] functions to exercise which the Augustana ascribes to bishops and pastors. Otherwise alongside the pastors as "leaders of the community of God" [SD X 10], there would have to be still other leaders who possess necessary church-governmental authority for the sake of order.

But our church does not know of any such leaders who would be more along the lines of the presbyter of the Reformed Church.<sup>76</sup> First of all they know nothing of a law that the secular governing authority should have the right to carry out the church-governmental dealings necessary for maintaining order in the church. That was already excluded when Article X of the Formula of Concord, "On

<sup>75</sup> SD X 10. Luther too declares that it is the task of the pastors that they "preach and lead the churches" (WA 46.735.12). See the discussion, note, and texts cited in part 3 above. HS

<sup>76</sup> Of course in accord with the doctrine of our church nothing is here said against the church for appropriate reasons creating a presbyterial office as good human order. HS

Church Usages," which we cited, ascribed to the church the right to introduce "ceremonies and church usages which in God's Word are neither commanded nor forbidden." And this was in full agreement with the other confessional documents.

#### TO WHOM DOES CHURCH GOVERNANCE BELONG?

Now we have come to the central question of our investigation: According to Lutheran doctrine, to whom does church governance belong? The completely unanimous answer of the confessions resounds, as Wilhelm Kahl<sup>77</sup> correctly formulated it: "The *ecclesia* itself, whose head is Christ." If we are questioned further about what is meant here by the word "church," we must answer this way: the one holy, catholic and apostolic church, which we confess in the Creed, the hidden church, which yet is not a Platonic republic (*civitas Platonia*), but rather a reality in the world, perceptible in its two marks—the pure preaching of the Gospel and the scriptural administration of the Sacraments; "the multitude of men . . . who here and there in the world, from the rising to the setting of the sun, truly believe in Christ, who then have one Gospel, one Christ, one and the same Baptism and Sacrament, are ruled by one Holy Spirit, even though they indeed have different ceremonies" (Ap VII/VIII 11 [German]); the church which is the body of the Lord, the people of God, the bride of Christ, the temple of the Holy Spirit; the church which wends its way through the peoples of the world and the centuries of history and to which the promise is given that the gates of hell shall not overpower it; the church in whose Word and Sacrament Jesus Christ is actually present, though our eyes do not see him.

This church, according to Evangelical Lutheran doctrine, is the possessor of ecclesiastical authority [*Kirchengewalt*]. The power of the keys (*potestas clavium*), which is the chief part of ecclesiastical authority, is not the possession of only one of the apostles. It does not belong to one individual ruling office in the church, nor was it first given to particular persons. It was given to the church, which is the body of the Lord.

It is necessary to acknowledge that the keys do not belong to the person of one particular individual but to the whole church, as is shown by many clear and powerful arguments, for after speaking of the keys in Matt. 18:19, Christ said, "If two or three of you agree on earth," etc. Therefore, he bestows the keys especially and immediately on the church, and for the same reason the church especially possesses the right of vocation. (Treatise, 24)<sup>78</sup>

#### OFFICE AND CONGREGATION

Consequently, with the power of the keys (*potestas clavium*) the church is also given the right and the task to confer [*übertragen*] the "ministry of teaching the Gospel and the administration of the Sacraments" (*ministerium docendi evangelii et porrigendi sacramenta* [AC V 1]), that is, to call men to the preaching office to carry out the task given it by Christ to proclaim the Gospel. By church is always meant here the one inseparable church which is the body of Christ.

But this church never appears in our space-time world and in this sinful humanity in its totality, and never in full purity. We perceive its presence in faith in our historical, empirical churchdoms in the pure preaching of the Gospel and in the correct administration of the Sacraments. Wherever we may say in faith "Here is the church of Christ," there we may also assert, "Here is the ecclesiastical authority which Christ has given his church—the right and duty to install pastors, for preaching and absolution, for administration of the Sacraments, for the orderly establishment of the Divine Service, and so on."

The church of Christ can be and is present where "two or three are gathered" in his name (Matt 18:20). It can manifest itself as the local congregation or in a group of congregations or even in a territorial church. It is completely false always to immediately apply what our confessions say of the congregation [*Gemeinde*], *the congregatio sanctorum, to the local congregation.* Those "called saints" in Rome [Rom 1:7] at the time of Paul apparently only very rarely came together all in one place. And the introduction to the Letters to the Corinthians testify that already at that time "all the saints throughout Achaia" belonged to the "church of God in Corinth" [2 Cor 1:1].

But in whichever form the church appears, where it really is present, there is ecclesiastical authority. Here we cannot enter a discussion of the unique relationship which according to Lutheran doctrine obtains between the spiritual office (*ministerium ecclesiasticum*) and the congregation (*congregatio sanctorum*). But let this be stated. The indissoluble mutual connection which according to the doctrine of our church obtains between congregation and office of the ministry—neither is present without the other, neither produces the other, neither is lord over the other—makes it completely understandable that certain functions of church governance, such as the arrangement of "church usages" and "ceremonies," are ascribed sometimes to the office of the ministry (AC XXVIII 53 f.) and sometimes to the congregation [*Gemeinde*].<sup>79</sup>

In every case they are functions of the church, whether exercised immediately by the congregation or by the bearers of the spiritual office as the organs of the congregation called thereto. The church is the sole possessor of ecclesiastical

<sup>77</sup> Der Rechtsinhalt des Konkordienbuchs (1910), 27 f. HS

<sup>78</sup> The English translation is from Tappert, BC, 324, MH

<sup>79</sup> FC Ep X 4: "We believe, teach, and confess that the community [*Gemein*] of God in every locality and every age has authority to change such ceremonies according to circumstances, as it may be most profitable and edifying to the community of God." [The English translation is from Tappert, BC, 493.] HS

authority, and indeed, not only ecclesiastical authority in the narrow sense of the power of the keys (*potestas clavium*), but also in the wider sense of the legal functions of church governance.

#### CHURCH GOVERNMENT AND SECULAR AUTHORITY

If this is the view of our confessions on church governance and its basis, then it is understandable that according to Lutheran church doctrine the secular governing authority as such can have no part in church governance. Of course the occupants of government office, so far as they are members of the church and participate in the rights of the Christian congregation, may exercise such church governmental functions to which the members of the congregations may be called commensurate with good order in the church. But such actions are the result of belonging to the church and not possessing governmental office.

