

The Ministry in the German Protestant Churches

HEINRICH DE WALL

Universidad Martin Luther de Halle-Wittenberg

A. INTRODUCTION

The doctrine of the ministry is fundamentally important for the Protestant churches and their ecclesiastical law. The ministry was, and still is, one of the main issues in the controversies with the Roman Catholic church and one of the crucial points for the split between the churches. Whereas in other points of discussion, such as the meaning of the justification of the sinner, the Roman Catholic and the Protestant point of view have come quite close together, there is no sign for any agreement about the ministry. And this disagreement is not restricted to the questions of the pope's role or the hierarchy of the Roman Catholic Church, but goes back to the very basis of the ministry.

In the following, a short outline of the teaching about the ministry by Luther, Melancthon and the other Reformers shall be given. Then the consequence of this teaching for the legal framework of the ministry in the Protestant churches shall be explained. This article concentrates on the Lutheran teaching and the Lutheran churches, whereas only few hints on other Protestant denominations can be given. As far as the law is concerned, only the law of the German churches will be subject. The law of Protestant Churches in other countries cannot be dealt with.

B. LEADING THE CHURCH BY WORD AND SACRAMENT

In the Lutheran teaching, the doctrine of the ministry is closely connected with the concept of ecclesiastical Power. This, again, makes clear, how important the teaching of the ministry is for the church and its law. In the Protestant view, the government of the church or ecclesiastical power are primarily the same as leading the church by teaching or preaching the Gospel and administering the Sacraments. And this is as well the very core of the *ministerium verbi divini* or, to put it the other way round: The ministry is the office of teaching and preaching the Gospel and administering the Sacraments. As a consequence, the ministry, ecclesiology and the idea of the law and government of the church are very closely connected with each other.

I. ECCLESIASTICAL POWER OR THE POWER OF BISHOPS IN THE ROMAN CATHOLIC DOCTRINE

The Protestant teaching can only be understood on the background of the Roman Catholic idea of ecclesiastical power. According to Roman Catholic teaching, ecclesiastical power (*potestas ecclesiastica*) consists not only of the task and power of teaching and preaching the Gospel and administering the sacraments, but covers the government of the church, even by the means of law, as well. As parts of ecclesiastical power the *potestas ordinis* and the governing or jurisdictional power (*potestas iurisdictionis vel regiminis*) have to be distinguished. The *potestas iurisdictionis* includes the power to govern the church and is endowed with *potestas coactiva*, the power to coerce and punish. It is subdivided into the legislative, the executive and the jurisdictional powers. So the right to legislation is included in the ecclesiastical power, but, of course, bound by divine law, *ius divinum*.

Only clerics can be owners of either powers, *potestas ordinis* and *potestas iurisdictionis* (s. cc. 129 § 1, 274 § 1 cic). By the ordination or consecration of clerics not only *potestas ordinis* is transferred, but also the ability to be bestowed with governing power. Owners of ordinary governing power (*potestas iurisdictionis*) are the local bishop and the pope. The other clerics, i.e. priests and deacons, are subordinate to this power and have an auxiliary role in exercising ecclesiastical power. As a result, the church is a hierarchical body in which the clerics with the bishops and the pope as their heads have the leadership over the Christian people. According to Roman Catholic doctrine, both these elements, the existence of ecclesiastical power which embraces *potestas ordinis* and *potestas iurisdictionis*, and the hierarchical structure of the church under the bishops and the pope are ordered by divine law. These topics of the Roman Catholic teaching of *potestas ecclesiastica* are basics of the doctrine and the law of the Roman Catholic Church not only in our time (see cc. 129 § 1, 274 § 1 cic), but in the 16th century as well.

II. THE LUTHERAN DOCTRINE OF THE MINISTRY

1. ECCLESIASTICAL POWER AND MINISTRY

These Basics of the Roman Catholic teaching of ecclesiastical power were fundamentally criticised by Luther, Melanchthon, and the other Reformers. They denied ecclesiastical power to be a monopoly of the clerical hierarchy. They also denied that ecclesiastical power included *potestas iurisdictionis*, the power to govern the church by means of law. They claimed that this meant a confusion of episcopal or church power and secular power. There is a narrow connection with the Lutheran teaching of the two realms and regiments.

The Lutheran concept of ecclesiastical power¹ was summarized in Article 28 of the Confessio Augustana (CA), in which the teaching of the Lutherans was presented to the diet of Augsburg in 1530. As a somehow official and legally acknowledged summary of the Lutheran teaching the Confessio Augustana, which was written by Melancthon, has become one of the most important documents of the Lutheran teaching.

Article 28 CA does not deny the existence of ecclesiastical power at all. The power of the keys or the power of bishops, which can be taken as synonyms for ecclesiastical power, is, however, limited to preaching the Gospel, to remitting and retaining sins, and to administering the Sacraments. This power is executed “*sine vi humana sed verbo*”, by the word only and not by any secular force whatsoever.

“But this is their opinion, that the power of the Keys, or the power of the bishops, according to the Gospel, is a power or commandment of God, to preach the Gospel. For with this commandment Christ sends forth His Apostles, John 20, 21 sqq.: As My Father hath sent Me, even so send I you. Receive ye the Holy Ghost. Whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained. Mark 16, 15: Go preach the Gospel to every creature.

