

From Adenauer to Brandt: Church and State in Western Germany

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Bearing in mind Vatican II pronouncements on the desired relationship between Church and State, the Catholic Church's relationship with the West German State appears well-nigh ideal. In Western Germany all Churches are by law disestablished, but most of them, including the Catholic Church and the Evangelical Church, enjoy corporate legal status (*Gemeinschaften des öffentlichen Rechts*) in the same way as trades unions and similar bodies. This gives these Churches legal recognition and allows them to enter into legal agreements with the State. The legal relationships between the Catholic Church and the West German State are laid down in the so-called Reich Concordat of 1933 between the Holy See and the German Reich. Although promulgated under the Nazi government, it is, with a few modifications, still legally binding. Furthermore the West German constitution (*Grundgesetz*) guarantees freedom of belief, conscience, religious conviction, and the right of the Churches to give religious instruction in State schools. Those Churches with corporate status are allowed to gather Church Tax on the basis of government tax-rolls.

So far, so good. But in fact the picture is more complicated than it appears at first sight, as is shown by increasing criticism from both Catholic and non-Catholic quarters of the Catholic Church's relations with the State since the war. The German mind is quick to draw the distinction between *de facto* and *de jure* (cf. the debate over the recognition of the GDR), and some have said that although there is no *de jure* establishment of the Churches in Western Germany, the Catholic Church has been as good as established *de facto* since the war. Such critics draw attention to the close working relationship between the Catholic Church and the Christian Democrat (CDU/CSU) governments of the fifties and sixties, the effects of this relationship on post-war legislation, the Churches' privileged financial position, and the influence of the Catholic Church on the pattern of German education.

The aim of this article is to look more deeply into these 'complications', which together may be said to form the distinctive features of German Church-State relationships, and to ask the question whether these relationships are changing as a result of changes in West German politics since the demise of Adenauer.

Throughout this article the reader should bear in mind four main periods of German post-war history, which may be summarized as follows:

1. 1949–61. The first years of the West German State under its present constitution. The CDU/CSU was in power throughout

- this period, either alone (1957–61) or in coalition with the Free Democratic Party (FDP).
2. 1961–66. Beginning of the decline in CDU/CSU political fortunes. Coalition with the FDP again under Adenauer and later Erhard.
 3. 1966–69. Following the break-up of the CDU/FDP coalition, ‘grand coalition’ of the CDU and the Social Democratic Party (SPD) under Kiesinger.
 4. 1969– . The CDU moves into opposition for the first time since the war. New SPD/FDP coalition under Brandt.

The Catholic Church and the Political Parties

It is no secret that the CDU/CSU was very much the party of the Catholic Church in Germany until well into the 1960s. The bishops openly supported the Christian Democrats and the Catholic population largely followed their lead. (See table 1 for the effects of this in the first *Land* elections after the war.) Less respectful voices talked of a duumvirate consisting of the CDU leader Adenauer and Cardinal Frings, then Archbishop of Cologne, Adenauer’s home town. It was only in 1965 that the Catholic bishops at last refrained from openly supporting the CDU/CSU in the general elections.

This pro-CDU line of the Catholic Church immediately after the war follows the general Vatican line of the time. Socialism was still damned (cf. *Quadragesimo Anno* of 1931) and Communism taboo (cf. Decree of the Holy Office of 28.6.1949). Vatican apart, it must not be forgotten that both before 1933 and immediately after the war the SPD was more markedly left-wing than nowadays. Many Germans, particularly in the Catholic Rhineland and South, regarded them as ‘reds in disguise’, a feeling still met with among certain members of the older generation. Political capital was made of this fear by the CDU/CSU: one election poster of the early years of the republic read: ‘Vote CDU. All other roads lead to Moscow.’ Given on top of this Germany’s front-line position in the East-West confrontation after 1945, it is hardly surprising that the Catholic Church and the CDU saw themselves forming together under Adenauer, himself a practising Catholic, a sort of ‘holy alliance’ against Communism. This strong anti-communist line of the Catholic Church in Western Germany still finds its way into official statements. As late as the end of last year, the Catholic Church was stating that the proposed relaxation of the sex-laws could lead via sexual revolution to social revolution in a communist form. (*Herder Korrespondenz*, 1970, p. 52.)