This would also apply to the incidental participation of the territorial lords in church governance as "chief members of the church" (*principua membra ecclesiae* [Treatise, 54]). Thus Luther himself, as we have seen, understood it when he called the Christian princes of Germany to "the office of love" [cf. WA 26.197.25; LW 40:271]. We can also understand it completely that "the most important member of the church," to whom as a Christian a maximum of duty in service of the church was given, now possessed a maximum of rights. And consequently he was not only owed thanks and respect but also given the highest measure of participation in the governance of the church, which a member of the church who is not endowed with a spiritual office can in general hold.

If the basic principle had been preserved that the church alone can wield ecclesiastical authority, the result would have been that secular governing authority as such would have been granted no right to the governance or co-governance of the church. But this did not happen in the confessions, and it can hardly be seen as an accident. When we consider what Melancthon in the Apology and in the Treatise entrusts to the princes in respect to the protection of the church and the demand for pure doctrine,<sup>80</sup> when we furthermore realize how much development the government of the church by territorial lord had already undergone by the time of the Treatise (1537), then it is quite surprising that he does not here already draw the consequence which he had drawn in later writings.

Even in the broadest statements on what the princes are in duty bound to do and thereby justified in doing, the territorial lord remains the lord protector of the church, but he never becomes the bishop.<sup>81</sup> The later theologians who sought to understand and justify the long-since established governance of the church by

<sup>80</sup> In addition to the passages already cited, compare Ap XXIII 71. HS

<sup>81</sup> For example, Treatise, 56: "It is especially incumbent on the kings to restrain the license of the pontiffs and see to it that the church is not deprived of the power of making judgments and decisions according to the Word of God." [The English translation is from Tappert, BC, 329-30, emphasis by Sasse.] HS

territorial lord, such as Johann Gerhard<sup>82</sup> were not able to do so by calling upon confessional doctrine. They formulated a completely new theological theory when they transformed the Lutheran doctrine of the three estates to which Christians belong (the domestic, political, and ecclesiastical orders—*ordo oeconomicus*, *ordo politicus*, and *ordo ecclesiasticus*) into a doctrine of the three estates which constitute and participate in the governance of the church. A glance at Luther's explanation of the Fourth Commandment in the Large Catechism proves that this theory is not identical with the old doctrine of the three estates.<sup>83</sup>

Thus the doctrine of the Lutheran Church on church governance, viewed in its totality, is a *confirmation of the basic principle* that both of the powers ordained of God—the secular governing authority and the spiritual office—should not be confused. But of course, our fathers knew just as well as we do that state and church don't exist on different planets. They knew just as well as we that they are by the sweat of their brow and consequently also belonged to the domestic or economic order (*ordo oeconomicus*). This and nothing else expresses the profound doctrine of Luther and the old Lutheran Church regarding the three estates, to which we all belong.

Therefore our confessions know that there are areas of life in which the tasks of the state concern those of the church and where, as a consequence, there may also be conflict. And they furthermore knew of the rights which the state had over against the church, and the secular government had over against the spiritual office. And they knew thirdly of the grave responsibility which state and church, secular authority and spiritual office, had for each other and both together for the people in whose service they had been placed by God. Regarding this we have something very important yet to say in conclusion to this section.

#### POINTS OF CONTACT BETWEEN CHURCH AND STATE

The areas where state and church intersect are not the same in all periods of history. This is because the functions of the state are not always the same. How many and which functions the state reckons within its sphere of responsibility are conditioned by the current dominant concept of the state. In the case of the state—as with the church—a distinction must be made between essential and accidental tasks. The only essential tasks are the maintenance of the law and the preservation of peace. Lutheran Church doctrine very keenly recognized this on the basis of the Holy Scriptures. And we ought to guard ourselves against seeing in this limitation only the alleged narrow-mindedness of a Reformation which occurred in the context of a very small and undeveloped ideal of state.

<sup>82</sup> Johann Gerhard (1582-1637) was the "archtheologian of Lutheranism" (*Lutheran Cyclopedia*, 329). MH

<sup>83</sup> Large Catechism, Fourth Commandment, 141 ff.; 158 ff. On the doctrine of the three estates, compare the article by A. F. C. Vilmar under the same title, *Kirche und Welt* (1872), 1:207 ff., and also Werner Eiert, *Morphologie des Lutheriums* (1932), 2:41 ff. HS

The fathers of our church well knew what tremendous tasks were incumbent upon the state in maintaining the legal order and preserving the public peace. They knew and believed the old German legal proverb that God is the beginning of all law. And they did not yet mock the "night watchman state" as was done in the enlightened police state of later times. The Reformers well knew, as Luther's demands of the princes and councilmen demonstrate, that the secular authority can still take on other tasks. In case of emergency it is in duty bound to assume the duty of forming schools, to take up the concern for the preservation of the church which goes beyond the self-evident maintenance of the law, and yes, in certain cases even to attempt the solving of purely domestic problems.

But these functions are not of the essence of the state. The state remains the state, even if it should not perform these tasks, while it ceases to be the state if it neglects the tasks mentioned previously. Thus the ancient state maintained that the commissioning of public worship [*Kultus*] was its task. The duty of its formal details however was always left to private organizations. The modern state throughout the world thinks in directly inverted terms.

On the other hand, there are indeed essential functions which remain those of the church, namely, the proclamation of the Word and the administration of the Sacraments. But the church also exercises accidental functions. Among these are the fulfillment of organizational tasks in the area of the formation of laws and the domestic side of ecclesiastical life (diaconate and the maintenance of the ecclesiastical organization) of which we have spoken. The church would also remain church if it finally did not exercise these functions, although their continuing neglect would finally destroy the church because it is at once a spiritual-portal organization. Thus the nullification of its outer organization would necessarily mean the destruction of the spiritual office and the Christian congregation [*Gemeinde*].

It is similar to the domestic functions of the secular authority, which are not essential to it and without which the proper tasks of the state cannot continue to be accomplished. Also with the church now we note a hesitation in respect to these accidental functions. The ancient church, for instance, had gradually to form its own legal system, or episcopal justice. When the Roman Empire went under and the secular authority was temporarily completely eliminated, it was a necessary service of love when the spiritual office, as the only authority remaining, offered assistance and took over the functions of the secular authority. This was the opposite counterpart to the service of love which Luther expected of the secular authority at the time of the dissolution of the medieval church. And the same misfortune occurred that those called to the "office of love" did not know when this office was to end.