This power is exercised only by teaching or preaching the Gospel and administering the Sacraments, according to their calling either to many or to individuals. For thereby are granted, not bodily, but eternal things, as eternal righteousness, the Holy Ghost, eternal life. These things cannot come but by the ministry of the Word and the Sacraments, as Paul says, Rom. 1, 16: The Gospel is the power of God unto salvation to every one that believeth².

Moreover, this power is not restricted to a clerical hierarchy, but belongs to all Christians. It is the ministry as it is defined in Article 5 CA:

That we may obtain this faith, the Ministry of Teaching the Gospel and administering the Sacraments was instituted. For through the Word and Sacraments, as through instruments, the Holy Ghost is given, who works faith; where and when it pleases God, in them that hear the Gospel, to wit, that God, not for our own merits, but for Christ's sake, justifies those who believe that they are received into grace for Christ's sake³.

For the sake of good order in the church, this ministry must not be executed in public by everybody who feels entitled to do so. The ministry of teaching the Gospel and administering the Sacrament belongs to every Christian and to the whole church and

¹ H. de Wall, Kirchengewalt und Kirchenleitung nach lutherischem Verständnis, Zeitschrift für evangelisches Kirchenrecht (ZevKR), vol. 47 (2002), 149 – 162; C. Link, Kirchenregiment, Evangelisches Kirchenlexikon, 3. ed., 1989, 1176 - 1181; M. Honecker, Kirchenrecht II, TRE XVIII, 1989, 740 f.; A. v. Campenhausen, Kirchenleitung, ZevKR, vol. 29 (1984), 11 – 34; H. Wehrhahn, Kirchenrecht und Kirchengewalt, Tübingen 1956.

² The Augsburg Confession, Art. 28; Project Wittenberg, <http://www.iclnet.org/pub/resources/text/wittenberg/concord/web/augs-028.html> (August 29th, 2008).

³ The Augsburg Confession, Art. 5, Project Wittenberg, <http://www.iclnet.org/pub/resources/text/wittenberg/concord/web/augs-005.html> (August 29th, 2008).

therefore, whoever carries out these tasks is in danger to deny the ministry of the others. What belongs to the whole church must not be used by any person, unless he or she is entitled to do so. Therefore only a person who is regularly called, “*rite vocatus*”, is entitled to preach the Gospel publicly on behalf of the church; Art. 7 CA:

“Of Ecclesiastical Order they teach that no one should publicly teach in the Church or administer the Sacraments unless he be regularly called”⁴.

It is, however, any Christians right an duty to preach the Gospel privately, without the assertion that the respective person acts on behalf of the church.

2. THERE IS ONLY ONE MINISTRY

Another important element of the Lutheran teaching of the ministry is that there are no various degrees but only one and the same office, regardless of any rank of the minister. Bishops and priests both have the same office to pray the Gospel and administer the sacrament – with respect to this office there is no clerical hierarchy. In some writings both words, bishop and priest, are even used as synonyms.

According to Lutheran teaching, the ministry contains no power of jurisdiction and no authority to govern the church by other means than only the word and the sacraments. Apart from the office of preaching the Gospel and administering the sacraments no power of jurisdiction or governing the church is included. Ecclesiastical Power does not cover the power of jurisdiction, Art. 28 CA:

“Therefore, since the power of the Church grants eternal things, and is exercised only by the ministry of the Word, it does not interfere with civil government; no more than the art of singing interferes with civil government. For civil government deals with other things than does the Gospel. The civil rulers defend not minds, but bodies and bodily things against manifest injuries, and restrain men with the sword and bodily punishments in order to preserve civil justice and peace”⁵.

After all, the Lutheran teaching of the ministry contradicts the Roman Catholic idea of *potestas ecclesiastica*. The ministry does not contain any power of jurisdiction, it has no different degrees so that there is nor hierarchy within the clergy, the ministry belongs to the whole church not only to the clergy.

3. THE GOVERNMENT OF THE CHURCH

When I emphasize that the ministry does not contain any legislative, executive or jurisdictional power, this needs further explanation, because obviously there are ministers

⁴ The Augsburg Confession, Art. 7, Project Wittenberg, <http://www.iclnet.org/pub/resources/text/wittenberg/concord/web/augs-007.html> (August 29th, 2008).

⁵ The Augsburg Confession, Art. 28; Project Wittenberg, <http://www.iclnet.org/pub/resources/text/wittenberg/concord/web/augs-028.html> (August 29th, 2008).

and bishops in the Protestant churches who have certain powers in their churches – not only in the fields of teaching or pastoral care, but also concerning the government of the church.

Despite of their heavy criticism of the pope, the bishops and the ecclesiastical hierarchy, even the reformers of the sixteenth century made clear occasionally, that they would not insist in abolishing the ecclesiastical hierarchy completely. But according to their teaching, if any jurisdiction exceeding the authority of preaching the Gospel and administering the Sacraments (including the power “to exclude from the communion of the Church wicked men, whose wickedness is known”) is transferred to them, it is by mere human right. Such powers may be given to bishops, if it seems appropriate, but without the assumption that they are by divine right part of their ministry or office of bishop. This means as well, that such powers may be given to other persons, whether clerics or laymen, or to multitudes of persons, as well.

