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Why Synods? Why Bishops?

The Co-emergence of Synodical and Episcopal Forms of Church Governance (Episcopé) in German Lutheran Churches from 1918: Historical Factors, Theological Arguments. Constitutional Consequences

Bernd Oberdorfer

It might seem surprising that in German Lutheran Churches Synod and Bishop as two institutionalised forms of Church governance emerged (and actually co-emerged) only in the twentieth century. In particular, the end of monarchy after World War I resulted in a deep historical rupture for the Protestant churches. In this chapter, I will scrutinize the historical development, its theological rationale as well as its political and social background, referring in particular to the Evangelical-Lutheran Church in Bavaria. This is not for reasons of an indigenous Bavarian's localist pride. And of course, it does not imply that the Bavarian church is a case of outstanding best practice (which I would never dare say in the presence of Bishop Meister). Rather, I focus on Bavaria as being typical for the developments in the German Lutheran Churches. The crucial questions I would like to tackle are these: why exactly did the Bavarian Lutheran Church establish Synods? Why exactly were Bishops introduced as organs of Church governance in this phase of institutional reset? Was this based on theological arguments, or was it inspired by the transformation of the political system from monarchy to republic and democracy? And how did and does this Church describe the functions of these organs and their co-operation?

In the EKD-style setting of the Meissen Conference, a Lutheran approach indicates one side of the discussion. The developments in Lutheran churches are not necessarily typical of the United or Reformed churches. For example, on the one hand, in the Reformed tradition, synods were a common tool of church governance from the very beginning. And on the other hand, it was no accident that bishops were not included in Calvin's model of church ministries. This means that whereas the introduction of synods in Lutheran churches marks a convergence to Reformed ecclesiology, the introduction of bishops might appear as a distinctive Lutheran

practice. But, as we will see, this is only partly true. Let us start with ‘pre-history’.¹

1. A Long Walk to Freedom? The Prehistory of an autonomous Luther- an Church in Bavaria

‘In the beginning was Napoleon.’ With these words, the historian Thomas Nipperday started his famous 3-volume *Deutsche Geschichte* of the nineteenth century.² This is also – indeed especially – true for Bavaria. After the end of the ‘Holy Roman Empire of the German Nation’ in 1803, Napoleon’s politics of pressure and challenge brought about a widely new shape to the regional structure of the German territories. The ‘Kingdom of Bavaria’ which comprised more or less the same geographic regions as the ‘Free State of Bavaria’ today (excluding Coburg, but including the Palatinate) results from this fundamental change. Beforehand the Duchy of Bavaria with Munich as its capital comprised only the southeastern parts, to which were added Franconia in the North and Swabia in the West. The new political structure, however, also put an end to the principle of religious homogeneity of political territories which had been maintained since the Augsburg Religious Peace of 1555: *cuius regio eius religio*. The strictly catholic ‘Old Bavaria’ was unified now with strictly Lutheran regions (parts of Franconia, esp. Ansbach and Bayreuth),³ Swabia was composed of small (some Catholic, some Lutheran, and a few Reformed) territories, and the Palatinate was Reformed (and later United). Thus, with respect to denominational structure, the Catholic King ruled a quite diverse Kingdom.

Strangely enough, however, one particular element of the old arrangement remained valid: the so-called *Landesherrliche Kirchenregiment*, i.e., the principle that in Protestant territories the political sovereign was at the same time the head of the regional church. In the new Bavaria, then, the Catholic King was *summus episcopus* of the Lutheran church. More-

¹ On this see, Werner K. Blessing, ‘Minderheit im paritätischen Königreich. Eine Skizze zur rechtlichen, politischen und gesellschaftlichen Stellung der bayerischen Protestanten’, in Hubertus Seibert (ed.), *Bayern und die Protestanten* (Regensburg: Friedrich Pustet, 2017), 154–175.

² Thomas Nipperdey, *Deutsche Geschichte 1800–1866* (München: C. H. Beck, 1983), 11.