There have been times when the church took care of the entire educational system and when the ecclesiastical diaconate helped preserve society. There were times when the church retreated from these spheres or when state and church encountered each other and therefore a legal regulation of the relationship was

necessary. In the age of the Reformation, the medieval inheritance of the religious involvement of the princes [*geistlichen Fürstentums*] was a primary problem.

How differently indeed would the Reformation have run its course if the bishops had been only bishops and not also continued to be secular authorities in their realms. The solution which the Augustana has for this problem is completely clear. As secular princes of the empire, the bishops are subject to the emperor: "In cases where bishops possess temporal authority and the sword, they possess it not as bishops by divine right, but by human, imperial right, bestowed by Roman emperors and kings for the temporal administration of their lands. Such authority has nothing at all to do with the office of the Gospel" (AC XXVI-II 19).<sup>84</sup> The emperor alone therefore has the right to confer (*collatio*) to the bishop the status of imperial princely rule (Treatise, 35 f.). This question was generally no problem for the Reformation. Here they only had to point back to the claims of the medieval spiritual office to secular rule.

#### CHURCH PROPERTY AND LAWS OF MARRIAGE

More difficult was the question of how the rights of state and church to two spheres were to be delimited where for all time civil and ecclesiastical competencies and interests encountered each other: These were the spheres of *marriage law* and *church property*. Article XXVIII of the Augustana explains regarding this: "Whatever other power and jurisdiction bishops may have in various matters (for example, in matrimonial cases and in tithes), they have these by virtue of human right. However, when bishops are negligent in the performance of such duties, the princes are obliged, whether they like to or not, to administer justice to their subjects for the sake of peace and to prevent discord and great disorder in their lands" (AC XXVIII 29).<sup>85</sup>

Consequently it [AC XXVIII 29] deals with "power or jurisdiction" (*potestas vel iurisdictio*)<sup>86</sup> for "legally investigating certain cases" (*congnoscendis certis causis*) which the bishops possess by human right (*de iure humano*), and indeed not as princes of the empire, rather as bishops [*Ordinarien*]; that is a jurisdiction which according to valid law was incumbent upon the ecclesiastical courts, though this jurisdiction could as well have been exercised by the secular court.

<sup>84</sup> The English translation is from Tappert, *BC*, 83-84. MH

<sup>85</sup> The English translation is from Tappert, *BC*, 85. MH

<sup>86</sup> Both words are used here in a difference sense than in Ap XXVIII 13, where the old separation of powers of the bishop into the power of orders and the power of jurisdiction (*potestas ordinis* and *potestas iurisdictionis*) is taken up as a possibility (*potest nobis*) in the Evangelical Lutheran doctrine of the office: "Therefore a bishop has the power of the order, namely, the ministry of Word and sacraments. He also has the power of jurisdiction, namely, the authority to excommunicate those who are guilty of public offenses or to absolve them if they are converted and ask for absolution." [The English translation is from Tappert, *BC*, 283.] The power of jurisdiction (*potestas iurisdictionis*) is consequently identical with the power of the keys and has nothing to do with the right of ecclesiastical legislation, which according to Augustana XXVIII the bishop like all bearers of the spiritual office possesses by human right (*de iure humano*) [cf. AC XXVIII 19, 29 ff.]. HS

The Augustana is prepared to further acknowledge this human arrangement (*ius humanum*) just as much as the spiritual leadership of the princes as a part of the civil order which obtained at the time. But since in principle the spiritual office can exercise no jurisdiction in secular matters, in case the bishops should forsake that authority or jurisdiction (*potestas vel iurisdictio*) it passes to the secular authority as the appointed judge. Consequently, according to Lutheran doctrine, the secular authority—Luther expressed this already in his “Address to the Nobility”—has the *jurisdiction* and thus with it also a *legislative right* in questions of church property.

It is self-evident that in these questions there is also an *inherent legislative right* which belongs to the church. But this is not spoken of. It is indeed presupposed in other passages that there is church property which is at the disposal of the church and which is designated for ecclesiastical use. The secular authority only has the right and duty to be concerned and certainly if need be use compulsory means to see that the property of the church is correctly managed, revenue is used for ends in accord with the church’s institution, and occasional illegalities are punished according to the principle of strict justice.<sup>87</sup>

Also *jurisdiction in the area of marital law* belongs fundamentally to the state. Therefore “temporal magistrates are compelled to make these decisions if the bishops are negligent” (Treatise, 77).<sup>88</sup> Other matters for the secular authority to nullify are the false ecclesiastical marriage law (e.g., “the prohibition of marriage between godparents,” Treatise, 78 [German]) or the prohibition of the remarriage of innocent parties of a divorce or the prohibition against priests marrying,<sup>89</sup> and secretly contracted marriages (“without the knowledge or consent of the parents”) are not to be acknowledged (Treatise, 78). However, the establishment of special courts to judge marital cases is proposed.

### THE RIGHTS OF THE SECULAR AUTHORITY

With this we already face the question of *which rights the secular government has over against the spiritual office*, [the question of] *the state and the church*. These rights arise from the character of the secular authority as the divinely established protector of the law and the peace.<sup>90</sup> All people, and this includes the members of

<sup>87</sup> “They themselves should remember that riches have been given to bishops as alms for the administration and profit of the churches. . . . Wherefore they cannot possess these alms with a good conscience. Meanwhile they defraud the church, which needs these means for support of ministers, the promotion of education, the care of the poor, and the establishment of courts, especially courts for matrimonial cases” (Treatise, 80). [The English translation is from Tappert, *BC*, 333–34.] HS

<sup>88</sup> [The English translation is from Tappert, *BC*, 333.] This of course applies only for a secular authority which still knows the Sixth Commandment, consequently not for governments which have enacted the *Allgemeine Landrecht* (“general territorial law”) or the Bolshevik marriage law. HS

<sup>89</sup> Compare AC XXIII and the Apology where the divine right (*ius divinum*) of marriage is equated with the natural law (*ius naturale*), for example, Ap XXIII 6: “Laws concerning celibacy . . . therefore we cannot approve, because they are against both divine and natural law.” HS

<sup>90</sup> Compare on this point AC XVI and its explanation in the Apology. HS

the church and those who occupy its spiritual office, are subject to its [the secular authority’s] statutory authority [*Befehlsgewalt*]. It has claim to the respect and obedience of members of the church and all bearers of the spiritual office if it remains within the boundaries of its call to govern people according to the principles of civil righteousness (*iustitia civilis*). And indeed, this obedience, which includes willingness to actively cooperate in all the tasks of state government, is to be performed as a willing service, as proof of Christian love. It is owed to the governing authority as a *legitima ordinatio*, as a legal order.