Since the formation of the ‘grand coalition’ in 1966 the Catholic Church and the Christian Democrats have started to grow apart. This is due mainly to an improvement of relations between the Socialist SPD party and the Catholic Church. The reconciliation of the two traditionally antagonist groups began in a quiet way in the early fifties, culminating in 1959 in the so-called ‘Godesberg Programme’ of the SPD, in which anti-Catholic overtones were excised

from Socialist doctrine to make way for a greater rapprochement. The Socialist party was further encouraged in its efforts towards such a rapprochement by John XXIII's social encyclicals *Mater et magister* (1962) and *Pacem in terris* (1963), which it saw as confirming its own political line. The seal of respectability was put on the SPD as far as the Catholic Church in Western Germany was concerned when an SPD delegation was received by the Pope in 1964.

The political results of this opening towards the Catholic Church have been encouraging for the SPD. Since 1960 it has registered greater than average electoral gains, not only in towns with large Catholic populations, but also in the strongly Catholic country areas of the Rhineland, Westphalia and Bavaria, which have long been considered bastions of the CDU/CSU. I suspect that this change of political fortune in Catholic areas is due rather to the emergence of a new post-war Catholic voting generation taking the Vatican line on social reform than to a change of party amongst older Catholics. Also the generation of die-hard Christian Democrats and Socialists whose views have been influenced by pre-1933 conditions is dying off.

The Catholic hierarchy in Germany still treads very carefully as regards the SPD, the more so in the last year or so as the Socialist legal reform programme becomes more clearly outlined. On the other hand, it is less prepared to back the CDU/CSU to the hilt, as was shown in its unwillingness to pronounce on the last two general elections. This loss of favour has not gone unnoticed by the CDU/CSU. One of the leaders of the CSU remarked unhappily at the 1970 CSU party conference that 'the Church has left us politically on the hook' ('die Kirche hat uns politisch hängen lassen').

Despite its minority position in Parliament, a word about the position of the FDP towards the Catholic Church is perhaps not out of place. The Free Democrats are committed to bringing about a greater distance between Church and State and one of their party platforms in the 1969 general election was the abolition of the Church Tax. The lack of pro-Church legislation after 1961 is possibly due to the fact that the CDU was once again forced into coalition with the FDP. Again the anxiety of the SPD at present to push through its proposed sex and abortion law reforms may be due in part to pressure from the FDP. The SPD relies on the FDP for its parliamentary majority, and the SPD/FDP majority in Parliament was whittled down earlier this year by certain FDP members walking out of the coalition.

The Catholic Church and legislation

(Much of the legislation involving the Catholic Church applies equally to the Evangelical and other Churches.)

The development of legislation involving the Catholic Church in one way or another may be divided into three broad periods: (1) 1949–1961: Much legislation directly involving the Catholic Church. (2) 1961–1966: A lull in such legislation. (3) 1966 onwards and

particularly after 1969: legislation and proposed legislation involves items at variance with Catholic beliefs and policies, including the revocation of some of the pro-Church measures of 1949–61.

In the first period (1949–61) we find items of legislation clearly favouring the Churches and their views on society. In the financial field the 1949 constitution guaranteed the Churches their revenues from the Church Tax, and between 1957 and 1961 various Acts of Parliament gave the Churches valuable privileges with regard to the owning of property. Some of these privileges are indeed greater than those enjoyed by local authorities. Social legislation of 1961–2 gave privately based social and youth work organizations financial preference over similar state-sponsored organizations, thus supporting the traditional Catholic principle of *subsidiarity* in such matters. In this period the interpretation of the sex laws (themselves dating from the previous century) closely reflected Church teachings. For example, the supreme court of arbitration for questions of interpretation of the criminal law ruled in 1954 that sexual intercourse between engaged couples was an indictable offence. The reasons adduced for this ruling—the purpose of sexual intercourse and the sanctity of marriage—read as if taken directly from a Catholic moral theologian of the old school. Whatever one's personal views on the subject, the fact that the German State felt that it had the right to pronounce in such a matter, along with the wording of the ruling itself, do suggest a pro-Church bias. Another example of this was the stiffening of the divorce laws in 1961. From 1938 to 1961 a marriage could be dissolved after a three-year separation of the partners if the marriage relationship could be proved at law to be irreparably broken. In 1961 the CDU/CSU government, acting on proposals put forward by the Evangelical Church and supported by the Catholic Church, limited the scope of the 'break-up' principle so that a marriage which was clearly broken could not be dissolved if the innocent party did not wish for a divorce. These amendments, which were opposed in Parliament by both the SPD and the FDP, were strongly criticized at the time as being a botch-job carried through without proper preparation. The fact that they were carried immediately before the CDU/CSU lost its absolute parliamentary majority raises the question of whether this wasn't a move to gain Church support for the coming general elections.