“When, therefore, the question is concerning the jurisdiction of bishops, civil authority must be distinguished from ecclesiastical jurisdiction. Again, according to the Gospel or, as they say, by divine right, there belongs to the bishops as bishops, that is, to those to whom has been committed the ministry of the Word and the Sacraments, no jurisdiction except to forgive sins, to judge doctrine, to reject doctrines contrary to the Gospel, and to exclude from the communion of the Church wicked men, whose wickedness is known, and this without human force, simply by the Word. Herein the congregations of necessity and by divine right must obey them, according to Luke 10, 16: He that heareth you heareth Me. But when they teach or ordain anything against the Gospel, then the congregations have a commandment of God prohibiting obedience, Matt. 7, 15: Beware of false prophets; Gal. 1, 8: Though an angel from heaven preach any other Gospel, let him be accursed; 2 Cor. 13, 8: We can do nothing against the truth, but for the truth. Also: The power which the Lord hath given me to edification, and not to destruction. So, also, the Canonical Laws command (II. Q. VII. Cap., Sacerdotes, and Cap. Oves). And Augustine (Contra Petiliani Epistolam): Neither must we submit to Catholic bishops if they chance to err, or hold anything contrary to the Canonical Scriptures of God.

If they have any other power or jurisdiction, in hearing and judging certain cases, as of matrimony or of tithes, etc., they have it by human right, in which matters princes are bound, even against their will, when the ordinaries fail, to dispense justice to their subjects for the maintenance of peace”⁶.

In Art. 10 of the Smalcald Articles, written by Luther in 1537, the consequences of this doctrine are discussed in connection with the right of bishops to ordain priests.

⁶ The Augsburg Confession, Art. 28; Project Wittenberg, <http://www.iclnet.org/pub/resources/text/wittenberg/concord/web/ausg-028.html> (August 29th, 2008).

If the bishops would be true bishops [would rightly discharge their office], and would devote themselves to the Church and the Gospel, it might be granted to them for the sake of love and unity, but not from necessity, to ordain and confirm us and our preachers; omitting, however, all comedies and spectacular display [deceptions, absurdities, and appearances] of unchristian [heathenish] parade and pomp. But because they neither are, nor wish to be, true bishops, but worldly lords and princes, who will neither preach, nor teach, nor baptize, nor administer the Lord's Supper, nor perform any work or office of the Church, and, moreover, persecute and condemn those who discharge these functions, having been called to do so, the Church ought not on their account to remain without ministers [to be forsaken by or deprived of ministers].

Therefore, as the ancient examples of the Church and the Fathers teach us, we ourselves will and ought to ordain suitable persons to this office; and, even according to their own laws, they have not the right to forbid or prevent us. For their laws say that those ordained even by heretics should be declared [truly] ordained and stay ordained [and that such ordination must not be changed], as St. Jerome writes of the Church at Alexandria, that at first it was governed in common by priests and preachers, without bishops⁷.

The right to ordain priests belongs to the whole church. It may be left to bishops for the sake of unity. It does not, however, exclusively belong to them by divine law. The same can be said about any legislative or jurisdictional power within the church.

The Reformers strongly oppose to introducing, based on the power of the church, any ceremonies or ordinances with the claim that such ordinances are necessary for salvation. As examples of such ordinances rules of fasting, church holidays or special ordinances for the churches' servants are given – rules which even in our days are part of the government of the church. This does not mean, that such ordinances may not be introduced at all. Moreover, the right to introduce such rules or to frame traditions may be given to bishops. But:

“This is the simple mode of interpreting traditions (better: ordinances, HdW), namely, that we understand them not as necessary services, and nevertheless, for the sake of avoiding offences, we should observe them in the proper place”⁸.

⁷ The Smalcald Articles by Martin Luther, Art. 10, The Wittenberg Project, <http://www.icl-net.org/pub/resources/text/wittenberg/concord/web/smc-03j.html> (October 29th, 2008).

⁸ The Defense of the Augsburg Confession, Art. 28, 17, The Book of Concord, http://www.bookofconcord.org/defense_25_ecclesiasticalpower.php (October 29th, 2008), see also Nr. 15s. “Although in the Confession we also have added how far it is lawful for them to frame traditions, namely, not as necessary services, but so that there may be order in the Church, for the sake of tranquillity. And these traditions ought not to cast snares upon consciences, as though to enjoin necessary services; as Paul teaches when he says, Gal. 5, 1: Stand fast, therefore, in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage. The use of such ordinances ought therefore to be left free, provided that offenses be avoided, and that they be not judged to be necessary services; just as the apostles themselves ordained [for the sake of good discipline] very many things which have been changed with time. Neither did they hand them down in such a way that it would not be permitted to change them”.

4. SUMMARY

The Lutheran teaching about ecclesiastical power can be summarized in few sentences: The power of the church, given to it by God, is the power to preach the Gospel and to administer the Sacraments and to exclude from the communion of the church wicked men, whose wickedness is known. This is the power of leading the church, but only by means of the word and without any worldly force whatsoever. This power belongs to the whole church. The public execution of this *ministerium*, ministry, requires the minister to be regularly called by the church. If any additional powers to leading the church are given to ministers or anyone else, this can be done for the sake of tranquillity, by human right. Such additional powers cannot only be given to clerics.

The clergy, bishops or priests, has no monopoly of jurisdiction within the church.

As a result of this teaching about ecclesiastical power and the ministry, the church can be organised in great liberty. The structures of the church are not ruled by *ius divinum* and can therefore be designed according to the needs of place and time. For instance: to have power of jurisdiction in the church does not claim the person to be consecrated so that not only clerics but also laymen may be provided with jurisdictional power.