This legitimacy is certainly not to be understood as a state-legal-historical [*staats-rechtlich-historischen*] principle of legitimacy. Every ruling power which carries out its office in the sense of the Second Table of the *Decalogue* is a legal order (*legitima ordinatio*). Here the bearers of the governing office need not be Christians. The Apology expressly declares that the secular authority has claim to our obedience as God’s order even if its office bearers do not belong to the church. Just as the father retains the office of father as a divine order even though he is not a believer, so also the secular authority remains such independent of its confession of faith or philosophy [*Weltanschauung*].

It would only cease to be secular authority, it would descend to the level of raw power if it were no longer the guardian of the law, if it were to suspend the commandments of the Second Table and were to compel us to sin against the commandments of God.<sup>91</sup> If this should be the case, Christians act according to Scripture, “We must be obedient to God rather than men” [Acts 5:29]. And then they must be prepared just as was the early church to bear the consequences of such a refusal to be obedient.

We could question whether or not this is all something quite self-evident and need not be specially mentioned as a particular right of secular authority. But since the eighteenth century in the West, there are scarcely any truths which are self-evident regarding these matters. A service has been rendered to the state, however great it may be and on whatever ideological principles it may rest, which no one else can do, when the truth is preached to its citizens, above all its youth: “For there is no authority except from God, and the authorities that exist are appointed by God” (Rom 13:1 [NKJV]).

No philosophy of the state can say this to them, for no philosophy understands this. This is a proposition which is not found in any human philosophy [*Weltanschauung*], however profound it may be and no matter how much influence it may have upon people. This is a proposition which only the church of Christ can speak. Ever since it was proclaimed to the peoples of the West, the fate of every European state stands and falls with this proposition. Should this truth finally no longer shed its light upon the German state and people, then the politi-

<sup>91</sup> There is no need here to demonstrate that and why the Lutheran Church does not treat the use of weapons in service of the state, the taking of oaths, and so on, as sins. We simply refer the reader to AC XVI and the Apology. HS

ical history of Germany would be past. Peoples to whom the church has not yet come can live because they have an inkling of the truth of this proposition. But peoples who have rejected this truth can find nothing with which to replace it.

Therefore the state has a real right over against the church that the doctrine of secular authority as the servant of God be correctly proclaimed. In the same way, the secular authority has an inviolable right to be remembered in the prayers of the church. Modern people who no longer know what prayer really is treat this prayer as a sort of polite formality. For the church it has never been such. The prayer of the church in the name of Jesus is not polite talk. It is a power, and it does not remain without effect.

Perhaps the time is coming when among our people the destructive effects of the Enlightenment of the eighteenth and nineteenth centuries will finally be overcome. Then we will again understand the claims which the secular authority has over against the church in these matters. The other rights of secular authority will seem insignificant by comparison. These rights consist in the state being the protector of civil righteousness (*iustitia civilis*) among a people and being granted legal right to exercise that *oversight* over the external administration and legal life of the church (of which we have spoken in dealing with the question of church property and marriage law). And secular authority furthermore has the right and duty to see to it that the struggles and discussions which will always exist in the church are so carried out that the *public peace of the country* is not disturbed and they do not result in insurrection.

The state cannot prevent schisms. But it can and ought to demand and be concerned that a division in the church not lead to division of the nation and the dissolution of the state. These are all questions and tasks which every people and generation of history faces anew. We see in the attempts to solve these timeless problems what of genuine state and genuine church was living at the time. We see in them whether the men of the church and of the state understood themselves only as combatants who wrestled with each other for positions of power or as men who carry out a God-given office in the service of God and men.

## 6. THE LUTHERAN CHURCH UNDER CHURCH GOVERNMENT BY TERRITORIAL LORD

### THE UNAVOIDABLE FACT OF CHURCH GOVERNMENT BY TERRITORIAL LORD

It cannot be seriously denied that there is a profound contradiction between the doctrine of the Evangelical Lutheran Church on the relationship of church and state, and the actual forms which this relationship took on in state-church law of sixteenth-century Germany. We found this contradiction already in nascent form in the thought and work of Luther. On the one hand, from the earliest days of his

reforming work until the last years of his life, he emphatically advocated the principle of the separation of the governments. And he directed increasingly sharp criticism at the secular authority. But on the other hand, he was not fully able to free himself from the idea of an ecclesiastical office of the Christian governing authority.

As the Middle Ages were passing there arose from this idea the beginnings of the system of governance of the church by territorial lord, which now in the sixteenth century began to experience its heyday. The Reformation did not create it, least of all the Lutheran Reformation. But as the structure of the Roman hierarchy came apart in much of the West, governance of the church by the Christian secular authority became the normal form of church constitution.

That was a historical fate which none of the new churches could avoid. For how could a theological theory of the relationship of church and state, however correct it may have been, no matter how deeply it may have been based on the doctrine of the Bible, have prevented the development of the medieval European forms of the state into those of the modern world? The establishment of the governance of the church by territorial lord cannot merely be viewed from the standpoint of church history. We must always recognize its political significance as an important step in the development of the modern state and princely absolutism.

Over against this development the Reformation was powerless. What deep resignation was expressed by Luther as he complained about the way the territorial lords in the period of nascent absolutism had become guilty of overstepping their bounds! "Satan goes on being Satan!" (*Satan pergit esse Satan*).<sup>92</sup> What did the governance of the church by the territorial lord as it now unfolded have to do with the confessions? What had the claim of the territorial lord that he as such had a right to govern the church of his land to do with the duty of the *curra ecclesiae*, the "care for the church" which Luther and the confessions had expected of the Christian princes?