During the period 1961–66 there was little or no legislation favouring the Churches. From 1962 onwards proposals were made for a revision of the criminal law on sexual offences and abortion, proposals unlikely to be popular with the Churches.

It was not until the period of the 'grand coalition' and afterwards that the first of these proposals were made law. In 1969 penal sanctions were abolished for adultery and 'simple' homosexual offences and reduced for abortion. As far as I know there was little objection from Catholic quarters to the first two of these amendments, but three further amendments of the criminal law which the SPD/FDP

coalition has announced its intention of passing have created a furore in the German Catholic world. These are a change in the divorce law to the break-up principle of before 1961, a partial relaxation of the law governing pornography and a further relaxation of the law on abortion. Neither is the Catholic Church very pleased at cuts in allowances made to Catholic social and youth work organizations announced last year together with a corresponding increase of finance for similar State-run organizations.

Returning to the proposed revision of the laws on divorce, abortion and pornography, some mention should now be made of the position of the German Catholic hierarchy at the present time to the question of the relationship between morality and legislation. The best and most recent summary of this I have found comes in a pamphlet entitled 'The Law of the State and the Moral Order' (*Das Gesetz des Staates und die sittliche Ordnung*) published jointly by the Roman Catholic and Evangelical Churches in December last year. There it is clearly stated that *the Church has no right to force specifically Christian interpretations of the moral law onto non-Christians via the State legal system*. This is certainly a departure from the position of 1954 as quoted earlier, where the Catholic Church was (presumably) content to let the law-courts apply a Christian interpretation of the moral law in their judgments. Nevertheless, in this pamphlet, the Churches do still *hold the government responsible for the retention of a basic moral order in society*, maintaining that an abnegation of responsibility by the government in such matters could have dangerous social and even political results. These cannot have been welcome words to the present government which seems anxious to wash its hands of any moral responsibility as expressed in the law on matters of individual sexual conduct.

Working from the principles outlined above, the Churches in general accept divorce reform, though they demand that the break-up principle should not become an excuse for easy divorce and that a hardship clause (*Härteklause*) be inserted preventing divorce at the request of one partner if the other partner is likely to suffer materially or otherwise as a result. At the same time the Churches have expressed their fear that the general principle of marriage *for life* might soon be expunged from the law-books, a fear which recent events have shown to be not entirely unjustified.

Not surprisingly the German Catholic Church is completely set against the proposed abortion reforms, arguing that the inviolability of life in the womb is so basic a tenet of moral law that there can be no question of individual freedom of choice in the matter. (Abortion has been allowed in Germany since 1927 in the case of danger of life and limb to the mother.) The Catholic Church is also unhappy at a possible relaxation of the pornography laws. It argues that society *as a whole* still has the duty to protect its members against such influence and rejects the results of the often-quoted 'Danish experiment' as too early to be conclusive. (The interpretation of the

German laws governing pornography is already looser than in England, judging from what gets into the German glossies.)

As yet there has been no 'break' between Church and government over these reforms. The Socialists appear anxious to avoid unnecessary conflict with the Churches at the moment. In November last year Herbert Wehner, the leader of the Socialist party in the Bundestag, in an interview with the German Catholic press agency (*Katholische Nachrichten-Agentur*), stated that Chancellor Brandt in conference with his party had laid great stress on the Catholic Church's comments on the proposed reforms, though later in the same interview he (Wehner) appeared non-committal on the Churches' desire for a *Härteklause*l in the new divorce law and 'sybilline' (*Herder-Korrespondenz*) on the question of abortion. He dismissed the fears of Cardinal Döpfner of Munich that a relaxation of the pornography laws would have dangerous political and social effects.

Nevertheless, direct conflict appears unavoidable unless the SPD is prepared to back down. The SPD has publicly committed itself to these reforms, though the result of a cabinet meeting in October, where a relaxation of the laws on procuring and pornography was narrowly defeated by 21 votes to 20, suggests that support for the measures within the SPD is by no means whole-hearted. The big question is whether the Catholic faithful would back the hierarchy with their votes if this became an election issue. My own feeling is that many of them might. Taking this fact along with the narrow SPD/FDP majority, it is conceivable that one or more of these reforms might be shelved, at least until Brandt is assured of a better parliamentary majority. And I, for one, would not like to bet on the outcome of the next general election in 1973.