³ Other parts of Franconia, like Bamberg or Würzburg, were strictly Catholic.

over, the principle of the *Landesherrliche Kirchenregiment* required that the one King was in charge of only one (Lutheran) church. Thus, within the territory of the Kingdom of Bavaria, the different regional Lutheran churches established a common organisational structure: the 'Evangelical-Lutheran Church in Bavaria' – as it was later called – also results from the formation of the new political entity 'Kingdom of Bavaria'. This church was founded in 1808.

The king exercised his function as head of the Lutheran Church through an *Oberkonsistorium* (General Consistory) which was part of the administration, forming a part of the ministry of the interior. This *Oberkonsistorium*, located in Munich, was chaired by an *Oberkonsistorialpräsident* who could just as well be a legal expert as an ordained minister. It is interesting to note that the first *Oberkonsistorialräte* (councillors) were legal experts whereas later, ordained ministers were preferred (the first ordained theologian was Gottlieb Christoph Adolf von Harleß, in 1852).

Although it is clear that the Lutheran Church was not a State Church in the strict sense in that it was a minority church, it was nevertheless a church whose administration was part of the state administration. Theologically, this did not present any problems from the perspective of the Enlightenment paradigm which was dominant in the first decades of the 'new' church. But when, inspired by the romanticist idea of religion as a living tradition, a new consciousness of the confessional roots of Lutheran church and devotion arose, the integration of the church in the state bureaucracy could be judged as compromising the specifically *religious* character of the church. Wilhelm Löhe, for example, the founder of the diaconical institutions in Neuendettelsau and an influential proponent of a confessionalist revival, considered the option of separating from the state-subsidised church and establishing a strictly Lutheran 'free church', but decided to stay and reform the church 'from the inside'.

All this meant that there was a growing awareness of the lack of ecclesial self-governance. It is no accident that in 1849 after the ultimately unsuccessful liberal revolution this led to the establishment of (regional and general) synods. These were composed of 50 per cent pastors and 50 per cent lay members. This balance was later adjusted to one third pastors and two thirds lay members, all of them, of course, male,⁴ and meeting every three years. The synod was deliberately conceived not as decision-

⁴ Women could be elected to the Synod only from 1958.

making body but rather as an advisory board representing the regional diversity and ensuring member participation.

This was the situation of the Lutheran Church's governance before monarchy came to an end:

- the Catholic king as *summus episcopus* who did not unfold doctrinal or liturgical authority;
- the *Oberkonsistorium* as administrative office, chaired by a *Oberkonsistorialpräsident* who did not function as bishop but increasingly was recognised as the public representative of the Church;
- and the *Synod* as an advisory board without formal legislative or executive rights, even though, according to an unbinding rule, any important topic was supposed to be submitted to the Synod for its attention and discussion.

This configuration mirrors the fact that Lutheran churches traditionally did not pay too much attention to supra-regional and supra-parochial structures of Church governance and maintained a more or less pragmatic attitude towards them. This does not mean that there was no awareness of the need for spiritual and doctrinal oversight. There was no question that ordained ministry was central to the essence of the Church and had an indispensable responsibility to safeguard the Church's loyalty to its apostolic sources. And as to doctrinal questions, the contribution of the Theological Faculties to the *magisterium* of the church was highlighted. But there was no need of developing more comprehensive normative theological models of church government (*episcopé*) until the collapse of the *Landesherrliche Kirchenregiment*.

2. Reset: The Restructuring of the Landeskirche after 1918

The end of Monarchy in the German Empire and all of its territories in 1918 – in Bavaria the King abdicated on 13 November – essentially changed the setting of the churches within the state.⁵ In Bavaria, on 14 January 1919, the provisional 'State Constitution of the Republic of Bavaria'

⁵ On what follows, see Hans-Peter Hübner, 'Neuordnung der Evangelisch-Lutherischen Landeskirche und ihres Verhältnisses zum Staat', in Gerhard Müller et al (eds), *Handbuch der Geschichte der Evangelischen Kirche in Bayern. Bd. 2: 1800–2000* (St. Ottilien: EOS-Verl., 2000), 211–232.