As far as our confessions are concerned, as we have demonstrated, the former right can never be derived from the latter duty. *The doctrine of our confessions knows of no territorial lord as summus episcopus* ["chief episcopate"]. *Indeed, they preclude it by their positive doctrine of church governance. Luther was right in speaking of an office of "emergency bishop" assumed by the territorial lords.*<sup>93</sup> But he viewed this only as a temporary service of assistance by the princes on the basis of the general priesthood, a service which was to end when an ordered church government had finally been reestablished.

Not once do the confessions speak of the office or title of "emergency bishop." They understand by the episcopal office precisely the office of a clergyman

<sup>92</sup> Letter to Daniel Geiser in Dresden, October 22, 1543 (Enders-Kawerau, 15, 256, 10), quoted above. RF

<sup>93</sup> See the end of part 4 above. HS

called for the proclamation of the Word and the administration of the Sacraments. And thus they exclude the possibility that the title of bishop can be applied to the territorial lords, even in only a conveyed sense.

Accordingly, if the governance of the church by the territorial lord, or—as it was later called—the *summus episcopus*<sup>94</sup> of the territorial lord, is to be treated as an anti-confessional institution, and indeed not because it is not found in the confessions, but because it is in open contradiction to their doctrine, then the question arises of *how the Lutheran Church for centuries could tolerate this form of church government?* And how is it that it still bears this form of government in the Scandinavian countries?

### THE CONSEQUENCES

First, as in the case of churches of other confessions, the Evangelical Lutheran Church bore the fate of the governance of the church by territorial lord not without suffering serious detriment to its spiritual and organizational life. The life of the congregation, the activity of the general priesthood of believers, the responsibility of individual Christians for the life and the work of the church necessarily suffers where the secular governing authority administers the affairs of the church and congregational members are left scarcely any activity other than attending the Divine Service.

How different was a Lutheran congregation in the time after the Thirty Years' War [1618–1648] from the picture of a Christian congregation which Luther had painted in his great Reformation writings! How quickly, in the age of ecclesiastical territorialism, did the ecumenical breadth which characterized the thought of the Reformation regarding the church narrow when the borders of countries became the borders of churches! Where in later times did the eye for the catholic, universal church remain, of which the Apology knows to speak so comfortingly and so forcefully, the eye for the church which is not bound to one country or one place but stretches from the rising to the setting of the sun!

And how the spiritual office had to suffer harm in respect to its very essence when pastors more and more became princely officials. Our church was rich with pastors full of character far into the seventeenth century. They were pastors who did not fear people and took up the cause of the poor and the oppressed even against the mighty of this world. How fearlessly a Valentin Ernst Löscher<sup>95</sup> at the

beginning of the Enlightenment spoke the Word of God even to the most powerful men on earth! But then princely absolutism and the doctrine of the Enlightenment on state and church made large numbers of Lutheran pastors servants of princes and state officials. And the governance of the church by the territorial lord was not without fault.

And is not the present condition of German Evangelical Christendom a crying lament against a past epoch of its history in which the capability of the congregations and the spiritual office to organize the body of the church was stunted and died? We need only cast a glance at the writings and lectures in which well-meaning professors of theology in the winter of 1918/1919 sought to get hold of the situation created by the collapse of church governance by territorial lord<sup>96</sup> in order to understand why sooner or later this collapse had to be followed by a catastrophe involving all of Evangelical Christendom in our fatherland.

What a conceptually rich and as yet inexhaustible body of literature was written for us by Lutherans and other theologians in the years between 1830 and 1870 regarding the basic questions of church law and constitution. They saw the end of the princely episcopate coming, and they had hoped that the Evangelical churches of Germany would finally assume the outward form which they had not been able to achieve previously, having been captive to the fetters of German territorialism and the absolute state. But this literature was forgotten.

To deal with the inferior questions of "cybernetics" [*Kybernetik*] is regarded as unworthy of theology. This is left to the men of proven ecclesiastical practice. And in the face of the partial approval and partial criticism which cries out to them in the *Quousque tandem* ["Which way then?"] of the professional theologians, these experienced "practical" men can accomplish nothing more than to erect that orgy of ecclesiastical parliamentarianism which is proudly called "the century of the church."

Who can be surprised that in the revolution of 1933<sup>97</sup> political territorialism in Germany came to a frightful end? What we experience today are the consequences of the government of the church by the territorial lord. We cannot say that this form of church government has existed in other countries and still exists there today and that the church is doing fine there. In reality government of the church by the territorial lord has only been maintained where the old monarchical form of the state has been at least superficially preserved. And even where this is the case, it finds itself in a latent crisis.

<sup>94</sup> *Summus episcopus* is merely another name for governance of the church by the territorial lord. It ought not be separated from this governance and be grounded on some alleged conferring of the episcopal jurisdiction to the Evangelical territorial lords by the Religious Peace of Augsburg [1555]. Such a conferral was not part of the Religious Peace, which only declared that the episcopal power rests with the Evangelical dominions. HS

<sup>95</sup> Valentin Ernst Löscher (1673–1749) was the son of a Wittenberg professor of theology. He founded the first theological periodical (*Unschuldige Nachrichten*) and was the last great orthodox opponent of Pietism, syncretism, and unionism before all of these and Wolfhan philosophy swamped what had been an orthodox Lutheran Church in Germany. His motto was *Veritas et Pietas* ("Truth and Piety"). Of the six doctoral dissertations written under Sasse at Erlangen, the first was by Paul Schreyer, *Valentin Ernst Löscher*

*und die Unionversuche seiner Zeit* (Schwabach: Verlag J. G. Schreyer, 1938). Löscher also happened to be an ancestor of Sasse on his mother's side. MH

<sup>96</sup> That was the consequence of the revolution in Germany following World War I. The constitution of the German Republic adopted by the National Assembly at Weimar in August 1919 declared church and state separate (*Lutheran Cyclopaedia*, 331). RF

<sup>97</sup> A reference to January 30 when Adolf Hitler became chancellor of Germany and/or July 11 when the constitution for the German Evangelical Church (DEK) was passed and then confirmed by Reich law on July 14. RF

In England, for instance, the classic country of the supremacy of the king, where because of the unique character of the people such old forms have been preserved with particular faithfulness, the necessary reform of the liturgy can no longer be accomplished through legal channels.<sup>98</sup> The parliament, whose members in large part do not belong to the Church of England but to the British free churches, as is well known rejected the reform agenda which intended to strengthen the Catholic elements. Only with difficulty was a solution to this situation found. But it only temporarily delivers church and state from a dilemma which in the long run cannot be solved except by "disestablishment," or the dissolution of the old bonds between state and church.