The predominance of the sexual and abortion act reforms over the last six months has muted the traditional outcry against the Church Tax system mentioned earlier. There is a strong case for revising or abolishing this tax, whereby every baptized German who has not formally 'signed away' his church membership is liable to Church Tax. This tax, which is collected for the Churches by the State, amounts to ten per cent on top of income tax (about £1 a week for a man with a family earning £50 a week) and in 1969 came to £150 million for the Catholic Church alone. Murmured desires for revision or abolition have been growing in German legal circles; on the other hand the present government is unwilling to alienate the Church still further by crippling it financially. Nonetheless it is universally agreed that reforms in the Church Tax system must eventually come about.

The School System

When the school system was being restored after the war in Western Germany, the Roman Catholic hierarchy, following general Vatican policy, was particularly keen that Catholic children should

receive a Catholic education. In Western Germany this meant the restoration of State-maintained confessional primary schools (*Volks-schulen*) on pre-1933 lines. (By 'primary schools' here is meant the equivalent of the English primary school before the 1944 Education Act, comprising under one roof what we now term 'primary' and 'secondary modern' schools.) The call for confessional technical schools (*Realschulen*) and grammar schools (*Gymnasien*) was by comparison negligible, presumably because the accent on a 'Catholic' education falls more heavily on the first school years, and also because Catholic technical and grammar schools are an organizational non-starter, except in the largest towns.

Here it must be borne in mind that in 1945, when the school system had to be rebuilt after the war, the German Catholic Church had ugly memories of Hitler's attempts to alienate German youth from the Catholic Church, and was also none too happy about the prospect of State schools being eventually controlled by a Socialist government. Their answer was to hold on to the confessional school principle as hard as possible.

Whether or not State-maintained confessional schools were set up depended on the policy of individual *Länder*. The reason for this is that the school system was forced to reorganize before the united West German State came into being, and that the only effective force to enact school legislation in the period 1945–49 was the *Land*. This situation survives till today, where the school system is almost entirely *Land*-based. The policy of the individual *Länder* towards confessional schools depended on which party had the upper hand, and this in turn, as is shown clearly in table 1, depended on whether the Catholic Church was in a majority or a minority in the *Land*. Where the Catholic Church was in a majority, the CDU or CSU was the largest party and reorganized the school system on confessional lines. Where non-Catholics were in the majority, the SPD was the largest party, and non-confessional schools were the rule. When the CDU came to power nationally in 1949 it defended the already existing confessional school systems by reference to the Reich Concordat, which specifies the right of Catholic parents to a Catholic education for their children.

However, in those *Länder* which originally adopted a confessional school system, there has been a movement in the last ten years towards deconfessionalization of the schools. The reasons are two-fold. Firstly, confessional schools have often had a lower standard of education than non-confessional schools (not surprising when some of them only had one or two classes) and German Catholics have become increasingly sensitive about the so-called 'Catholic education deficit' over and against Protestants and free-thinkers. This 'deficit' comes out in Church Tax figures, which show that Protestant Church members, numbering about 45 per cent of the population, pay 57 per cent of the total Church Tax, and that Catholic church members, numbering some 51 per cent of the population, pay only 43 per cent;

i.e. the Protestants have better jobs because of better education. Secondly, there has been a move to reorganize the *Volksschule* on English lines, splitting it into primary school and secondary modern school (*Hauptschule*) and to close down many of the smaller schools in the country. The new schools are in the main non-confessional, for both educational and financial reasons.

The Catholic hierarchy, seeing its old 'hold' on the school system weakened, has protested loudly against such reforms, even going so far as to call the faithful to vote in the last *Land* elections in North Rhine-Westphalia (1970) for candidates who guaranteed the continued existence of the confessional school. But their efforts have been of little avail. The CDU/CSU is becoming disinterested and unwilling to back the bishops politically. Equally important, Catholic parents, at least those I myself have spoken to, admit that they see little point in Catholic schools continuing a separate existence.

In virtually the whole of Germany the only strongholds of Catholic education untouched by these reforms are *private Catholic schools*. These have existed since the war in areas where the school system was not confessionalized. Such schools are allowed to exist by constitutional law *only if they do not charge fees which prevent poorer children from attending them*. This means that such schools require massive financial backing either from the *Land* or the Churches in order to keep going. Their existence remains secure for the time being, though their *raison d'être* in many cases may soon be called into question.