5. CHURCH OFFICES BESIDES THE MINISTRY

Although, according to Lutheran teaching, there is only one ministry of teaching and preaching the Gospel and there is no hierarchy among ministers, in fact there is a multitude of different offices and services in the Protestant churches. In the Lutheran as well as in the reformed churches, the office of deacon is common. Many different kinds of posts are instituted to serve for the sake of the ministry of the church. But their task is not teaching and preaching the Gospel personally, but helping the ministers with their service. Their activities are very important for the church, but they do not preach the Gospel or administer the Sacraments. They cannot claim their teaching or preaching as being attributed to the church itself, because they neither preach the Gospel nor administer the Sacraments. Therefore they do not need to be regularly called as ministers. The ordination, which is nothing else but the regular calling into the ministry, does not impose a kind of ontological difference from laymen to the ministers nor does it mean any subjection of the latter. Therefore, the other services in the church are not of lower rank than the ministry. The ordination is to be understood as a way to transfer a specific function and nothing more. As this function is the task of the church itself, the ministers are, of course, very important for the church. But apart from their special task of preaching the Gospel and administering the Sacraments, they have no prerogative in any other task or power of the church. The ordination does not cover any such additional power and they can be given to laymen as well as to ministers.

C. THE LEGAL FRAMEWORK OF THE MINISTRY IN ECCLESIASTICAL LAW

I. THE RELATIONSHIP OF MINISTER AND CONGREGATION

The Preaching of ministers is always addressed to a certain number of people, usually the congregation in a parish. Therefore the question arises, how the relation of the ministers to the congregation to which they preach can be defined. Minister and congregation are necessary parts of the task of the church. The congregation is gathering in services to listen to the prayer and to celebrate the sacraments. The minister is the counterpart of the congregation and vice versa. These two elements are necessary for the existence of the church and their relation is an important subject for the constitution and the statutes of the Church.

The special significance of the relation between minister and congregation is reflected in many rules within the churches' constitution. For instance, there must be a certain percentage of ministers and a certain number of laymen in the synods of the church. So the synods represent the parishes and other congregations with their two parts – ministers and laymen.

Another important issue must be considered, when the law of the ministry in the Lutheran churches is to be analysed. Although Lutheran teaching emphasises the role of the congregation, which is gathering to listen to the Gospel, it is not congregational. Although the single congregation matches all elements of the Lutheran definition of the church, it cannot be identified with the whole church as a universal community of all believers. The parish seeks for contact with other Christians and tries to take part in the great communion of all believers. The parish or any other congregation gathering to listen to the Gospel is not the only type of church. A community of many parishes meets the elements of the definition of the church as well. Consequently, the single congregation on the local level is part of a church organisation on a higher level.

The Lutheran churches are not organised on a worldwide level except for the Lutheran world council, which is an association of independent churches rather than a church in itself. According to the specific historical circumstances in different states, there is a multitude of different types of Lutheran and other Protestant churches – national or state churches, or congregational free churches. As Germany did not achieve its national unity until 1871, German Protestant were organised on the level of the German territories, duchies, earldoms, free cities and so on. Although there have been considerable changes of the shaping of the German “Landeskirchen”, many of them have survived within boundaries of German states or Prussian provinces, which have long ceased to exist, e.g. Oldenburg, Brunswick, Rhineland, Westphalia, Baden, Anhalt, Mecklenburg etc. Historically, not the local congregations, but the Landeskirchen were the constitutional core of the Protestant churches in Germany. The local congregations were considered only as the local district to which a minister was

sent to fulfil his task, not an entity of its own right. This was the case in the typical - mostly Lutheran - Landeskirchen under a Protestant prince. In some western parts of Germany there were, however, minoritarian reformed congregations on a local level under catholic rulers, which were to be tolerated according to special regulations of the law. These communities were organised according to a Presbyterian tradition which also corresponded with the reformed teaching. On a higher level they gathered with other congregations in synods - this is one source of the introduction of synods as legislative bodies of German Landeskirchen which began in the middle of the nineteenth century.

The ministers of the Protestant churches usually are employees of the Landeskirche, not of the local congregation. They are sent to the local congregation by the church – but the local congregation does have certain rights in connection with the election of their minister and the minister has, according to his task, rights and duties in his relationship to the community he is sent to. So when the question is being discussed, which consequences the Protestant teaching about the ministry has for the legal status of the ministers⁹, two different legal relationships are to be distinguished – the legal position of the minister in the parish he is sent to and his relationship to the Landeskirche.

II. THE LEGAL RELATIONSHIP OF THE MINISTER AND THE LOCAL CONGREGATION OF HIS PARISH

In the Lutheran churches, the relationship of the minister and the local congregation of his parish can be described as a kind of dichotomy. An example of this is the way the minister is called into his office. While in the churches with a reformed tradition the minister always has to be elected by the community, in the Lutheran churches, usually the Landeskirche has the right to send the minister to the parish in every second case. The reformed tradition refers to the strong position of the congregation and so its minister appears to be appointed to his office always by this local congregation itself. In the Lutheran tradition, the minister carries out his duty in the local congregation as a representative of the church as a whole and therefore is sent to it by the church, although the community is granted the right to make its own choice every second case. In the reformed tradition the minister is a functionary of the local community, in Lutheran church he represents the whole church. However, these different traditions must not be overestimated nowadays. The Lutheran churches have discovered the special importance of the local community, the reformed churches do not deny that the

⁹ *A. Stein et.al.*, Das Amt des Pfarrers und der Pfarrerin, in: *G. Rau/H. – R. Reuter/K. Schlaich*, Das Recht der Kirche, 1995, vol. III, S. 71-199

church as a whole has its own theological dignity. So the difference between the laws in this respect is about to vanish.