The governance of the church by territorial lord is in a state of crisis everywhere. That its effects on the church in Germany were much more devastating than in other countries is explained by the fact that the political chaos of Germany had of necessity to lead to an ecclesiastical chaos. He who would maintain that the territorial *summus episcopatus* was correct must grant that a change in boundaries such as the annexation of Hanover by Prussia meant that the Prussian king now became the legal highest bishop of the Church of Hanover. But this then means that the decision regarding who according to God's will should govern a particular church can be rendered on a battlefield along with other decisions.<sup>99</sup> There is no need to waste words over the fact that no church can live in perpetuity under a system of constitution which leads to such consequences without being severely hindered. If the Lutheran Church once had endured the government of the church by territorial lord without sufficiently protesting against it on the basis of Scripture and confession, then it must seriously repent of this historical guilt.

#### HOW COULD THE CHURCH TOLERATE IT?

But why did the Evangelical Church not once clearly protest against this governance of the church by territorial lord which is contrary to its confession? Why did the complaints of Luther over the self-interest and the overreaching of the princes not become a protest of basic principle? The answer is that no one entirely understood the significance of the development of state-church law which was

<sup>98</sup> The attempt to reform the liturgy of the Book of Common Prayer (1662) in 1928 failed due to conflicts in parliament. RF

<sup>99</sup> Sasse elsewhere explained:

After 1866 things began to change. It has been said with a good deal of justification that the Lutheran Church of Germany suffered its decisive defeat on the battlefield of Koenigsgratz. The annexation of Hanover, Schleswig Holstein and electoral Hessa confirmed the dominant position of Prussia. This meant that the leadership of Protestant Germany was taken over by the church and state authorities in Berlin and sealed the predominance of the Prussian Union.

This quote is from "Zur Lage des Lutherthums nach dem Zweiten Weltkrieg" (Erlangen, July 1945, type-written manuscript). The English translation used above is that of George Wolfgang Forell, "The Situation of the Lutheran Church" (unpublished), 4. The German original was reprinted in *ISC*, 1:287-302 (Huss number 251). RF

occurring at the time. Not even the individual territorial lords themselves were clear on what they were attempting to do, and did.

The history of the Reformation would be unthinkable without the nobility, those truly pious princes, or without the councilmen of the German cities who were profoundly gripped by the message of the Gospel. They rendered the service Luther expected of them out of the deepest commitment to their duty to care for the church (*cura ecclesiae*), in real responsibility before God, as real "chief members of the church" (*praecipua membra ecclesiae* [Treatise, 54]). And how could the history of Evangelical Germany be conceived of if, even in the later centuries, such men had not ever and again rendered their service as Christian governing authority, convinced that God would demand a reckoning from them regarding their office? The Evangelical Church will never forget this. Theology must never forget those men who in the most difficult times of our history were real protectors of the church and the Gospel, so far as men can be such. But the institutions are to be distinguished from the men. There is a history of the governance of the church by territorial lord which is not simply the history of its bearers.

Quite aside from the ruling territorial lords desiring it of their office as "chief members of the church" and no matter how the Reformers viewed it, the general political and social circumstances rooted in the thought of the time regarding the state and the actual exercise of the protection of the church gave rise to the institution of governance of the church by territorial lord. It was fully developed by the Religious Peace of Augsburg of 1555 and was anchored in imperial law. All at once it was there. Who could have gotten around it? With it the Evangelical Church at the time would stand or fall as a communion acknowledged by imperial law.

But for the Lutheran theologians there could only be one question: Can the church render her service of the pure proclamation of the Word and the right administration of the Sacraments under this form of church constitution as it had come to exist in the terrible struggles of the time of the Reformation? The answer then had to be this: It can do so as long as the incumbents of the governing authority know that they are bound to the pure doctrine of the church in the exercise of ecclesiastical power. Melancthon, for instance, who for the most part had acceded to the theological grounding of the governance of the church by territorial lord and had even experienced its consummation after the Religious Peace of Augsburg, had always maintained that the government in its church-governmental dealings is only the "minister and executor of the church" (*minister et executor ecclesiae*).<sup>100</sup> Thus they [secular authorities] have to protect and advance the pure doctrine of the church in the world.

<sup>100</sup> Although we have distinguished the powers, nevertheless it may be observed that civil power ought to be subject to the church for the sake of discipline. . . . For we ought all obey the ministry of the Word, thus the magistrate in the republic is minister and executor of the church." ("Quamquam distinximus



But the decision regarding what is pure doctrine belongs to the church as a whole, consequently also to the teaching estate and the congregation.<sup>101</sup> Here Melancthon constantly and emphatically emphasized that the principle of the separation of the powers should not be infringed.<sup>102</sup> Thus where possible he also still maintained the fundamental delimitation of the governmental authorities which is expressed in Luther's remark to the elector that he "is not commanded to teach and govern in spiritual matters" [WA 26.200.28; cf. *LM* 40:273].

As long as this limitation was heeded, church governance by territorial lord could be tolerated for the sake of necessity. Church governance by the king in the Scandinavian countries today still is based upon the presupposition that the territorial lord in his ecclesiastical dealings is strictly bound to the confession of his church. Consequently, for example, he only nominates a man to the office of bishop who is qualified for the office according to Lutheran doctrine. But the moment this adherence of the territorial lord to the confession of the church and his joyous affirmation of this confession should cease, this form of church government, tolerable in the case of necessity, would no longer be tolerable. For the existence of the church as church would be illegally threatened.