(*Staatsgrundgesetz der Republik Bayern*) guaranteed the ‘religious associations’ (*Glaubensgesellschaften*) ‘independence from the State’ (art. 14). On 17 March 1919, the ‘Provisional Constitution of the Free State of Bavaria’ (*Vorläufiges Staatsgrundgesetz des Freistaats Bayern*) confirmed this, adding that the religious associations ‘arrange and administer their affairs autonomously in accordance with the state laws’ (art. 15). At a national level, on 11 August 1919, The *Weimarer Reichsverfassung* (Weimar Constitution) declared ‘There is no State church’ and underlined the autonomy of the Church’s self-governance. However, instead of equating religious associations to private clubs, churches were given a specific public status. This meant that the separation of Church and State in Germany, unlike in France, did not result in a strict secularism. These principles were incorporated in the so-called Bavarian “Bamberg Constitution” of 14 August 1919.

On the basis of this, the Bavarian Parliament, on 2 February 1920, officially declared the *Landesherrliche Kirchenregiment* to be abolished, after, on 28 January 1920, the Bavarian Government had suspended the General Consistory as a State office.

This challenged the *Landeskirche* to build up structures of self-governance. The church had to reinvent itself, as it were. That did not mean, however, that it had to start from scratch. But the institutional structures had to be adapted to the new setting and were substantially transformed. After long discussions, the *Kirchenverfassung* [Church Constitution] of September 1920, which came into force in 1921 demonstrated the new structure:

- Firstly, the status of the Synod was massively raised. The *Landessynode* (which replaced the *Generalsynode*) was no longer only an advisory board but now had legislative competence which had hitherto been in the hands of the State. The Synod was presided over by a lay member.
- Secondly, a *Landessynodalausschuss* [Standing Commission of the Synod] was established in order to transact synodical business between the Meetings of the Synod.
- Thirdly, a *Landeskirchenrat* [Church Council] replaced the *Oberkonsistorium* as the administrative board of the Church.

The first draft of the Church Constitution mentioned only these three organs of self-governance. But soon a majority felt that there was a lack of a personal representative for the Church in this model which resulted in a desire to have a representative who would more or less combine the functions of *Summus Episcopus* and *Oberkonsistorialpräsident*. This meant

that a fourth instrument of church governance was introduced. There was discussion as to whether this would be called *Landesbischof*, but it was finally decided to use the term *Kirchenpräsident* which more clearly demonstrated the continuity with the office of the *Oberkonsistorialpräsident*. Nevertheless, the intention was to have a more ‘bishop-like’ person representing the church.

In the Church Constitution of 1920, these four instruments are located on the same level without degrees of hierarchy. As to the Synod, writings on Canon Law tended to avoid parallels to political parliaments. It was argued that a Synod had no ‘parties’ which try to enforce their particular interests against those of other ‘parties’ but instead all members share in the responsibility for the common good. But this reveals a somewhat negative picture of decision-making in democratic parliaments and at the same time an unrealistic and overly harmonious picture of decision-making in the Church. Moreover, it is evident that the Synod is designed to represent the diversity within the Church and to foster member participation in Church governance, both of which it has in common with political parliaments.

From a more negative point of view, this connection with the political process becomes even more evident when we take into consideration that in 1933, in the context of the National Socialist *Machtergreifung* [seizure of power], the competences of the Synod were restricted by an *Ermächtigungsgesetz* [Enabling Act] which enormously strengthened the position of the *Kirchenpräsident* who was given the title of *Landesbischof*. It was no accident that the Synod did not meet from 1934 to 1946. The motives behind this change were ambiguous: On the one hand, the anti-democratic, authoritarian *zeitgeist* was also popular in the Church with many Protestants supporting the Nazi programme. This meant that there was a desire for a strong leader figure in the Church and an antipathy towards the culture of constructive parliamentary debate. On the other hand, choosing the title *Landesbischof* indicated the intention to distinguish *spiritual* authority from *political* authority. Consequently, at least in part, it did not aim at adapting the Church to the political order but rather at emphasising the specifically religious character of the Church. This would serve to safeguard the Church against the enforcement of Nazi totalitarianism [*Gleichschaltung*]. Similarly, one of the reasons not to convene the Synod for many years was to prevent the Church from the influence of Synod members who were openly sympathetic to Nazi ideology.