In the exercise of his ministry in his parish, the minister is independent, within certain limits of faith, which are to be discussed later. Included in his right to teaching in the community is his right to decide who else may pray in his church. If another minister wants to celebrate services in the parish, he must have the consent of (usually) the minister of the parish. If a member of the parish wants to marry or his children to be baptized in another parish, he or she needs his consent (*dimissoriale*), as well¹⁰.

The minister is not the only person who is responsible for the task of preaching the Gospel but the local congregation by its presbytery or local church council shares the responsibility. The local congregation is not limited to its role as audience to the minister, but has to take care of the ministry. The right to elect the minister is only one example of this part. Additionally, the church council has to decide which services are to be celebrated, it has to care for the teaching in the community and is responsible of its conformity with the doctrine of the church.

Besides his ministry many tasks of governing and taking care of the community and leading the church in legal matters are transferred to the minister of the parish by the laws of the church. He is the master (or better: the servant) of the local church office, which means that he has to care for the everyday tasks which are connected with the governance of the local congregation. He is member and often (but not in all churches) he presides over the local council of the church, as well. As member or president of the council he takes part in its responsibilities, for example for the property, the buildings and the staff of the local community. Both minister and congregation are responsible of the tasks and the welfare of the parish.

The special dichotomy of ministry and congregation is being reflected in many regulations and institutions of the constitution of the church on every regional level. On its regional and on its highest level, the Landeskirche itself, and even on the level of the organisation which brings the churches together on the national level in Germany, there are synods as representative bodies of the congregations. Usually two thirds of its members are laymen, and one third are ministers. So the synods represents the local congregation in both of its elements - the congregation of the believers and the minister.

In another respect the constitution of the Landeskirchen themselves reflect both of these elements. The bishop is the minister of the whole community of the Landeskirche, the synod in a way represents this community as a whole.

¹⁰ P. v. Tiling, *Das Kanzelrecht*, Zeitschrift für evangelisches Kirchenrecht, vol. 40 (1995), 418.

III. THE LEGAL RELATIONSHIP OF THE MINISTER AND THE LANDESKIRCHE

1. THE MINISTER AS CIVIL SERVANT OF THE CHURCH

Two aspects of the legal relationship of the minister and the church as a whole have to be distinguished: the ordination and the legal framework of his status as employee of the church (“Dienstverhältnis”). By the ordination, his ministry and his duty to preach the Gospel and to administer the Sacraments is transferred to him. This does not contain, however, any particular duties (e.g. to celebrate services in a certain parish) or rights such as his own or his families maintenance. There are a small number of ministers, who exercise their ministry as volunteers, without any legal obligation or right against the church except that their teaching has to comply with the doctrine of the church.

Usually, however, the relationship of the minister to the church is a lifelong relationship ruled by public law. Like the relationship of civil servants and the state, it is not a *quid pro quo* of service and wages, but a lifelong relationship of obedience and service. It is subject to public, not private law. As a consequence, its conditions are not subject to the consent of the parties but to the legislation of the church itself. This special status of the ministers of the Protestant churches, which is different from ordinary labour law, is provided for by the constitution of the German State. Art. 140 of the German Basic law grants the churches the right to apply the rules for civil servants to its employees as part of their status as public corporations.

This appears to be an appropriate legal framework of the ministry. Just like civil servants according to German state public law, ministers are always on duty without any restriction as to place or time. The minister is obliged to work only for the church and for no one else. So if the minister wants to take over a sideline, this is subject to an explicit permit by the church. These duties and restrictions are acceptable only because the maintenance of the minister and his family is cared for by the church. The legal position of the minister as civil servant of the church is lifelong and cannot be terminated by the church or the local congregation. This allows him to preach like he thinks is appropriate – even if the community has to be called to (christian) order. His freedom of teaching is protected by his legal status.

2. THE RIGHTS AND DUTIES OF THE MINISTERS¹¹

Since the middle of the 20th century, in the German Lutheran churches the sex of a person has no influence in his or her ability to become minister any more. Since the

¹¹ *H. Maurer*, Die Pflichten des Pfarrers aus Ordination und Dienstverhältnis, *Abhandlungen zum Kirchenrecht und Staatskirchenrecht*, 1998, 46 ss.; *H. Weber*, Die Rechtsstellung des Pfarrers, insbesondere des Gemeindepfarrers, *Zeitschrift für evangelisches Kirchenrecht*, vol 28 (1983), 1 ss.; *R. Mainusch*, Aktuelle kirchenrechtliche und kirchenpolitische Fragestellungen im Pfarrerdienstrecht, *Zeitschrift für evangelisches Kirchenrecht*, vol 47 (2002), 1 ss.

Reformation, ministers may be married. The most important duty of the minister is his (or her) duty to preach the Gospel and to administer the Sacraments. In the performance of this office, the minister is bound only by the Gospel and the confession of the church.