#### THE INSUFFICIENCY OF THE SAFEGUARDS

This moment came when the presupposition of the prince as chief member of the church that was self-evident for Luther, the confessions, and the Religious Peace of Augsburg disappeared. It was self-evident to them that the territorial lord should belong to the church whose government he led. Hans Leube<sup>103</sup> once remarked how peculiar it is that Paul Gerhardt<sup>104</sup> in his valiant struggle for the right of the Lutheran Church in Brandenburg had never considered contesting that the *Reformad* elector could be *summus episcopus* over the *Lutheran* Church.

potestas, tamen animadverti potest, quod potestas civilis servare Ecclesiae propter disciplinam. . . . Omnes enim debemus obedire ministerio verbi, sic magistratus in republica minister et executor est Ecclesiae. Debet enim et ipse obedire ministerio verbi," *Corpus Reformatorum*, 16:124). HS

<sup>101</sup> "Because it is not always certain which opinions are blasphemous or impious, therefore precedence must be given to another jurisdiction, namely, knowledge of doctrine. But this pertains not only to the magistrate, but to the church, that is, not only to the clergy, but also to the laity" ("Quia non semper constat, quae opiniones sint blasphemae seu impiae: ideo debet praecedere aliud iudicium, videlicet cognitio de doctrina. Haec autem pertinet non solum ad magistratum, sed ad ecclesiam, h. e. non tantum ad presbyteros, sed etiam ad laicos," *Corpus Reformatorum*, 4:468). HIS

<sup>102</sup> For example, *Corpus Reformatorum*, 16:96: "In order that the distinction between the ministry of the Gospel and the magistrate be maintained. . . we do not confuse the offices" ("Ut conservetur discrimen inter ministerium Evangelii et magistratum. . . non igitur miscemus officia"). HS

<sup>103</sup> *Kalvinismus und Lutherium in Zeitalter der Orthodoxie* (1928), 1:401. HIS

Hans Leube (1896-1947) was a professor of church history at Leipzig, Breslau, and Rostock; he was a student of H. Böhmner (*Lutheran Cyclopaedia*, 468). MH

<sup>104</sup> Paul Gerhardt (1607-1676) studied theology at Wittenberg (1628-1642) and became a pastor in Berlin in 1657. He was a noted hymnist. In 1666 he was dismissed from his position as pastor for refusing to sign syncretistic edicts of Frederick William I of Brandenburg. In 1667 he declined the opportunity to return to his position. In 1669 he became an archdeacon in Lübben, where he remained until his death (*Lutheran Cyclopaedia*, 329). MH/RF

So firmly was the thought rooted already in the seventeenth century that the governing authority as such was to govern the church of its land, quite independent of its confession.

When the Saxon Electoral House for the sake of the Polish crown returned to the Catholic Church, it was viewed as intolerable that a Catholic ruler should himself exercise the governmental functions of the church. But no one contested that they belonged to him as territorial lord. It is well known that his rights and duties over against the church of his land were looked after by three ministers in *evangelicis* ["in things evangelical"]. And the general principle was adopted that the Catholic territorial lord indeed possessed the episcopal right (*ius episcopale*) over his Protestant subjects but allowed it to be exercised by Evangelical officials. With this the governance of the church by the territorial lord had come to the point of complete absurdity (*ad absurdum*). The princes continued to possess what they had once taken over as the "chief members of the church" (*praecipua membra ecclesiae*), even after they had ceased to be "members of the church" (*membra ecclesiae*)!

#### TERRITORIALISM

Consequently a man could now become the bishop of a church even though his doctrine was false! And one door after another was opened to appalling "territorialism," that theory of church law born of the absolute state and the Enlightenment, according to which the governance of the church is a civil matter. The exercise of religion is subject not only to the supervision of the state government, but also the leadership of the state. Thus the church had become purely an institution of the state.

This is the theory of church law of all men of the Enlightenment, from Marsilius of Padua to Thomasius<sup>105</sup> and the Prussian state philosophers. It is the church-law theory which has ruled Germany since the eighteenth century. Its dangerousness was not recognized because it was hidden away behind the pious mask of the old Evangelical doctrine of the duties of the princes as the "chief members of the church" (*praecipua membra ecclesiae*).

Finally the mask was allowed to drop. In Prussia on December 16, 1808, contrary to all public and valid law in Germany and in Prussia which had stood since the Reformation, a cabinet order of the Reformed *summus episcopus* dissolved the existing church governments of both the Lutheran and the Reformed Church. The administration of the church was transferred to a division of the Ministry of the Interior which was also in charge of the royal theater.

Prussian Union

<sup>105</sup> Christian Thomasius (1655-1728) was a lawyer and lecturer in Leipzig who was forbidden by the consistory to teach in 1690. He went to Berlin, gathered a large following, and laid the foundations for the University of Halle, where he later taught. "In a series of works on church law, he recognizes the State as purely secular and the Church as a society within its domain." He was a strong advocate of territorialism. A descendant, Gottfried Thomasius (1802-1875), taught theology at Erlangen (*New Schaff-Herzog*, 11:429-30). MH

chief problem

But the responsible men of the state, struck in a fog of pietistic feelings, of idealistic thoughts about the state and romantic episcopal dreams, finally never understood what they had done. They never realized the fact that by their actions the curse which lay upon an institution in which the orders of God had been violated had been carried out. Thus the government of the church by territorial lord necessarily led the Evangelical Christendom of Germany, and also the German princely houses, into an abyss.

## 7. CAN CHURCH GOVERNMENT BY TERRITORIAL LORD BE RENEWED?

It really ought to be unnecessary to have to note that the government of the church by territorial lord is an unrepeatable relic of the past and cannot be renewed. But recently it has been seriously proposed that the problem of the new ordering of the relationship between church and state be solved by a reinstitution of the old legal form of the *summus episcopatus*. And so something has to be said regarding this by way of conclusion.

### THE UNREPEATABLE NATURE OF THE *SUMMUS EPISCOPATUS*

There are institutions which, after they have finally died, can never be resurrected. They are the temporally conditioned result of a particular historical situation which is unrepeatable. The governance of the church by territorial lord is such an institution. We can renew the relationship between state and church which it represents as little as we can reestablish the state and the church of the sixteenth century. Its presupposition is not only a unanimity of confession shared by ruler and people, but also the confessional unanimity of the people.

Thus finally both of the following legal principles are essential to this form of church constitution: "He who rules determines the religion of his dominions" (*Cuius regio, eius religio*)<sup>106</sup> and "Where there is one ruler, there ought to be one religion" (*Ubi unus dominus, ibi sit una religio*). The governance of the church by territorial lord is at best conceivable where citizenship and church membership are coterminous and where the territorial lord is in agreement with his people regarding which is the pure doctrine that he is bound to advance and protect.

A portion of such unity of faith is today still present in the people who have been spared confessional division and in whom the Christian heritage of the past remains a force in determining the nature of their lives as a people. But even there only a portion of this unity is living, and the principle "He who rules determines the religion" (*cuius regio, eius religio*) is no longer possible even there.