In any case, religious instruction is still mandatory for all school children under fourteen unless they are withdrawn by their parents, and to change the law on this point would require a major constitutional reform. So the Churches still have some 'hold' on children of their flocks, the more so since religious instruction in State schools is normally given by the local priest or parson (which helps to make the German clergy the best-paid in Europe).

In conclusion it may be stated that there has certainly been a change in the direction of Catholic Church-State relationships in Western Germany since Adenauer. The changes may loosely be described as de-establishing, if we describe the period 1949–61 as one of *de facto* establishment. This change is still going on apace and its final outcome is far from certain. So far the change has hurt many Catholics, at least if we take the hierarchy as representing German Catholic opinion at large, perhaps a dangerous assumption. It means that the Catholic Church now has a relationship with the State similar to the one it has in other European countries like England, France and Holland; it certainly does not mean any persecution of the Church, as some die-hards would have one believe.

As an Englishman and a non-Catholic I welcome the changes of the last ten years, though respecting the attitude of German Catholics who are chary about the reforms of the sexual offences and abortion

laws. One of the main features of the generation gap in modern Germany is the aversion of German youth to 'establishment' in any form. The sooner the Churches in Germany lose their aura of establishment, the better. Particularly I would like to see the abolition of the Church Tax and the Churches' dependence on it. Mercifully whilst in Germany I didn't have to pay it.

TABLE 1

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The relationship between Church membership and political party as shown in the first post-war Land elections, and the resultant school systems.

Land	Percentage of Catholics and Protestants in 1950 (a)		Voting percentages of CDU/CSU and SPD in the first Land elections (b)		Majority party and year of election	School system chosen
	Cath.	Prot.	CDU/CSU	SPD		
Schleswig-Holstein	6.0	88.0	34.1	43.8	SPD 1947	Non-confessional
Hamburg	6.5	79.0	22 ⁽²⁾ / 3 ⁽³⁾	78 ⁽³⁾	SPD 1946	ditto
Lower Saxony	18.8	77.3	19.9	43.4	SPD 1947	Compromise ⁽⁴⁾
North Rhine-Westphalia	54.8	41.1	37.4	32.0	CDU 1947	Confessional
Bremen	8.9	84.9	22 ⁽²⁾	45 ⁽³⁾	SPD 1947	Non-confessional
Hessen	32.2	64.3	30.9	47.2	SPD 1946	ditto
Württemberg-Baden ⁽⁵⁾	37.8	59.5	39.8	32.3	CDU 1947	Confessional ⁽⁶⁾
Bavaria	71.8	26.8	52.3	28.0	CSU 1946	ditto
Rhineland-Palatinate	57.7	40.8	47.2	34.3	CDU 1947	ditto
South Baden ⁽⁶⁾	69.9	28.7	55.9	22.4	CDU 1947	ditto ⁽⁶⁾
S. Württemberg-Hohenzollern ⁽⁶⁾	52.1	46.7	54.2	20.8	CDU 1947	ditto ⁽⁶⁾
West Berlin	11.4 ⁽⁷⁾	72.0 ⁽⁷⁾	19.4	64.5	SPD 1948 ⁽⁸⁾	Non-confessional
Saarland ⁽⁹⁾	— ⁽¹⁰⁾	— ⁽¹⁰⁾	51.2 ⁽¹¹⁾	32.8 ⁽¹²⁾	CVP/CSU '47	Confessional

(Percentage of Catholics and Protestants in Western Germany in 1950 excluding the Saarland: Catholics: 51.2 per cent. Protestants: 45.2 per cent.)

Notes

¹Source: *Statistisches Jahrbuch der Bundesrepublik Deutschland*, 1952, p. 28.

²Source: *Lexikon für Wirtschaft und Politik*, *passim*.

³CDU and FDP campaigned together. The result is for both parties combined.

⁴Could find no percentage figures. Percentages worked out from seat distribution.

⁵State-maintained confessional schools provided where parents requested them.

⁶These three *Länder* were combined in 1953 to form the present *Land* Baden-Württemberg.

⁷Reorganized, with the exception in South Württemberg, into non-confessional schools when the *Länder* combined in 1953.

⁸I can find no Church membership figures for 1950. The figures given are for 1969.

⁹This was in fact the second election in Berlin. The first one was held in 1946 before the city was divided.

¹⁰Under French control till 1959. During the period of French control the German political parties were illegal.

¹¹I can find no figures for 1950. The majority of the population is Catholic.

¹²CVP/CSU—the equivalent of the CDU.

¹³SPS—the equivalent of the SPD.