He is free to preach what he thinks to be the proper teaching according to the Gospel and the confession of the church. He is, however, not bound by any commandment of other persons concerning the teaching, neither the synods nor the bishops. Consequently, the Protestant churches do not have any institution or office which could prescribe the contents of the teaching in a legally binding way. If a bishop thinks that a minister's teaching does not comply with the Gospel, he may and ought to say so, but only by words without any legal consequence for the minister in question. So there seems to be no opportunity to sanction false teaching by ministers. However, if a minister preaches in a way which is not in conformity with the doctrine of the church, he cannot claim to preach as a representative of this church and must be removed from his ministry. So there must be a way to find out if his teaching still complies with the confession of the church or not. For this purpose, from the beginning of the 20th century a special procedure, called "Lehrzuchtverfahren"¹², was introduced in the Protestant churches in Germany. Special courts were instituted with theologians and lawyers as their members. Their task is primarily to discuss the question of the conformity of a minister's teaching with the minister himself. If no consensus can be reached on this question and if the court considers the teaching of the minister not in line with the doctrine of the church, the minister can not teach in the name of the church any more and so loses his ministry and is removed from his office. This sanction, however, is supposed not to be a punishment like it would be imposed if a minister steals property of the church. His dismissal is just a reaction on the non-conformity of his teaching with teaching of the church without any allegation of personal guilt of the minister.

The special procedure (Lehrzuchtverfahren) to examine the compliance of the minister's teaching with the doctrine of the church can be understood as a means to strengthen the independence of the minister. Although it is the bishop's and any other minister's task to criticise teaching which they consider wrong, they are restricted to the word to do so. The minister, however, cannot be called to conformity with the teaching of the church by compulsory or other legal means, but only through a special and very rarely applied procedure. A number of further rights of the minister are meant to strengthen his independence. He is irremovable, which means that he must not be sent to another parish if he does not apply to. There are only few reasons which can justify his being sent to another post. He cannot be dismissed from his office – his status is lifelong. That the minister is independent in his teaching does not mean, however, that his freedom is unrestricted in other aspects of his office. So, of course, he is bound by the rules of the

¹² A. Stein, *Probleme evangelischer Lehrbeanstandung*, 1967; W. Härle / H. Leipold (ed.), *Lehrfreiheit und Lehrbeanstandung*, 2 voll., 1985.

liturgy of his church. And when he performs all the activities in connection with the legal government of the church, he has to abide by the many rules of the church concerning these matters. These activities have nothing to do with his teaching and therefore are object to limitations according to the law of the church.

By the ordination, not only the right and duty to preaching the Gospel and administering the sacraments are transferred, but also some other duties which can be derived from the ministry. Among these are the minister's duty to behave in a way which does not call in question the credibility of the ministry and his teaching, in public as well as in private life. The divorce of a minister is, for example, a matter of concern to the church. Although the Protestant churches accept divorce as a result of the imperfectness of human beings it still emphasizes the indissolubility of matrimony as an institution. Therefore, if a minister divorces, there is reason for the church to examine if this was inevitable or if it was result of a behaviour which cannot be tolerated. Any allegation of misbehaviour or breach of duty on behalf of the minister is subject to a special disciplinary procedure. If this allegation proves to be true, sanctions can be imposed which can go as far as the dismissal of the minister. This is, however, a very rare case.

D. LUTHERAN BISHOPS AND THEIR OFFICE

I. THE INTRODUCTION OF THE OFFICE OF BISHOP IN THE GERMAN LUTHERAN CHURCHES

In the Protestant churches there is no hierarchy within the clergy. But obviously, the office of bishop is common in their church constitution. Moreover, the Organisation of German Lutheran Churches is based on three institutions: the consistory (Konsistorium) as a kind of executive, the synod as the legislative body and the bishop¹³.

Historically, the office of bishop was introduced as the last of these institutions, namely since the 1920s. During the centuries before, the tasks of a bishop had also been

¹³ *I. Asheim/V. R. Gold*, Kirchenpräsident oder Bischof? 1968; *Th. Barth*, Elemente und Typen landeskirchlicher Leitung, 1995, 121-196; *A. v. Campenhausen*, Evangelisches Bischofsamt und apostolische Sukzession in Deutschland, in: *K.-H. Kästner* (Ed.), Festschrift für Martin Heckel zum siebzigsten Geburtstag, 1999, 37ss.; *H. Frost*, Strukturprobleme evangelischer Kirchenverfassung, 1972, 323ss.; *W. Fleischmann-Bisten*, Bischofsamt (Th), in: *Evangelisches Staatslexikon*, new ed. 2006, 236-240; *G. Grethlein/H. Böttcher/W. Hofmann/H.-P. Hübner*, Evangelisches Kirchenrecht in Bayern, 1994, § 40; *B. Guntau*, Bischofsamt (J), in: *Evangelisches Staatslexikon*, new ed. 2006, 233-236; *B. Kämper*, Bischof, in: *Lexikon des Kirchen- und Staatskirchenrechts*, vol. 1, 266; *W. Maurer*, Das synodale evangelische Bischofsamt in Deutschland seit 1933, in: *Die Kirche und ihr Recht*, 1976, 388-448; *G. Müller*, Das Bischofsamt – historische und theologische Aspekte, *Zeitschrift für evangelisches Kirchenrecht*, vol. 40 (1995), 257-279; *A. Schilberg*, *Evangelisches Kirchenrecht in Rheinland, Westfalen und Lippe*, 2003, 100f; *I. Tempel*, Bischofsamt und Kirchenleitung, 1966; *G. Tröger*, Das Bischofsamt in der evangelisch-lutherischen Kirche, 1966; *H. de Wall*, Bischof, III. Dogmatisch-kirchenrechtlich, 3. Evangelisch, in: *Religion in Geschichte und Gegenwart*, vol. 1, 4th ed., 1998, 1621-1623; *D. Wendebourg*, Das bischöfliche Amt, *Zeitschrift für evangelisches Kirchenrecht*, vol. 51 (2006), 534.