Already soon after the Peace of Westphalia [1648] it was no longer sustainable in Germany. And the ideas of the eighteenth century and the political and

social changes of the nineteenth century have since made it completely illusory. The government of a modern state which in principle tolerates individuals belonging to various churches and which must do so on ethical grounds can indeed no longer assume the duties which were inseparably bound together with the old *summus episcopatus*. It can no longer force citizens to send their children to Christian religious instruction if they refuse to do so for reasons of conscience. It cannot be intent on suppressing heresy.

No government of a modern state can decide the question which the territorial lords of the sixteenth century believed themselves authorized, indeed required, to decide—namely, whether the doctrine of the Roman or the Evangelical Church is correct. There can be a number of churches in one state, churches which the state acknowledges and protects and over whose external affairs it claims a right to oversight. But it cannot govern them. An Evangelical Church can be governed only by a person who maintains that its doctrine is correct and the doctrine of Rome false. Only someone who can render a judgment on the orthodoxy of pastors and bishops, and therefore on the doctrine of the church, can appoint them.

"For the doctrine of the church is not like a civil law code, which we can apply even if we are not convinced of its correctness. Its correct understanding and correct application rather presupposes inner faith and faithful inquiry," said Friedrich J. Stahl<sup>107</sup> in a time in which the incompatibility of the government of the church by territorial lord with the modern, nonsectarian state was generally acknowledged by all statesmen and theologians. It was the time when Frederick William IV<sup>108</sup> as he was elevated to the throne, was considering the abandonment of the *summus episcopatus*. In the plans of the Reich and state constitutions of 1848, for the first time in German history, the separation of church and state was announced and everywhere in the Evangelical churches of Germany discussion began regarding possible new formations of the church. The government of the churches by territorial lord among our people was at its irretrievable end. It had lost the last remnant of its meaning. What remained of it was a spiritless state-church bureaucracy, which in November of 1918 met its inglorious demise.<sup>109</sup>

<sup>107</sup> *Die Kirchenverfassung nach Lehre und Recht der Protestanten* (1862), 2:3-60. HS  
Friedrich Julius Stahl (1802-1861) was a jurist and statesman.

He held that the three systems, episcopal, territorial, and collegial, represented different views of the nature of the church government, and were the outgrowths of the prevailing sentiment of three epochs of development; respectively, the orthodox, the Pietistic, and the rationalistic. Stahl advocated the Episcopal order. In his *Die lutherische Kirche und die Union* (1860) he opposed a formal union of the two Protestant churches. (New Schaff-Herzog, 11:61) MH

<sup>108</sup> Frederick William IV (1795-1861), King of Prussia (1840-1861), issued the "Generalkonzession" on July 23, 1845, which permitted Lutherans who remained separate from the Prussian Union to organize free churches (*Lutheran Cyclopaedia*, 312). MH

<sup>109</sup> This is a reference to the "revolution" in Germany at the end of the war. The Kaiser fled the country and a republic was proclaimed. "As far as Protestantism was concerned, the revolution not only meant the

## A NEW STATE CHURCH?

There is no possibility of reviving church government by territorial lord. But something else is theoretically conceivable. It is conceivable for the doctrine of territorialism in the relationship of state and religion to experience a revival. It is conceivable that there could be a revival of the doctrine that looking after religion ought be a task of the state. This was the view of the ancient world which was revived by the civil theories of the Renaissance. It has been the view of "enlightened" men of all times, from Marsilius of Padua to the Prussian state philosophers of the nineteenth century.

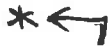
The Enlightenment indeed knew of a religious freedom, but it only granted individual people the freedom to believe or not to believe. The Enlightenment did not assert the freedom for the church to preach its message unhindered because it did not believe that any church had a message given by divine revelation. It viewed churches only as religious societies disseminating their private religious views. And thus precisely the most decided advocates of the Enlightenment were time and again able to harmonize their demand of individual freedom of faith with the concession that *public* doctrine and *public* exercise of religion are a civil matter.

Is it really entirely unthinkable that the result of the Enlightenment of the eighteenth and nineteenth centuries for the Western peoples of the future should limit itself to that personal freedom of the individual to believe or not to believe, but that the *public* doctrine of the faith and the *public* cultus again would be declared a monopoly of the state? Does a revival of the *Civius regio, civis religio* in an entirely modern sense really lie outside the realm of possibility if we consider the terrible changes which the state has gone through recently, and certainly not only in Germany?

If so much which was previously a matter of the individual is declared to be a matter of the entire people [Völk]!<sup>10</sup> and subordinated to the rule of the state, why should religion be an exception? If there is no longer "freedom" in science, no "freedom" in art in the sense of Liberalism, why should a "freedom" in religion still exist? The proposition "religion is a private matter" has completely lost its meaning in a world which finally no longer views human beings as autonomous individual personalities, but first as members of a people [Völk]. There is absolutely no reason why religion should be viewed as a private matter after art, science, philosophical and political worldviews have ceased to be private matters of the individual citizen. Thus there in fact exists a *theoretical* possibility that the *Civius regio, civis religio* of times past shall experience a resurrection in our century.

But it is still only a theoretical possibility. For anyone who has lived through the last two years of internal German history knows that this history has demonstrated two things. First, it is a fact that today it is no longer possible to declare one of the great Christian confessions the religion of the state, and second, it is a fact that these confessions still possess so much power over souls that every attempt to replace them with another state religion would throw Germany into the worst confessional struggle of its history.

Thus the German state of our day does not, as many a theoretician believes, face the task of assigning religion a new position within the bounds of public life. It faces rather the old question which has ruled the history of our people for a thousand years, the question of the correct ordering of the relationship of the state to the church of Jesus Christ. Whichever solutions are found to these problems of our century, however the civil-ecclesiastical law of the future in Germany may appear, this law will really serve the state and the church and thus be a blessing to the people who belong to both only if it preserves the basic principle which the Lutheran Reformation once learned from the Holy Scriptures and proclaimed to the world—that the divine orders of the state and the church are not to be mixed or confounded.



end of its traditional legal order; the revolution also robbed it of its political support, endangered its economic foundations and spiritually was nothing less than a catastrophe" (Klaus Schölder, *The Churches and the Third Reich*, 1:3), RF

<sup>110</sup> A central feature of National Socialist theory. RF