It is interesting to note that in 1946, after the end of the Nazi era, Hans Meiser, who was elected as *Landesbischof* in 1933 after the resigna-

tion of *Kirchenpräsident* Friedrich Veit, abolished the Enabling Act returning constitutional rights to the Synod. The title *Landesbischof*, however, remained (and, needless to say, Meiser remained in office).

Let us jump now from history into the present day. What are the functions of *Landesbischof* and *Landessynode*, according to the Church Constitution in its revised version of 1971 which remains in force until today (including some minor modifications)? And how is the cooperation of these different organs regulated?

3. Checks and Balances? The Polycentric Structure of Church-Governance

The 1971 revision of the Church Constitution did not implement substantial structural changes but adapted the description of the organs of Church Government to what might be described as more ‘Habermasian’ *zeitgeist*.⁶ Firstly, whereas the Constitution of 1920 had only declared *Kirchenpräsident/Landesbischof* and *Landeskirchenrat* explicitly to be ‘Church-leading organs’, the Constitution now included *Landessynode* and *Landessynodalausschuss* into this category. This highlights the fact that Church Government is not exclusively exercised by the ordained ministry, something to which I shall return. Secondly, the 1971 Constitution did not place the instruments of government in any sort of hierarchy. They perform the governance of the Church *together*, ‘in a community with a division of labour and mutual responsibility’ [*arbeitsteilige Gemeinschaft und wechselseitige Verantwortung*]. Together, they are ‘responsible for seeing that the Evangelical-Lutheran Church in Bavaria fulfils its duties in doctrine and life, proclamation and pastoral care, organisation and administration and preserves its unity and freedom’ (art. 41 ‘[2]’).⁷ The economic term ‘division

⁶ On this, see my more extensive discussion in Bernd Oberdorfer, ‘Arbeitsteilige Gemeinschaft und gegenseitige Verantwortung. Zum Verhältnis von synodaler und bischöflicher Episkope im gegenwärtigen Luthertum’, in Gunther Wenz et al. (eds.), *Ekklesiologie und Kirchenverfassung. Die institutionelle Gestalt des episkopalen Dienstes* (Münster etc.: LIT, 2003), 123–136.

⁷ All the institutions of Church governance are *jointly* ‘verantwortlich, dass die Evangelisch-Lutherische Kirche in Bayern in Lehre und Leben, Verkündigung und Seelsorge, Ordnung und Verwaltung ihre Aufgabe erfüllt und ihre Einheit und Freiheit wahrt’ (Art. 41 [2]). The Constitution is at: https://www.bayern-evangelisch.de/downloads/ELKB_Kirchenverfassung_Stand_2020.pdf (accessed 21 March 2022).

of labour' indicates that they exercise different functions and their duties are not interchangeable. Nevertheless, the task of preserving the unity of the Church, for example, is not exclusively ascribed to the bishop. And, moreover, the synod is not given merely a second-level responsibility: 'The *Landessynode*,' the Constitution reads (art. 43 [1]), 'can negotiate all church issues and, by doing so, take decisions on tasks which result from the mission of the Church in the [reality of the] Evangelical Lutheran Church of Bavaria'.⁸ And, because 'Church governance is a spiritual and at the same time legal service',⁹ the responsibility of the synod cannot be restricted to organisational issues and the bishop's competence limited to spiritual and doctrinal issues.