fulfilled, but not by bishops but by ministers with the title of “Superintendent”. Their office was not, however, an independent part of the constitution of the independent Landeskirche. The reason for this was the capacity of the German princes, the rulers of the German territories, as *summi episcopi*, highest bishops, of their respective kingdom, duchy, or Earldom. As *summi episcopi*, the princes were, of course, not ministers. But they were responsible for the church organisation and had the power over the Protestant churches in their countries. The superintendents were officers of the princes in this capacity, not holders of a leading position of their own right within an independent church. Not until the end of the territorial church government in 1918 were the German Lutheran churches free to organize themselves according to their own principles and could the office of bishop be introduced. Since the 1920s, bishops were introduced in all Lutheran Landeskirchen and in a number of churches with a Lutheran – Reformed Union as well. Today, all Lutheran Landeskirchen have a bishop as independent leading minister of their church. What are the characteristics of the office of a Lutheran bishop according to the German church constitutions?

First of all, a Lutheran bishop is a minister. His ministry is the same as the ministry of all other ministers of his church. The bishop, like all other ministers, has the right and the task to preaching the Gospel and administering the sacraments. What makes the difference between the ministry of the bishop and of the other priests is the bishop’s parish, which is the whole Landeskirche. The bishop is a minister whose parish is the Landeskirche. The identity of the ministry of bishops and priests, the unity of the ministry, does not exclude that other tasks than preaching and administering the sacraments are being transferred to the bishop as a leading minister. Such additional tasks and powers are, however, – different from the catholic view of the episcopate – not based in *ius divinum*. It is human power which introduces and transfers such additional capacities. Typically episcopal functions in this sense are the right to visit the parishes and the right to ordain priests.

II. THE BISHOP AS MINISTER

In many Lutheran church constitutions the office of Bishop is explicitly defined as a minister who is called into the leading office for the whole territory of the church. As a sign of his ministry of the whole Landeskirche the bishop has the right to preach in any of its churches. Additionally he has the right to make announcements which must be published and read out in all parishes. Some constitutions lay stress on the bishop’s function as *pastor pastorum*. All these rights are examples of the episcopate as ministry for the whole church.

As the ministry of the bishop is the same as the ministry of all other priests, there is no special kind of consecration of bishops. Their ministry is based in their ordination which does not have to be repeated when they become bishops. So the solemn ceremony

celebrating the introduction of a bishop is just a kind of installation into a special office. The presence of other bishops and the ceremony of laying their hands on the head of the new bishop are understood just as symbols of the unity of the churches, not as a way of communicating a charisma.

As the bishop's ministry is the same as the ministry of every other priest, he or she has no specific authority to judging the teaching of others. Of course he has the task and the right to tell right from wrong, but, as any minister, *sine vi sed verbo*. In the "Lehrzuchtverfahren", which is the legal procedure to find out if the teaching of an ordained minister violates the Lutheran confession, a bishop presides. But the members of the committee in charge are not all bishops, but other ministers, professors of theology, and laymen. One of them must be a lawyer. The authority to judge the teaching of the ministers is a matter of the whole church. The bishop is of great importance, but he has no monopoly in this question.

III. VISITATION AND ORDINATION OF MINISTERS

Visitation and ordination are not parts of the *ministerium verbi divini*. Even if transferred to ministers, these rights remain based on human, not divine law. Visitation and ordination are – however – in a close relation to the ministry of preaching. It is quite obvious that these rights are significant of the episcopate as the office of unity. They represent the bishop's care for the whole church. Consequently, these rights have been called the core of the Lutheran office of bishop. Accordingly, with one exception, all constitutions of the German Lutheran churches lay the right to ordinate priests into the hands of the bishop. The right to visiting the parishes is also given to all Lutheran bishops in Germany, again with one exception. Nonetheless, the right to visit is typical of the Lutheran office of bishop. In the non-Lutheran Protestant Landeskirchen the leading ministers usually do not have it.

IV. FURTHER CHURCH LEADING AND REPRESENTATIVE FUNCTIONS

According to the church constitutions the bishop has the task of representing the church in public. This task has a political as well as a spiritual dimension. The bishop has the right to give statements on behalf of the church whenever he thinks it appropriate. But the bishop is not the only one who is entitled to do so. Usually the synod has the same right, too. But as the synod only has periods of session of one or two weeks a year, the bishop's task of representing the church in public is much more important. In the German language the word for acting for another person in legal affairs is the same as the word for speaking in public for a corporate body – "vertreten" or – as a noun – "Vertretung". The bishop's task is only meant in the sense of giving statements for the church in public. This does not cover the right to act on behalf of the church in legal affairs, which is

usually performed by the consistory. Besides a great number of rights and duties in the field of legal administration of the church, the bishop usually has to care for the training of young theologians and for good communication among the staff of the church and its sub-institutions. He is also given the task to get or stay in contact with other churches.