We now outline how the respective specific functions of *Landesbischof* and *Landessynode* are described in the Constitution. The Constitution lists ten 'duties of the *Landesbischof*'.¹⁰ The first one is: 'He [or she] sees that the Word of God is proclaimed in accordance with Holy Scripture and the [Lutheran] Confessions and that the sacraments are rightly administered.'¹¹ After this fundamental function – which refers to the Augsburg Confession, art. 7, and highlights the core mission of the Church as a whole as well as the specific vocation of the ordained ministry – the Constitution names administrative tasks (e.g., the enforcement of church laws and the appointment of pastors and Church officers) and adds an extensive list of pastoral functions such as counselling or inspiring dialogue and different ways of conversation. The clear intention is not to give the picture of a hierarchical, authoritarian Church leader but rather an integrative mediator, spiritual counsellor and public 'face' of the church. As to doctrinal authority, the Constitution gives the *Landesbischof* the right of veto against decisions of the *Landessynode* by suspending the synod and ordering a new election. But if the new synod repeats the earlier decision, the Bishop cannot repeat his or her veto. This means that the veto is only provisional and not decisive in itself. It is interesting to note that the Con-

⁸ 'Die Landessynode kann über alle kirchlichen Angelegenheiten verhandeln und dabei über Aufgaben beschließen, die sich aus dem Auftrag der Kirche für die Evangelisch-Lutherische Kirche in Bayern ergeben.' (Art. 43 [1])

⁹ 'In der Evangelisch-Lutherischen Kirche in Bayern ist Leitung der Kirche zugleich geistlicher und rechtlicher Dienst.' (Art. 5)

¹⁰ See art. 61 (1). The current version reads 'Landesbischof bzw. [...] Landesbischöfin'. The gender-inclusive language was added after the introduction of the ordination of women in 1976.

¹¹ Art. 61 (1) 1: 'Er bzw. sie achtet darauf, dass das Wort Gottes schrift- und bekennnisgemäß verkündigt wird und die Sakramente recht verwaltet werden.'

stitution does not include ordination in this list of duties but speaks of the ‘right of ordination and visitation’ in a separate sub-paragraph (art. 61 [2]). This might indicate that ordination is not regarded as an aspect of Church-governance but forms a category of its own.¹²

The *Landessynode*, according to the Constitution, is ‘assigned to joint decision-making of the Evangelical Lutheran Church in Bavaria’ (art. 42 [1]).¹³ It ‘embodies the unity and diversity of the congregations, institutions, and services’ of the Church. It thus mirrors and represents the communion. The list of its duties starts with ‘the right of Church legislation’ and the election of the *Landesbischof* (art. 43[2]) and continues with different issues of decision-making, in such matters as the introduction of liturgies or hymn books, or the creation of new parishes, or on the budget of the church.

To come to an end: Of course, as already said, the functions of *Landesbischof* and *Landessynode* are not identical. It is no accident that the Bishop is neither a member nor head of the Synod. But in relation to the governance of the Church, there is no priority given to the Bishop. The idea is that the institutions of Church leadership perform *episcopé* together, avoiding controversies, and forming consensus. This mirrors the distinction that Canon Law Theory draws between the basic function of the ordained ministry – publicly proclaiming the Gospel and administering the sacraments – and the function of *episcopé* which is not an exclusive competence of the ordained ministry.

¹² The Constitution does not develop a theory of ordination. It only names the *Landesbischof* and the *Oberkirchenräte im Kirchenkreis* (regional senior administrators who can be addressed as *Regionalbischöfe*, but only within their respective region) as persons who have the right or duty to ordain. But it does not emphasise that these persons have this right or duty exclusively. In the article on ‘the calling to publicly proclaiming the Word of God and administering the sacraments’ it only reads that persons are called into this office ‘by laying on of hands, blessing and sending’ (art. 13) in ‘good order’ without explicit reference to the persons who are entitled to perform this ‘orderly call’.

¹³ The synod is ‘zur gemeinsamen Willensbildung der Evangelisch-Lutherischen Kirche in Bayern berufen’ (Art. 42 [1]).