V. THE INDEPENDENCE OF THE OFFICE OF BISHOP

The Lutheran constitutions emphasize the independence and equal rank of the office of bishop and the other church leading institutions. In the constitution of the Landeskirche of Württemberg he is even called the top leader of the church – although the bishop in Württemberg does not have a very strong position compared with the other Lutheran bishops. In the German Lutheran constitutions the office of bishop is only one among a multitude of principally independent and equally important institutions – the consistory, the synod, and – in some churches – a church senate. Differently from what is common in the churches with a reformed tradition, the Lutheran bishops are not officials who act on behalf of the synod, but are basically independent of the synod. That does not mean, however, that the synod has no influence at all in the bishop or vice versa. Like the constitutions of the modern states, the church constitutions establish a system of checks and balances among the leading institutions of the church. One of the most important features of this system is the election of the bishop by the synod. It is an important question for the independence of the bishop if his period of office is limited or not. One kind of limitation is common to all Lutheran churches – that is the age of retirement. The bishops have to retire at the age of 65 or 68. Until some years ago, there was no other restriction of the period of office. In a number of churches, however, a limitation of six or twelve years was introduced in the recent years. As this is usually combined with the opportunity of re-election for a second period of office, this might have an effect in the intellectual and spiritual independence of the bishop.

VI. THE RELATIONSHIP OF BISHOPS AND OTHER LEADING INSTITUTIONS OF HIS CHURCH

The episcopal office of the German Lutheran churches is called “synodales Bischofsamt” – synodal episcopate. This is meant to distinguish it from the hierarchical episcopate of the Roman Catholic church and the historical episcopate of the Anglican church and the church of Sweden. German Lutheranism rejects the idea that the historic line of episcopal succession is relevant for the office of bishop. The term “synodales Bischofsamt” can be misleading. The Lutheran bishops are not – as the leading ministers of some other Protestant churches – representatives of the synods. They are basically independent of the synods and equal in rank as church leading organs. The term refers to the election of the bishops by the synods.

The relationship of bishop and synod is not only signified by the election of the bishop. Some bishops have the right to veto the synod's decisions. The veto can, however, be overruled by the synod with a qualified majority in most cases. But at least it suspends the synod's decision. In some Landeskirchen the right to veto is performed not by the bishop but by the "Kirchenleitung" (church senate) of which the bishop is a member. In Bavaria and in Württemberg the bishop even has the right to dissolve the synod. These rights to veto or to dissolve the synods seem to suggest, that there is a kind of permanent struggle between the synods and the bishops. This is, however, not the case and it would be very inappropriate within a Christian community. In fact, these rights are very rarely executed. The relationship of bishops and synods ought to be a relation of cooperation, not of confrontation.

Unlike the leading ministers in the non-Lutheran Protestant churches, the Lutheran bishops are usually not members of the synods. This shows a Lutheran tendency to emphasize the independence of bishop and synod and to set them against each other – not in a kind of confrontation but as different institutions with different tasks. Somehow the relation of ministry and congregation is mirrored in this. Of course the bishop has the right to be present at the sessions of the synod and to speak to the synod.

VIII. BISHOPS WITH OTHER TITLES

The bishops of the German Lutheran Churches have to perform a great number of duties and functions. Some of their Churches have a considerable number of believers. The church of Hanover has 3.2 million, the Bavarian church 2.7 million members. It is impossible for one single man or woman to be both a minister of such a great number of Christians and to perform all the other duties a bishop has as a leader of the church. That's why many of the Landeskirchen have introduced other offices with the functions of bishops - ministers with episcopal rights and duties, but with other titles – such as Landessuperintendent or Probst or "Regionalbischof". Their tasks and functions are different from church to church. Nevertheless they are bishops in the Lutheran sense: They are ministers in a church leading office with the typical episcopal rights to ordain priests and to visit the Parishes. They also have the right to preach in every church of their district. It is *communis opinio* in Germany that they are true bishops, whatever their titles may be. Their diocese is, however, not the whole Landeskirche as it is for the Landesbischof, but only a part of it.

E. CONCLUSION

The laws and constitutions of the German Lutheran Landeskirchen quite accurately implement the Lutheran teaching about the ministry and the episcopate, as it is seen in

Germany. It is the task of the minister to preach the Gospel and to administer the sacraments. No further tasks or powers are necessarily attributed to the ministry by divine law. It is possible to give additional tasks or powers to a minister, but this is only a question of human law. Ministers have no monopoly of the church powers. By ecclesiastical law they are given important tasks concerning the administration of the parish. Their relationship to the congregation they are sent to, especially the parish, is significant of the Lutheran teaching of ministry and congregation. Their relationship to the respective Landeskirche is designed according to the relationship of civil servants and the state. There is no hierarchy among the clergy as far as the ministry is concerned. Consequently, the ministry of the bishop is basically the same as that of every other minister. The difference between the bishop and a minister is that the minister has a restricted parish, whereas the bishop's diocese covers a multitude of parishes. By human law further rights and duties can be and are transferred to the bishop – usually the bishops are given the rights to visitation and to ordination of ministers. The church constitutions give many other functions and duties to the office of bishop which make bishops quite strong leaders of the church. The bishops share the task of leading the church with other institutions, namely the synods and the consistories. These institutions are not subordinate to each other, but are basically independent and equal in rank. They all have to cooperate in their specific functions.